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CUNY LAW REVIEW

Edited by the Students of the City University of New York School of Law

Scholarship for Social Justice

City University of New York School of Law
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2020–2021
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INTRODUCTION TO VOLUME 24.1: LAWYERING IN CRISIS

"Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next."

Arundhati Roy[1]

Welcome to the first issue of the City University of New York Law Review imagined and produced entirely online during a global pandemic. Thank you to the 70 staff and board members and nine authors who made this issue happen.

We began work on this issue in March 2020, as the gravity of the COVID-19 pandemic was just beginning to crystallize in the U.S. In a Zoom room that would come to emblematize our new reality, we reflected on how the pandemic response exposed more people to the cracks in our systems that were already there and already deep. The coronavirus pandemic offers a magnifying glass on the systemic inequity that marginalized communities have survived under and fought against for centuries. In an effort to recognize the pandemic as an iteration of the crises of racism and capitalism, and to situate this moment in a longer history of resilience and resistance, we landed on the theme for this issue: Lawyering in Crisis.

Under this theme, our authors explore movement lawyers' roles in working against white supremacy and how lawyers can work for the survival of Black people; the pitfalls of pandemic-related stimulus and surveillance programs; and pre-existing statutory schemes and evidence rules that contribute to economic inequality and mass incarceration.

In *Movement Lawyering During a Crisis: How the Legal System Exploits the Labor of Activists and Undermines Movements*, authors Tifanei Ressl-Moyer, Pilar Gonzalez Morales, and Jaqueline Aranda Osorno argue that attorneys can no longer ignore or underplay the ways in which the legal system and profession uphold racial capitalism and white supremacy. The authors place the current crises we are living in—including the worldwide health crisis brought by the COVID-19 pandemic, the continued police killings of Black people, and white supremacist attacks on the Capitol—in the context of a legal system that often serves to undermine social movements, magnify harms, and exploit the work of Black, Indigenous, and other activists of color. They illuminate harmful legal practices that show up in social justice movements in times of crisis, and offer some ways forward for lawyers who wish to serve in the struggles against systemic oppression.

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[1] Arundhati Roy, *The Pandemic is a Portal*, FIN. TIMES (Apr. 3, 2020), https://perma.cc/NGQ3-592F.

James Stevenson Ramsey's Footnote Forum piece, *Lawyering in the Wake: Theorizing the Practice of Law in the Midst of Anti-Black Catastrophe* explores a framework for lawyers working for the survival of Black people in the context of state violence—not just police violence, but the state itself as violence. Ramsey's theoretical departure point is Christina Sharpe's *In the Wake: On Blackness and Being*, which posits that "the suffering of Black people, who live in the wake of slavery, is singular and foundational to personhood as established and conceived of by the state." Ramsey explores how this principle of "wake work" shows up in the law, and how lawyers can act on behalf of those in the wake. Ramsey asks: "What possibilities for legal practice might open up if we were to theorize lawyering from the underside of society, where the law is an existential problem?"

During the worst unemployment crisis since the Great Depression, the IRS sought to force economically vulnerable communities—incarcerated individuals and migrant workers—to repay their stimulus checks. In his Footnote Forum piece, *Coronavirus Aid, Relief, and Economic Security for Whom? IRS Overreaches in Denying CARES Act Economic Impact Payments to Migrant Workers and Incarcerated Individuals*, Justin Schwegel argues that under the statutory language on stimulus payment eligibility, incarcerated persons and migrant workers should be allowed to keep their stimulus payments, and that the IRS's guidance to the contrary was both procedurally and substantively deficient under the Administrative Procedure Act.

Our Notes and Comments section features a Note from CUNY Law student Emma Mendelson. In *How the Fallout From Post-9/11 Surveillance Programs Can Inform Privacy Protections for COVID-19 Contact Tracing Programs*, Mendelson applies the lessons learned from post-9/11 surveillance laws to emergent surveillance practices during the COVID-19 pandemic. She argues that while data surveillance plays a key part in slowing the spread of COVID-19, the post-9/11 era demonstrates that egregious privacy violations occur when government surveillance programs act in secrecy and with total deference.

Colleen Henry and Vicki Lens's *Marginalizing Mothers: Child Maltreatment Registries, Statutory Schemes, and Reduced Opportunities for Employment* examines how state child maltreatment registries work to systematically marginalize poor women, especially poor Black women. Henry and Lens provide a thorough review of state statutory schemes and registry practices across the country, and argue that these registries have strayed far from their original purpose as an investigative tool. Instead, they cast a harmfully wide net and undermine families by preventing thousands of parents from engaging in paid care work. At a time of historically high unemployment rates that disproportionately impact women of color, *Marginalizing Mothers* urges statutory and policy reform to address the punitive and counterproductive effects of these state registries.

In the past few decades, prosecutors have convicted thousands of innocent people, many times based on inaccurate eyewitness identifications. Despite scientific support for the unreliability of eyewitness testimony—including the role of cross-racial bias—New York maintains a common law rule of evidence that allows trial judges to block jurors from hearing expert testimony whenever the government has some evidence corroborating the identification. In *The Court of Appeals Should Abandon the Corroboration Rule Governing the Admissibility of Expert-Identification Testimony*, Matthew Bova argues that this rule is illogical, arbitrary, and unconstitutional. Bova posits that any justification for the rule pales in comparison to the fundamental problem that too many innocent people sit in prison due to mistaken identifications. At a time when the country is reckoning with racism in the form of mass incarceration, Bova points to one facet of our criminal legal system that exacerbates over-incarceration in a state with one of the largest prison systems in the United States.

Since our founding, the CUNY Law Review has been a journal in service of human needs. We seek to center the experience and expertise of people impacted by systemic injustice, because we know that this wisdom is central to building our vision of collective liberation. We offer this issue to you in the hopes that it will help you make meaning of this moment of great pain and potential and imagine new possibilities for the world to come.

2020-2021 CUNY Law Review Editorial Board

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