

# SYMPOSIUM

## Immigrants' Rights: From Global To Local

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### ESSAY—LAW AND ORGANIZING FROM THE PERSPECTIVE OF ORGANIZERS: FINDING A SHARED THEORY OF SOCIAL CHANGE

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### I. INTRODUCTION

In recent years, much has been written about law and organizing, a model of social change lawyering that endorses collaboration between lawyers and organizers, as well as the utilization of legal strategies to advance grassroots community organizing.<sup>1</sup> Critical analysis has focused, in large part, on the role of *law* and *lawyers* within the law and organizing model. For example, law and organizing is understood as a way to re-envision the attorney-client relationship to promote client agency and empower clients; reflect on innovative methods of lawyering beyond conventional legal practice; and analyze the efficacy and limitations of legal strategies in social movements.<sup>2</sup> Proponents of the law and organizing model posit that legal strategies, when pursued in combination with and in support of grassroots organizing campaigns, are more effective than legal strategies alone in both empowering communities and achieving social justice goals.

In practice, however, tensions between lawyers and organizers persist and, at times, hinder campaigns for social justice. There are

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1. See, e.g., Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001) (describing the history and the evolution of joint legal and organizing strategies); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 429 (1995) (describing the Workplace Project, an organization based in Long Island that organizes immigrant workers to address the many problems they face at their jobs and in their communities); Victor Narro, *Finding the Synergy Between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 FORDHAM URB. L.J. 339 (2008) (describing immigrant worker organizing campaigns involving law and organizing strategies). See also Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 67 (2000) (urging lawyers to adopt an activist lawyer model that incorporates organizing and other nontraditional strategies to support low-income communities).

2. See generally Cummings & Eagly, *supra* note 1; Diamond, *supra* note 1; Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 1 (Austin Sarat & Stuart A. Scheingold eds., 2006).

long standing critiques, particularly on the part of organizers, that lawyers, even those who are progressive, undermine community organizing and collective action. Rather than building the power of marginalized communities, lawyers tend to create dependency on lawyers and legal strategies without altering structural inequalities and the status quo.<sup>3</sup> Notably, in my experience, community organizers believe that these criticisms are applicable even to lawyers and lawyering within the “law and organizing” model. The reality of these on-the-ground conflicts between organizers and lawyers must be addressed if “law and organizing” is to be effective and sustainable as a model for bringing movement players together to achieve systemic change.

This essay explores the philosophical, interpersonal, and operational tensions in law and organizing from the perspective of organizers and concludes that the key to the law and organizing model—and to effective partnerships in social justice movements—is a shared theory of social change based on the primacy of affected community members. Community members—not lawyers or organizers—should lead and be at the center of efforts seeking to improve their lives. Organizers and lawyers can and should find common ground as facilitators, supporters, and allies of affected community members.

Section II begins by discussing the perspectives of organizers on “law and organizing,” specifically, the strategic reasons underlying organizers’ decisions to involve lawyers in their campaigns. I then turn to the operational and interpersonal challenges of law and organizing identified by organizers, namely the privileging of legal strategies by lawyers at the expense of building community power, as well as the unequal power dynamics perpetuated by lawyers who take on the “expert” role in their interactions with organizers and community members. Next, in Section III, I explore the philosophical underpinnings of the ongoing tensions between organizers and lawyers. I conclude that a primary source of conflict is when lawyers and organizers have divergent theories of social

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3. See generally Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U.L. REV. 455 (1994).

change, and propose that lawyers and organizers find common ground with a shared theory of social change that honors the primacy of affected community members. In Section IV, I set forth a model of law and organizing based on movement building, and suggest philosophical, interpersonal, and operational guidelines to strengthen the law and organizing model as a concrete and practical method to advance social justice.

## II. “LAW AND ORGANIZING” FROM THE PERSPECTIVE OF ORGANIZERS

Integral to the law and organizing model is the proposition that grassroots organizing and mass mobilization are central to social movements, and that legal strategies are ancillary strategies that, while at times provide necessary and effective support to organizing campaigns, do not result in meaningful long term social change by themselves.<sup>4</sup> Despite the primacy of grassroots organizing in this model, an ongoing and serious criticism levied by organizers about lawyers is that even progressive lawyers minimize and fail to understand the role of organizing in social justice efforts. Organizers often believe that lawyers undermine, rather than advance, their on-the-ground organizing efforts.

If the law and organizing model is to be truly effective as a social change strategy, then we must understand the range and nature of the tensions that exist when organizers and lawyers attempt to collaborate. To obtain the perspective of organizers, I interviewed community organizers who have substantial experience working with lawyers on workers’ rights, civil rights, and immigrants’ rights campaigns that fall within the rubric of “law and organizing.”<sup>5</sup> I also drew on my personal background as a community organizer on gender justice issues, as well as my near-decade of experience working with organizers. In particular, I reflected on the numerous conversations I have had with organizers and progressive lawyers over the years about law and organizing. The following is meant to be a preliminary and non-scientific exploration of law and organizing from the vantage point of organizers.

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4. See Narro, *supra* note 1, at 340; Sarat & Scheingold, *supra* note 2, at 2-3.

5. To learn more about the perspectives of community organizers on the difficulties that arise when lawyers work with community organizations, see Quigley, *supra* note 3.

### A. Why Add “Law” to “Organizing”

Rather than assume that lawyers should be involved in organizing efforts, I asked organizers the following preliminary questions: Should lawyers be involved in organizing efforts in the first place? If so, why? What value do lawyers add to grassroots organizing endeavors?

According to the organizers with whom I spoke, the decision to involve lawyers in their organizing campaigns is contextual and based on strategic considerations, namely whether legal strategies can help to advance a campaign. The organizers uniformly said that they view legal strategies, including litigation, legal community education, and legislative advocacy, as just one of multiple components that comprise a campaign.

The following is an analytical framework, based on my conversations with organizers, for how organizers evaluate whether lawyers and legal strategies can add value to their organizing efforts. The key strategic questions that organizers consider in deliberating whether to involve lawyers include:

- Will legal tactics put *pressure* on the organizing targets?
- Will legal tactics help to enhance the *legitimacy* of the grievances against the target?
- Will lawyers and legal tactics provide *support for organizers* by defending them from attacks, providing them with legal guidance, or helping to build trust and credibility with members?
- Will lawyers and legal tactics provide *support for members* by defending them from attacks, educating them about their legal rights, or providing support through direct legal services?
- Will legal tactics generate *publicity* and *public support* that will put pressure on the targets and cultivate allies, alliances, and support for the campaign?
- Will legal support help to *institutionalize* and *enforce* hard fought victories?

In my conversations with organizers over the years, there are seven primary legal strategies that organizers have identified as being effective in advancing community organizing objectives such as those outlined above: affirmative litigation; legislative advocacy; community legal education; strategic counseling and advice; defensive litigation; direct legal services; and legal drafting of agreements or legislation.

First, affirmative litigation can put pressure on campaign targets, thereby gaining leverage and advancing organizing goals. For example, one organizer noted that campaigns to organize workers who are employed by large corporate institutions are difficult without the assistance of lawyers.<sup>6</sup> Large corporate targets have ample resources and use scurrilous tactics to rebuff organizing efforts. Legal strategies can help to overcome this power differential by imposing pressure through wage and hour, health and safety, or other affirmative litigation. In addition, affirmative lawsuits can—in seeking to create, enforce, and/or strengthen legal rights for workers—effect systemic change by altering the existing legal framework. They can also generate media attention and public support, affording campaigns with much needed leverage to accomplish their desired goals.

Second, campaigns may also seek to alter unjust laws or to create new laws to advance the rights of marginalized communities. In highlighting the disjuncture between the injustices that exist under the current legal structure and the normative vision possible under a new statutory framework, legislative campaigns can be an effective way of drawing media attention and public support to put pressure on the campaign targets. Lawyers can play a critical role in such legislative reform efforts. Lawyers may analyze existing laws, identify possible legislative changes, strategize about how to frame legislation to withstand potential legal challenges, draft proposed legislation, and testify before legislative bodies.

Third, community legal education is important, according to the organizers, to educate both organizers and members about the members' legal rights. This process of understanding that existing

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6. Telephone Interview with Vy Nguyen, former Campaign Coordinator, Koreatown Immigrant Workers Alliance, in L.A., Cal. (Dec. 19, 2008).

conditions are not just unjust, but at times also unlawful, may give members a greater sense of political consciousness and agency, enabling them to stand up for their rights and alter the status quo. Armed with such knowledge, organizers can then integrate “know your rights information” into the organizing campaign to strengthen members’ capacity to mobilize.<sup>7</sup> For example, one of the very first outreach events for car wash workers in Los Angeles, which eventually led to a union organizing drive, was a carne asada (barbecue). This community education event was held for workers to inform them about their legal rights to minimum wage, overtime, and healthy and safe work conditions.<sup>8</sup>

Fourth, the organizers commented that lawyers provide valuable input regarding the legality of organizing strategies and tactics. One organizer noted, for example, that he values the advice of lawyers in planning direct actions like picketing at a campaign target.<sup>9</sup> This organizer also commented that knowing what can or cannot be done legally (*e.g.*, understanding that there is a First Amendment right to picket on a public sidewalk) is invaluable, and that it is necessary to have legal observers at direct actions.<sup>10</sup> Lawyers may also present strategic options of which organizers are unaware.

Fifth, lawyers are indispensable when organizers and members are attacked by the opposition for organizing and speaking out, often through the filing, or threat of filing, lawsuits intended to harass and intimidate. In recent years in Los Angeles, garment worker and taxi worker activists have both been hit with lawsuits ultimately deemed to be Strategic Lawsuits Against Public Participation (“SLAPP”) designed by the plaintiffs to chill the organizers’ First Amendment rights and deter them from engaging in protected activities such as passing out flyers and testifying to city officials about exploitative

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7. Interview with Nelson Motto, Community Organizer, CLEAN Carwash Campaign, in L.A., Cal. (Dec. 17, 2008).

8. This carne asada took place in April 2007 at the UCLA Labor Center, a community education event planned by lawyers and organizers at which workers were informed about their legal workplace rights.

9. Interview with Nelson Motto, *supra* note 7.

10. *Id.*

working conditions.<sup>11</sup> Legal advocates played a critical role in defending these organizers and enabling them to continue with their campaigns. They strategically employed their litigation skills to push back against the opposition.

A sixth way that lawyers may add value to organizing efforts is by providing direct legal services that enhance the credibility and appeal of the organization leading the campaign. For example, Los Angeles worker centers and immigrants rights organizations, such as the Garment Worker Center, Koreatown Immigrant Workers Alliance, and South Asian Network, have referred workers with wage claims to legal services providers, in addition to providing internal case management services. Other worker centers have made direct legal services a membership benefit.<sup>12</sup> Whether legal services are provided in-house or through referral, they can facilitate trust-building between organizing entities and community members, and lay a foundation for community members' further involvement in organizing campaigns. It may also bolster grassroots organizations by providing legal support and a means of involvement for community members who may not be directly involved in a campaign.

Seventh, legal drafting skills contribute to organizing campaigns by helping to institutionalize campaign successes. For instance, a lawyer may draft agreements or legislation to codify the victory and ensure enforcement, including potential remedies in the event the agreement or statute is violated. The lawyer may also help to reach out to affected community members to explain the components of the victory, as reflected in such an agreement or legislation.

Thus, from the organizers' point of view, the issue of whether to involve lawyers and lawyering is, in many ways, a utilitarian one. The fundamental question is: will a legal strategy help to advance the organizing? A critical assumption underlying this approach is that legal strategies, both offensive and defensive, should fit within the context of the *overall* organizing campaign. For lawyers and

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11. *See* Fashion 21, Inc. v. Garment Worker Ctr., No. BC-269427 (Cal. Super. Ct. 2002) (discussed in Narro, *supra* note 1, at 350-51); Bell Cab Co., Inc., et al. v. S. Asian Network, Inc., No. VC051895 (Cal. Super. Ct. 2008) (appeal pending).

12. Cummings & Eagly, *supra* note 1, at 467-68, 496.

organizers to work together effectively—according to all the organizers interviewed—there should be a shared understanding of the larger campaign goals and strategy, as well as the specific organizing objectives underpinning the legal tactics. As discussed in the section below, however, organizers believe that it is often the lack of a shared understanding, and differences of opinion as to who should make the decisions, that cause tensions between organizers and lawyers and hinder the organizing despite the best intentions of both.

### **B. The Challenges of Adding “Law” to “Organizing”**

Although the interplay between organizing and law as a social change strategy has become increasingly complex and sophisticated, the integration of lawyers and lawyering into organizing endeavors is not without its pitfalls. The ideal situation, from an organizer’s point of view, is to collaborate with lawyers who understand the long-term organizing goals, recognize the strategic and supporting role of legal strategies, creatively push the boundaries of the law and legal system to advance organizing efforts, and are capable of establishing respectful partnerships with both organizers and members. Yet, while “law and organizing” has become vogue in progressive legal circles, a perception of organizers is that lawyers fail at times to meet these expectations on operational, interpersonal, and philosophical levels.

In my conversations with organizers (all of whom have worked with lawyers in the context of broader organizing campaigns that would be considered examples of “law and organizing”), several expressed a significant amount of frustration about collaborating with lawyers. In particular, they conveyed dismay about how lawyers—even those who profess to value the primary role of community organizing in social justice struggles—privilege litigation and other legal strategies at the expense of organizing. They also expressed dissatisfaction that lawyers find it difficult to play a supporting role, instead assuming “expert” roles and trying to impose their views on both organizers and members. The irony is that law and organizing has evolved and gained credibility as a social change

strategy in large part to address such concerns about the limitations of law and lawyering in effecting systemic change.

In order to analyze and explore how to address these tensions, the following discussion outlines some of the critical operational, interpersonal, and philosophical challenges of working with lawyers from the perspective of organizers.<sup>13</sup>

*1. Operational Challenges: Privileging the LAW in “LAW and Organizing”*

Many of the criticisms of lawyers expressed by organizers are grounded in the perception that lawyers privilege legal strategies above other social change strategies, including community organizing, thereby neglecting the longer-term challenge of movement building. While organizers are responsible for a multi-faceted organizing campaign in which legal tactics comprise just one component, the perception is that lawyers—even those with the best intentions—focus on legal advocacy, particularly litigation, and treat the legal fight as the entire picture. Rather than defer to organizers with respect to strategic decisions, lawyers prioritize their desired legal outcomes and are too willing to allow their litigation goals to take precedence over organizing goals.<sup>14</sup> For example, one organizer noted that lawyers who had filed affirmative litigation against a target within the context of an organizing campaign repeatedly

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13. While there were many common themes expressed by the organizers whom I interviewed and with whom I have conversed over the years, by no means do I intend to suggest that there is just one monolithic organizers' viewpoint. The organizers expressed a range of opinions about law and organizing, full of nuances and complexities. The following discussion is intended as an initial effort to begin to outline some of the primary critiques that organizers have of lawyers to better understand perspectives that are not often heard within legal fora.

14. It is important to note that the organizers who raised this issue were cognizant of the ethical obligations that attorneys have to their clients. As one organizer noted, a lawyer may approach it as “my case, my clients, and my ethical obligations,” whereas an organizer thinks not of individual members' interests but about how to achieve long-term systemic change that benefits the collective community and furthers values of social justice. While this is a structural issue given that lawyers are bound by professional responsibility rules to advocate for their clients' interests, the organizers expressed that it is much more difficult to bridge this divide when the lawyers fail to keep in mind the big picture and the original purpose of the legal advocacy to support and achieve the overarching organizing goals. When lawyers and organizers have such a shared understanding, in the organizers' view, it is more possible to devise workable solutions that allow lawyers to fulfill their ethical obligations and to simultaneously advance the organizing.

counseled organizers not to conduct direct actions against the campaign target because it might jeopardize lawsuit settlement talks. While both the organizers and lawyers shared the goal of settling the lawsuit, the lawyers viewed it as so imperative that the organizing goals of mobilizing allies and providing a space for members to speak out publicly were temporarily set aside.

Another serious ramification of prioritizing legal strategies, according to organizers, is that members may come to rely on the legal system and lawyers rather than their own power in organizing for social change. Members look to the lawyers and develop a dependency on legal remedies, thus hindering organizing efforts intended to encourage collective action and community leadership.<sup>15</sup>

This leads us to a second related criticism that lawyers at times hinder—rather than help to advance—organizing efforts. The complaint is that, instead of jointly strategizing with organizers about how to deploy creative legal tactics to achieve organizing goals, lawyers fail to think outside the box and focus on what *cannot* be done.

For example, one organizer recounted how all major campaign decisions and all written documents, including action alerts, first had to be reviewed and approved by lawyers. This process of review and veto authority had the effect of slowing down and delaying organizing efforts, even during emergencies when organizers felt like they needed to mobilize public support immediately. Moreover, this organizer noted, the lawyers effectively gained control over strategy and messaging. After the campaign experienced a legal attack from the campaign target, the lawyers insisted that the organizers hold off on conducting any direct actions despite the organizers' belief that it was critical to respond to the attack with public mobilization. The lawyers' opinion that it was necessary to suspend the direct actions in order to strengthen the campaign's legal position prevailed over the protests of the organizers. The lawyers thus failed to partner with

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15. The concern about potential dependency on lawyers and the legal system is a recurring theme in the literature on lawyering in poor communities. See, e.g., Quigley *supra* note 3, at 464-44; Wexler, *supra* note 3, at 1053, 1055-56. It is also contrary to the strand of progressive public interest lawyering that seeks to empower clients to articulate stories and experiences in their own voices. See Cummings & Eagly, *supra* note 1, at 457-60.

the organizers to strategize how to defend against the legal attack and also continue the direct action tactics central to the organizing strategy. Instead, the lawyers curtailed and limited the organizing with their conservative “work within the system” approach. In the view of the organizer, this hindered the success of the campaign. As another organizer half-jokingly remarked: a lawyer’s mantra is “no se puede.”

## *2. Interpersonal Challenges: Unequal Partners*

Another prevalent critique is that lawyers do not treat organizers and members as equals, perpetuating unequal power dynamics between lawyers, organizers, and members, which prevents effective collaboration for social change. Lawyers, in the organizers’ view, too often attempt to act as the “experts” in the room and take lead decision-making roles, rather than supporting ones. Lawyers are perceived as aggressive, prone to talking instead of listening, and hierarchical in their approach. This makes it difficult, according to organizers, to establish respectful and effective partnerships between organizers and lawyers.

Organizers believe that many lawyers do not truly value the roles of community organizing and organizers in movements for social justice. While lawyers may profess to value the primacy of organizing, organizers often feel that lawyers fail to understand movement building and how grassroots organizing and mass mobilization are key to achieving long-term systemic change. As a result, they often exert authority and convey a sense of superiority over organizers and members. For instance, one organizer commented that lawyers take a top down decision-making approach and seem puzzled when organizers explain that critical decisions must be made and approved by the membership rather than just the attorneys and organizers. Another organizer wryly noted that lawyers expect organizers simply to “show up” with clients whenever the lawyers need to meet, overlooking the amount of trust-building and logistics that goes into having strong members willing to be plaintiffs in lawsuits. Many lawyers, according to organizers, minimize the high level of skill involved in organizing and do not invest time or effort in cultivating trusting relationships with the

members who are their clients, instead relying on organizers to be liaisons, while the lawyers focus on the technical aspects of lawyering.

Organizers also expressed concern that, within this unequal power framework, lawyers often do not communicate effectively with clients or organizers about the status of legal advocacy. Organizers commented that members who have pending cases often complain that attorneys do not keep them updated about their cases and/or that they did not understand fully what the attorneys told them. The members, who sometimes are intimidated by the attorneys, will then ask the organizers, whom they trust, to explain what is going on with their cases. All too often, however, organizers feel that the lawyers have not apprised them of the status of the case. When organizers ask the attorneys, often on behalf of the members/clients, for updates on the legal advocacy, they are told that attorney-client privilege prevents disclosure of such information. The result is that organizers and members both feel disempowered.

Moreover, one organizer noted that the lack of effective communication results in a missed organizing opportunity. This organizer expressed a desire for lawyers to educate both organizers and members about the members' rights and remedies under the law and, in essence, unravel and deconstruct the existing legal framework in ways that organizers and members can understand. Integrating such "know your rights" education into organizing can increase members' political consciousness and embolden them to stand up, speak out, and organize for systemic social change.<sup>16</sup> According to this organizer, however, lawyers too rarely make the effort to conduct this type of community education for organizers and members. Thus, rather than empowering organizers and members by sharing their knowledge of the law, lawyers continue to assume the exclusive role of expert.

One organizer did comment, however, that the imbalance of power is not always weighted toward the lawyers. The organizer cautioned that it should not be assumed that somehow lawyers have greater agency than organizers. Given that organizers and sometimes

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16. See Wexler, *supra* note 3, at 1056.

community members have free will and agency in the context of a campaign, there are instances when lawyers' voices are not equally heard or taken into account. It is therefore important, according to this organizer, for lawyers, as well as members and organizers, to express their agency within relationships that are built on mutual trust and respect. Organizers, members, and lawyers are all human actors and should have a safe space where they can be themselves and act on their agency; to think otherwise is patronizing and romanticizes the situation.

Indeed, community organizers and other actors who come from outside the community are not immune from the potential pitfalls to which lawyers are vulnerable. Community organizers are susceptible—just as lawyers are—to sometimes imposing their agendas on community members. Whenever an outside actor interacts with affected community members, there is a complex and nuanced engagement and negotiation between the actor (be it lawyer or organizer) and the community members. Given that the craft of community organizing is premised upon building community power, organizers tend to be more conscious than lawyers of the importance of creating democratic mechanisms and processes for ensuring participation of members. Nonetheless, organizers' agendas—like those of lawyers—still may, at times, conflict with those of the individual community members.<sup>17</sup>

This does not by any means justify the tendency of lawyers to assume the role of “experts” and to treat organizers and community members as less than equals. While the power dynamics between lawyers, organizers, and community members are fluid and complex, in my experience, organizers' criticisms of lawyers that are interpersonal in nature, such as the ones noted above, are often legitimate and well-founded.

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17. Interestingly, the ethical obligations that require lawyers to zealously advocate for their clients' interests and at their clients' direction may, at times, render lawyers more accountable to affected community members. A lawyer must “abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.” MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2007). Thus, a lawyer is obligated to adhere to a client's articulated goals even when they conflict with the lawyer's conception of what is in the public interest. There is no such formal framework of professional accountability that applies to community organizers.

### *3. The Role of Race and Other Intersectional Axes of Identity*

Organizers raised the issue of race as another significant factor that complicates relations between lawyers and organizers. In commenting on the common scenario of white public interest lawyers working with organizations led by and/or working within communities of color, one organizer noted that the lawyers often have not done the necessary anti-racist self-work and instead act out their white privilege in their interactions with organizers and members, thus contributing to the tendency of lawyers to act as the experts or authorities in the room. This prohibits developing sound working relationships built on mutual trust and respect.

The situation is further complicated, this organizer noted, when attorneys provide pro bono services in support of a community organization or its campaign. While pro bono representation is appreciated by organizers, the perception, based on actual experience, is that pro bono lawyers often do not provide services equivalent to the representation afforded to paying clients. This raises significant issues of accountability, or lack thereof, to the organization or community involved and reinforces an unequal power and class dynamic between lawyers on the one hand and organizers and community members on the other.

Other intersectional axes of identity, such as gender and sexual orientation also influence the power relations between lawyers, organizers, and community members. For instance, male privilege and/or heterosexual privilege on the part of lawyers also may add to the oppression of organizers or community members who are women and/or lesbian, gay, bisexual, or transgender (LGBT).

In some instances, power and privilege may shift away from lawyers who belong to the marginalized group(s). A LGBT woman of color lawyer, for example, may be confronted with the challenge of dealing with male, heterosexual, and/or race privilege on the part of organizers or community members. The reality is that lawyers, organizers, and community members alike possess privileges and biases that affect their worldviews and interactions with others. It is important to remember, however, that in the context of law and organizing, these power imbalances tend to weigh in favor of lawyers given that a disproportionate percentage of communities of

color are low income and people of color, women, and LGBT individuals are typically underrepresented in the legal field.

Due to all of the challenges that arise when organizers and lawyers work side by side, some of the organizers commented that they believe there are two main options in working with lawyers: either quarantine the lawyers into a discrete, limited role in the campaign or attempt to bring the lawyers more fully on board as partners by educating them on the broader organizing campaign to understand how legal strategies can advance the organizing goals. The route chosen depends in part on the interpersonal relations between the organizers and lawyers and whether they share a common vision of social change.

### III. THE PHILOSOPHICAL DIMENSIONS OF LAW AND ORGANIZING: FINDING A SHARED THEORY OF SOCIAL CHANGE

The frustrations raised by organizers about their experiences working with lawyers deserve serious examination. The relationships between organizers, lawyers, and community members are part of the human infrastructure of social justice movements. If the overarching goal is to create a social justice movement that achieves long term structural change premised upon values like fairness and equality, then an analysis of the challenges of law and organizing should be done with an eye towards developing stronger collaborative relationships and social change strategies that can facilitate movement building. The implications of the tensions between organizers and lawyers working on social justice struggles should be understood and addressed.

In my conversations with organizers, they highlighted two specific areas of persistent tension and conflict. The first is the perception that lawyers privilege legal strategies above other social change strategies and do not appreciate the central role of organizing in winning campaigns and building social movements. The second recurring concern is the difficulty of establishing respectful, trusting relationships between lawyers and organizers.

At the crux of these tensions is the question of whether organizers and lawyers share a common theory of social change. An individual's worldview about how social change occurs—whether it

is rooted in mass protest and collective action, or winning and wielding electoral power, or altering legal frameworks and structures, or a combination of multiple factors—has significant implications for how an individual evaluates and prioritizes social change strategies. Even the issue of what constitutes meaningful systemic change—e.g., new statutory rights or altered social mores—has bearing on how an activist thinks about the desired social justice goals and the best means to achieve such outcomes. One’s assumptions about what constitutes social change and how such change occurs influences one’s approach to specific campaigns as well as the broader challenge of movement building.

Thus, it would not be surprising if we were to learn that, in general, lawyers and organizers often subscribe to different theories of social change. A simple version of the theory behind community organizing is that social justice can be achieved only when marginalized communities most affected by a problem are actively engaged and have a voice in making decisions and devising solutions that affect them. A critical underlying assumption is that there can be no meaningful and lasting systemic change unless the masses organize and democratic institutions and policies are established that enable ongoing mass participation. While other social change strategies, such as legal advocacy and research, are valuable and complementary tools in social justice struggles, the primary and requisite strategy is community organizing and mobilization.

Lawyers, on the other hand, may adhere to a range of theories of social change. A common theory amongst progressive lawyers is the belief that legal institutions and structures reflect the current balance of power and that a more equitable society can be created by challenging and altering existing laws, as well as enforcing laws that are just. Unlike theories of community organizing, in which the participation of those most affected is not just requisite, but is given primacy, progressive lawyering does not necessarily posit legal strategies at the forefront of social change strategies. While lawyers may at times privilege legal strategies, as noted in the critiques raised by organizers, theories of progressive lawyering for the most part recognize that other forms of challenging the status quo are

necessary to combat inequality. Law and organizing is a prime example of this.

Thus, in analyzing the opportunities for collaboration between lawyers and organizers, a critical initial question to ask is: *Is there shared agreement on a theory of social change?* If no common understanding exists at the outset, it is likely that the tensions and conflicts between organizers and lawyers discussed above will arise. Indeed, differences of opinion as to whether to prioritize legal or organizing goals and strategies are probably to be expected. Perhaps one reason organizers and lawyers often seem at odds is that both assume that they have a common progressive political analysis and commitment, without delving further into their underlying values and beliefs about how social change occurs and the most effective means for achieving it. Thus, expectations of positive collaboration are created without closer examination of whether there actually exists a common foundation and framework for moving forward.

There also are implications with respect to the criticism of lawyers expressed by organizers about the difficulties of establishing relationships of mutual trust and respect. The theory of social change subscribed to by an individual will influence her views of the appropriate roles that should be played by various actors in a campaign. For example, if a person believes that change comes about only through the active participation of affected community members, then it is more likely that she will think that community members themselves and organizers should have more decision making authority and play more prominent roles in a campaign than lawyers.

A key lesson to draw from this is that a shared theory of social change is essential for effective collaboration between organizers, lawyers, and community members. For those dedicated to the law and organizing model, it seems imperative that there be commitment to a theory of social change based on the primacy and leadership of affected community members and, thus in practice, a prioritization of community organizing *complemented by* legal and other social change strategies. By definition, “law and organizing” is premised upon the recognition that legal strategies alone are not sufficient to achieve systemic change. Rather, grassroots organizing that fosters

the active participation of affected community members is critical to transforming existing structures and institutions. The fundamental purpose of the “law and organizing” model would be undermined if, even inadvertently, legal strategies were privileged over organizing strategies that empowered affected community members to build power and take action themselves. Moreover, the important democratic concept inherent to organizing — that affected individuals should have the greatest voice in decisions that impact them—is consistent with a primary goal of progressive public interest lawyering, which is to empower clients so that clients have a voice and speak for themselves rather than having lawyers speak for them.<sup>18</sup> This is further reinforced by the ethical obligations that require lawyers to zealously advocate on behalf of their clients’ interests, as articulated by the clients, and to defer to decisions made by their clients, not themselves.<sup>19</sup>

While it is important to have a shared theory of social change premised upon the primacy and participation of affected community members, it should be noted that the effectiveness of community organizing, legal, or other strategies and tactics depends on context. Factors such as the political landscape, existing legal framework, availability of resources, community and cultural dynamics, characteristics and pressure points of the campaign target, and profile of the relevant decision makers all affect the development of campaign strategies and tactics—including which strategies and tactics should play a more prominent role in various stages of a fight.

In circumstances where legal strategies may be prioritized in a campaign, three issues become critical: first, there should be a deliberative process that includes organizers and community members, as well as lawyers, in reaching the conclusion that the battle is primarily a legal one; second, there should be strategizing as to how to maximize any organizing opportunities that may exist given the legal fight’s potential for increasing public awareness and support for the relevant communities and issues; and third, affected

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18. See Cummings & Eagly, *supra* note 1, at 457-60.

19. See MODEL RULES OF PROF’L CONDUCT R. 1.2(a), 1.4(a)-(b) (2007).

community members should have a leading voice and decision making role in the shaping and implementation of legal objectives.

The overarching principle should be to ensure that affected community members are actively involved and have a leadership role regardless of whether community organizing, legal, or other strategies are utilized in a social justice campaign.

#### IV. LAW AND ORGANIZING AS MOVEMENT BUILDING: PRACTICAL GUIDELINES FOR EFFECTIVE COLLABORATION

In essence, affected community members—not lawyers or organizers—should be in the lead and at the center of campaigns for social justice. This is common ground that can bring together organizers and lawyers in their roles as facilitators, supporters, and allies of affected community members. By explicitly engaging in transparent dialogue about their theories of social change and the values implicit in such theories, this triad of actors will be better able to develop constructive partnerships and processes that will establish a strong human infrastructure for a social justice movement.

There are not just tensions—but also opportunities—inherent to law and organizing. The organizers with whom I spoke were, despite their mixed experiences, for the most part hopeful about the potential for collaborating with lawyers in future social justice struggles. Since there is no lack of desire for partnering, the issue becomes developing the necessary tools to facilitate building strong relationships between organizers, lawyers, and community members to advance effective law and organizing.

Within the framework of creating and strengthening a broader movement for social justice, set forth below are some thoughts for approaching law and organizing from three different dimensions: philosophical, interpersonal, and operational.

##### **A. Philosophical**

At the outset, organizers, lawyers, and community members can engage in a transparent dialogue about the theories of social change to which they adhere, and the implicit values in which they believe. By sharing their worldviews on how social change occurs and the most effective strategies for attaining it, lawyers, organizers, and

community members can begin a process of understanding and learning that develops philosophical and moral solidarity. It also is an opportunity to ensure that a social justice framework is established that can inspire and guide all participants over the course of a struggle.

To establish a framework for a philosophical discussion which also lays the groundwork for operationalizing principles and values, the following guideposts for planning social justice campaigns might be considered:

- What are the social justice values in which we believe and to which we are committed?
- How do we win long lasting systemic change that is socially just?
- What forms and strategies (both within and beyond campaigns) are effective in winning social justice campaigns *and* also consistent with social justice values?
- What forms and processes (both within and beyond campaigns) can help to guarantee that the people most affected have the greatest voice in decisions that affect them?
- What accountability mechanisms should be established to ensure that campaign goals, strategies and decision-making are guided by social justice values?

In reflecting on these questions, lawyers, organizers, and community members can do the necessary work of formulating and articulating the social justice values that guide their campaigns and struggles. While strategies and tactics may shift in the course of battle, having a shared philosophy, vision, and goals can enable social justice activists to build a strong, cohesive campaign team and to keep their eyes on the prize. The bonds created between organizers, lawyers, and community members who believe in the same ideology and values can help them to maintain trust and effectiveness even when tensions or conflicts arise. By agreeing on and establishing democratic mechanisms and processes for the operational aspects of a campaign, social justice principles can be

preserved and actualized during the campaign itself—resulting in a stronger and more effective campaign.

Moreover, there is an opportunity for organizers, lawyers, community members, and other movement players to challenge themselves to consciously and proactively develop systems that will help to avoid perpetuating inequality and marginalization in the struggle for social justice. For example, in reflecting on other historical movements, the women's movement has been criticized for its lack of inclusion of women of color, while the black power movement has been criticized for its marginalization of women. By engaging in honest conversations about ideology and by developing processes based on shared values, lawyers, organizers, and community members can strive to be visionary and inclusive, and embody in practice a social justice ethos.<sup>20</sup>

### **B. Interpersonal**

There is an interpersonal dimension to law and organizing that can greatly influence whether collaboration between lawyers and organizers is effective as a social change strategy. In the course of a hard fought campaign marked by vigorous opposition, attacks, and setbacks, there is potential for divisiveness, finger pointing, and demoralization. It can be a testing ground for the relationships between organizers, lawyers, community members, and others involved in a struggle for social justice. Whether these individuals are able to withstand the pressure and continue to collaborate effectively in furtherance of campaign goals depends in part on whether there is adequate trust and respect amongst them. In charting an interdisciplinary approach to social justice, law and organizing holds the promise of fostering truly equal partnerships amongst organizers, lawyers, and community members.

As discussed above, law and organizing arguably begins with a theory of social change premised upon the belief that marginalized

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20. While community members should lead and be at the center of campaigns, this is not to suggest that their potential biases or prejudices, for example homophobia, should be accepted without challenge. Rather, it is essential that a social justice framework be established and guide a campaign so that all actors, including community members, lawyers, and organizers, can be held accountable for practicing values of inclusion and equality.

communities should have an active role and voice to shape the institutions and decisions that affect them. This presents both an opportunity and obligation for organizers and lawyers to create an environment where community members are respected and able to express their agency, and where it is acknowledged that, as those with the most to risk and lose, community members should have the greatest role in campaign decisions affecting them and their communities. With respect for community members as a baseline, trusting relationships between organizers and lawyers can also be established. The centrality of community members can mitigate the potential for competitiveness or positioning between organizers and lawyers in a campaign, instead allowing both organizers and lawyers to be reflective and thoughtful about their supporting roles in facilitating the empowerment of community members.

A key to developing relationships of mutual trust and respect in this context is the recognition that organizers, lawyers, and community members are all human beings with agency. As one organizer noted, while there may be imbalances of power due to lawyers' professional training and credentials, these dynamics are fluid and do not always weigh in favor of lawyers. To think that lawyers always have the upper hand is both unrealistic and potentially condescending towards both organizers and community members. The challenge, according to this organizer, is to develop authentic relationships of trust and solidarity. By respecting the agency of others and oneself, equal partnerships that mitigate power imbalances can be created.

In my experience, two additional factors are essential to achieve authentic relationships of trust and solidarity. First, there must be an understanding and appreciation of the particular experiences, skills, and knowledge that each person—whether an organizer, lawyer, or community member—brings to the table. It entails recognition that multiple strategies—organizing, legal, research, media, alliance building—are necessary to challenge existing institutions and power structures and to shift power to the hands of those who are marginalized. Lawyers, organizers, researchers, academics, and others all possess specialized knowledge and expertise that are invaluable to a campaign. Organizing, like lawyering, is a skilled

profession and craft and should be valued. Most importantly, community members themselves are the “experts” on the conditions in which they live and work and, with their first hand knowledge and experience, possess wisdom and insight into what type of social transformation is necessary and the best means to get there. In offering and honoring their respective knowledge, experience, and skills, community members, organizers, and lawyers can establish relationships based on equality and mutual respect.

Second, there is a human dimension to movement building that is integral to developing trust. In my years of working with garment workers, immigrant youth, taxi drivers, and car wash workers, a fundamental lesson I have learned is to approach and respect community members first and foremost as human beings and partners in a shared struggle for social change. People are not simply “clients” or “members” to be organized, but rather individuals with their own histories and hopes for achieving a measure of justice. Trust is built when community members feel that a relationship with lawyers or organizers is not about expediency or utilitarianism in achieving campaign goals, but is based on true solidarity and friendship. Especially given the psychological toll that years of exploitation and abuse can inflict, it is important to create a safe space where community members can vent and express their agency and feel that allies are there to support them on a personal level even beyond the parameters of a campaign. When people feel that their innate value as human beings is respected, true partnerships can be developed. This is true not just of community members, but organizers and lawyers as well. By honoring each other as members of the larger human community and respecting the contributions of all, strong, trusting, and respectful relationships can be built.

As one organizer commented, “Unless we all break bread together and take ownership, these will remain projects.”

### **C. Operational**

After a shared theory of social change is reached and everyone agrees to an approach that engenders and facilitates trust and respect, the focus should shift to more structural and operational issues. On a practical note, the following is a possible framework for planning a

campaign that involves both organizing and legal strategies to promote effective collaboration between organizers, lawyers, and community members:

- Campaign Goals: With organizers and community members taking the lead—and the involvement of lawyers—there should be discussion and agreement on the campaign’s overall goals.
- Campaign Strategies and Tactics: Campaign strategies and tactics should be discussed, including how the legal strategies (including litigation) *fit into* the overall campaign and are intended to advance campaign goals.
- Roles and Expectations: The roles of everyone involved in the campaign – organizers, lawyers, community members, researchers, allies – should be discussed and delineated to ensure transparency and understanding of all involved. Given the theory of social change, community members should play a leading and active role. An honest assessment of resources should be completed and communicated to ensure that expectations—especially on the part of community members—are not created that cannot be met.
- Decisionmaking Process: Protocols for making decisions should be established so that there is a shared understanding from the outset. Context and circumstances should be taken into account in determining who should be involved in various types of decisions. For example, deference may be accorded to lawyers regarding legal strategy, while organizers have a greater voice in organizing strategy. At all times, the central role of community members should be recognized and incorporated.
- Training for Organizers and Lawyers: There should be a training conducted by lawyers for organizers and community members regarding the professional rules of responsibility by which lawyers are bound. Issues such as attorney-client privilege and confidentiality should be discussed so that everyone has a shared understanding of lawyers’ ethical

obligations and protocols can be developed accordingly (e.g., communications protocols to preserve confidentiality). Organizers should also conduct a training for lawyers on the basics of organizing so that lawyers can better understand the methodology of organizing.

- *Communications Protocols*: Guidelines should be developed for how and when organizers, lawyers, and community members will communicate with one another. Regular meetings and other means of communication should be established. In addition, there should be protocols for urgent situations. For example, if there is a legal development that affects the campaign or there is a campaign development that affects the litigation, there should be guidelines for effectively communicating this information in a timely manner that preserves attorney-client privilege and confidentiality. In instances involving retaliation against community members, this is especially critical.
- *Document Protocols and Memorialize Agreements*: Protocols should be written down and documented to ensure that all parties are in agreement and have a shared understanding. If appropriate, agreements between the parties, such as communications protocols, should be memorialized.
- *Organizational Plaintiffs*: Situations sometimes arise where the individual plaintiffs in litigation filed to advance a campaign have interests that diverge from the campaign goals. In these circumstances, lawyers have ethical obligations to zealously advocate on behalf of their clients. In order to ensure legal strategies are consistent with lawyers' ethical and professional obligations and to avoid such situations where the individual plaintiffs' goals potentially conflict with the broader social justice organizing goals, the issue of whether to include organizational plaintiffs should be considered. Community organizations that share the values of the campaign—including the organizations leading the campaign—are potentially ideal plaintiffs and can play an

important role in ensuring an alignment between plaintiffs' interests and the broader campaign goals.

#### V. CONCLUSION

The universal concept underlying almost every social justice movement is the innate value and worth of every human being. Given the structural inequalities and daunting challenges that we face, it is often difficult not to perpetuate the very types of hierarchies and oppressions we fight against, especially when winning seems so crucial. The promise of law and organizing lies in part in its potential to establish a framework and accountability mechanisms that ensure that those community members whose lives and interests are at stake have a central voice and role in any effort to achieve social justice. The promise of law and organizing also rests in its emphasis on collective action that strives for systemic social change, rather than victories that benefit a few individual interests. By honoring the primacy of affected community members—and also challenging them and ourselves to adhere to social justice values—organizers and lawyers can find common ground as supporters, facilitators, and allies of the communities leading the struggle for a movement for social justice.