THE CITY UNIVERSITY OF NEW YORK LAW REVIEW

City University of New York Law Review

Volume 24 | Issue 1

Winter 2021

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Acknowledgements

Writing this piece would not have been possible without the generous and invaluable feedback we received from the following: Katie Mathews, Daniel Teehan, Elie Zwiebel, Tori Larson, Nora Smith, Talila Lewis, Kula Koenig, Yvette Borja, Andrea Meza, Akhil Gopal, Arash "Ash" Khosrowshahi, and other thought-contributors who wish to remain anonymous. We thank you for your time, your labor, and most importantly, your deep commitment to collective liberation.

MOVEMENT LAWYERING DURING A CRISIS: HOW THE LEGAL SYSTEM EXPLOITS THE LABOR OF ACTIVISTS AND UNDERMINES MOVEMENTS

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INTRODUCTION

Americans witnessed the brutal—and highly visible—killing of George Floyd by Minneapolis police in the summer of 2020.[1] Emboldened by anger, heartache, and restlessness, people flooded the streets all over the United States to protest police brutality and call for an end to violence against Black bodies.[2] Local law enforcement, the National Guard, and the Department of Homeland Security uniformly, and unironically, responded with ruthless force against protesters across the country, without provocation or articulable threat of violence from the crowds.[3]

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[1] *See, e.g.*, Wesley Lowery, *Why Minneapolis Was the Breaking Point*, ATLANTIC (June 12, 2020, 4:45 PM), https://perma.cc/43MD-M884.

[2] Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://perma.cc/N94W-UQNE.

[3] Zolan Kanno-Youngs & Katie Benner, *Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests*, N.Y. TIMES (June 2, 2020), https://perma.cc/FG34-K6PN.

Several months later, armed white supremacists seized the Capitol building in Washington, D.C., to protest the outcome of the 2020 presidential election.[4] In stark contrast to the summer's protests, the Capitol rioters were met with very little—and decidedly ineffective—intervention from law enforcement.[5] Videos of police posing for selfies with white rioters or aiding rioters as they ascended the steps into the Capitol circulated the internet, providing the American public with a perfect view of the difference between state responses to white rebellion and Black resistance.[6]

At the same time, the United States has become the epicenter of the COVID-19 pandemic, with more people dying from the virus than anywhere else in the world.[7] This pandemic has exposed the "decades of systemic racism and deeply entrenched inequity in America" and resulted in Black and Latinx people contracting and dying from the virus at much higher rates.[8] Those same law enforcement agencies that exacted terror upon Black Lives Matter protesters are publicly refusing to enforce public

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[4] *See, e.g.*, Greg Miller et al., *A Mob Insurrection Stoked by False Claims of Election Fraud and Promises of Violent Restoration*, WASH. POST (Jan. 9, 2021, 8:49 PM), https://perma.cc/L4QT-CWUR.

[5] *See, e.g.*, Peter Hermann et al., *How the U.S. Capitol Police Were Overrun in a 'Monumental' Security Failure*, WASH. POST (Jan. 8, 2021, 12:15 AM), https://perma.cc/NJJ2-PD2Z.

[6] *See*, *e.g.*, Derecka Purnell, Opinion, *Look at the Capitol Hill Rioters. Now Imagine if They Had Been Black*, GUARDIAN (Jan. 7, 2021, 9:02 AM), https://perma.cc/2D9S-3QTP ("[O]ne difference between white rebellion to feigned oppression and Black resistance to actual oppression: where there is radical Black resistance, there is state repression. Where there is white rebellion for conservative causes, there is collusion with the state.").

[7] *See, e.g.*, Paulina Firozi et al., *U.S. Records Its Deadliest Day of the Pandemic While Eyes Are Fixed on Mob Storming Capitol*, WASH. POST (Jan. 7, 2021, 9:12 PM), https://perma.cc/L24N-PCEL; Donald G. McNeil Jr., *The U.S. Now Leads the World in Confirmed Coronavirus Cases*, N.Y. TIMES (May 28, 2020), https://perma.cc/JHU4-HUXQ.

[8] Yael Caplan et al., *Fighting COVID-19's Disproportionate Impact on Black Communities with More Precise Data*, STAN. SOC. INNOVATION REV. (June 15, 2020), https://perma.cc/6KRZ-9GJG; *see also Why COVID-19 Disproportionately Impacts Latino Communities*, NPR (July 1, 2020, 5:00 AM), https://perma.cc/F7EH-BJCV.

health regulations that might curb the impact on Black and Latinx communities.[9] They have, however, routinely enforced evictions, contributing to tens of thousands of preventable COVID-19 deaths.[10]

The series of crises that we are currently living in has exposed this nation's commitment to white supremacy and racial capitalism.[11] What seem like contradictions or double standards are simply demonstrations that law and law enforcement literally change depending on circumstance to ultimately serve and uphold systems of oppression.[12]

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[9] *See, e.g.*, Alanea Cremen, *13 Law Enforcement Agencies that Refuse to Enforce California's New Curfew and Why*, ABC 10 (Nov. 20, 2020, 8:42 PM), https://perma.cc/CPL7-DGQD; *Some Sheriffs in Oregon Say They Won't Enforce COVID-19 Restrictions: 'We Are Not the Gestapo,'* FOX 12 (Nov. 20, 2020), https://perma.cc/Z87V-VSKR; *Law Enforcement Officials in Nine WNY Counties Won't Enforce Cuomo's 10 Person Limit on Private Gatherings*, WGRZ (Nov. 19, 2020, 2:33 PM), https://perma.cc/RUE9-TWAF. *See also* Timothy Colman et al., Opinion, *The Data Is in. People of Color Are Punished More Harshly for Covid Violations in the US*, GUARDIAN (Jan. 6, 2021, 6:17 AM), https://perma.cc/3S6Q-RGFN ("This kind of aggressive policing only exacerbates the effects of the pandemic.").

[10] *Researcher Finds Evictions Are Associated with More than 10,000 Deaths from COVID-19*, NPR (Dec. 1, 2020, 4:07 PM), https://perma.cc/YG9C-VXQK.

[11] Both "white supremacy" and "racial capitalism" are terms with varying definitions used to describe complex systems of oppression. In this article, the authors adopt Critical Race Theory scholar Frances Lee Ansley's definition of "white supremacy": "[By] 'white supremacy' I do not mean to allude only to the self-conscious racism of white supremacist hate groups. I refer instead to a political, economic, and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings." David Gillborn, *Rethinking White Supremacy: Who Counts in 'WhiteWorld,'* 6 ETHNICITIES (SPECIAL ISSUE) 318, 320 (2006) (quoting Frances Lee Ansley, *White Supremacy (And What We Should Do About It)*, *in* CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR 592 (Richard Delgado & Jean Stefancic eds., 1997)). *See also* Vann R. Newkirk II, *The Language of White Supremacy*, ATLANTIC (Oct. 6, 2017), https://perma.cc/PGM5-AT9V.

For "racial capitalism," the authors adopt the term as defined by Cedric J. Robinson in his book, *Black Marxism*, wherein he posits that capitalism is not a mere "displacement of feudal modes," and asks his readers to understand capitalism as an "extension of" "social, cultural, political, and ideological complexes of European feudalisms" "into the larger tapestry of the modern world's political and economic relations." CEDRIC J. ROBINSON, BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION 10 (Univ. of N.C. Press reprt. 2000). He argues that "[t]he historical development of world capitalism was influenced in a most fundamental way by the particularistic forces of racism and nationalism." *Id.* at 9. Robinson explains these forces precipitated the creation of "the Negro" "at the cost of immense expenditures of psychic and intellectual energies" and that such creation was a prerequisite for the ruling and mercantile classes to exploit the world economy. *Id.* at 4. Robinson pushes his readers to understand that "[f]or more than 300 years slave labor persisted beyond the beginnings of modern capitalism, complementing wage labor, peonage, serfdom, and other methods of labor coercion." *Id.* In other words, slave labor was not "some 'pre-capitalist' stage of history." *Id.* Rather, capitalism has always necessitated value be attributed to and extracted from race or nationalist identities. *Id.*

[12] Purnell, *supra* note 6.

As lawyers, we must identify, understand, and stop the practices the legal profession engages in that also serve systems of oppression and undermine social movements. We do not believe that being an effective lawyer requires loyalty to or unquestioned faith in the current legal system. In fact, we believe competency requires a thorough understanding of both the legal system's usefulness and its limitations. Our clients and their communities are better served when we bring an understanding of the harms the legal system perpetuates and the mechanisms it uses to do so.

This article explains how the inequities embedded within the legal system serve to undermine social movements, magnify harms, and exploit the work of Black, Indigenous, and other activists of color in the process. Our hope is that this piece can contribute to the growing collection of scholarship that questions the illusion of impartiality of our legal systems, theory, or praxis, and builds on activists' work toward a society with equitable distribution of resources and equal access to wellness and joy.

I. HARMFUL LEGAL PRACTICES DURING SOCIAL JUSTICE MOVEMENTS AND IN TIMES OF CRISIS

> We have been taught that the law itself produces justice. We are taught to think that social change flows from the law; things like winning lawsuits or changing policy. It is understandable that we give more importance to the law than is due . . . We over-centralize the role of lawyers in bringing about social change.[13]

The American judicial system functions in relative obscurity from the public, including in matters related to the oppression of U.S. residents.[14] This allows for most judicial functions to escape scrutiny. It also

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[13] Movement Law Lab, *Session 1: What Is Movement Lawyering?*, FACEBOOK (July 8, 2020), https://perma.cc/P9SU-C2EB ("History tells us movements made up of people directly impacted by injustice have always been the engine of social change.").

[14] [W]hen courts elect a strategy of incremental and evolutionary change, their opinions will typically frame each step using a style of legal justification that encourages popular "belief that judicial decisions are based on autonomous legal principles" and "that cases are decided by application of legal rules formulated and applied through a politically and philosophically neutral process of legal reasoning," with outcomes framed in "legalistic" terms dictated by such sources as detailed legal text, legislative history, and precedent.
Stephen B. Burbank & Sean Farhang, *Rights and Retrenchment in the Trump Era*, 87 FORDHAM L. REV. 37, 62 (2018) (citation omitted). *See also* Vanessa A. Baird & Amy Gangl, *Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness*, 27 POL. PSYCHOL. 597, 598 (2006) ("A commonly advanced explanation for the popularity of the Supreme Court relative to other institutions is that media coverage of Court activities is largely apolitical with little or no discussion of the underlying rationale for the decisions it renders."); Carroll Doherty, *Chief Justice John the Obscure*, PEW RESEARCH CTR.: FACT TANK (May 30, 2013), https://perma.cc/7VCJ-V64V.

provides shelter for many—but not all[15]—lawyers from consideration of how everyday legal practice(s) harm the same people they purport to defend.[16]

The oft-told story of *Brown v. Board of Education*,[17] and its progeny, is an example of the distortion of history that legal professionals have relied upon to push the narrative of lawyers and judges as the purveyors of social change.[18] It is also an example of how the lack of foresight and follow-through that can accompany civil rights litigation serves white supremacy and ultimately harms the communities of our clients.

The communities of the clients who were represented by the NAACP Legal Defense and Educational Fund, Inc. (LDF) experienced significant harm in the district court cases litigated in deference to the *Brown* decision. In 1959, Prince Edward County, Virginia, refused to comply with a court order to integrate its schools.[19] Instead, the county repealed its compulsory school attendance laws[20] and defunded its entire public school system.[21] The school closures lasted five years, the length of time it took for a subsequent court order to compel state officials to reopen the public

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[15] The authors humbly bow their heads in solidarity with other attorneys who, like them, have entered this work intent on using the privilege and power of the legal profession as a tool in the fight to liberate their families and communities, never having an opportunity to buy into the myth of an unprejudiced system.

[16] Stephanie M. Wildman et al., *Revisiting the Work We Know So Little About: Race, Wealth, Privilege, and Social Justice*, 2 U.C. IRVINE L. REV. 1011, 1012-13 (2012) ("[B]ecause of the prevalent view that American law and legal institutions are class and colorblind, most of those working within law see no place for considerations of race and wealth disparities in their education or practice. Ironically, neutrality and equality can support subordination and hierarchy.").

[17] Brown v. Bd. of Educ., 347 U.S. 483 (1954) (declaring state-mandated segregation of public schools unconstitutional).

[18] *See, e.g.*, Neil G. Williams, Brown v. Board of Education *Fifty Years Later: What Makes for Greatness in a Legal Opinion?*, 36 LOY. U. CHI. L.J. 177, 178-79 (2004) ("Indeed, for many (including me) *Brown* has become an honest-to-goodness 'American icon.' This is not to say, however, that over the years the *Brown* decision has been free of controversies and criticism, although I must admit that for purposes of my introductory session I steer away from those controversies and criticisms of *Brown*. After all, one of the goals of the session is to get neophyte law students in a positive frame of mind regarding the study and practice of law.") (citations omitted).

[19] *The Closing of Prince Edward County's Schools*, VA. MUSEUM OF HIST. & CULTURE (last visited Dec. 23, 2020), https://perma.cc/MKL8-R6PN.

[20] *Id.*

[21] TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT 189 (2011).

school system.[22] And the illiteracy rate of Black youth in Prince Edward County increased nearly eight-fold (from 3% to 23%).[23]

In anticipation of the 1959 closures, white leadership in the county had developed private schools with publicly supported tuition for white children.[24] But Black children were left without adequate options, some receiving volunteer lessons in their church while others received nothing—they could sit idly all day or work in the field with their parents, who were agricultural workers.[25] Although this reality beset most Black children, it was not the case for all. NAACP members who had the financial means were able to send their Black children away for a private education:

> [N]either the LDF nor the NAACP had taken adequate steps to ensure that all children whom the county denied schooling received compensatory education. The school desegregation litigation imposed extravagant costs on black communities, and NAACP officials had not fulfilled their responsibilities to local blacks to ameliorate those disadvantages.[26]

Within the post-*Brown* public school system, Black students are three times more likely than white students to be forcibly removed from their classrooms through suspension or expulsion.[27] This harm is compounded if the Black student has a disability. According to a Peabody Award-winning investigation, Black students with disabilities are 16 times more likely to be removed by law enforcement from their classroom than a white student without a disability.[28] Young, Black girls are also pushed out of educational systems at predictively high rates: "Black girls

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[22] Kristen Green, *Prince Edward County's Long Shadow of Segregation*, ATLANTIC (Aug. 1, 2015), https://perma.cc/C65C-2MW2.

[23] Glenn Frankel, Opinion, *When a Va. County Closed Its Schools Rather than Admit Black Students*, WASH. POST (July 1, 2015), https://perma.cc/73SQ-QSTE.

[24] *See* Green, *supra* note 22.

[25] *See id.*; *see also* BROWN-NAGIN, *supra* note 21 ("Holt saw 'boys and girls 8 and 9 years old'—the children of black agricultural workers not long removed from sharecropping and slavery—'standing around, doing nothing.'").

[26] BROWN-NAGIN, *supra* note 21.

[27] Tom Loveless, *2017 Brown Center Report on American Education: Race and School Suspensions*, BROOKINGS (Mar. 22, 2017), https://perma.cc/UX9P-MPHH.

[28] *Arrested at School: Criminalizing Classroom Misbehavior*, NBC BAY AREA (Apr. 14, 2017), https://perma.cc/26EM-H6TW ("Nationally, black students are about 3 times more likely to be arrested at school than white students. Children with disabilities are also 3 times more likely to be arrested compared to their peers. In California, black students with disabilities—compared to white students without disabilities—are 16 times more likely to be arrested at school.").

are 16 percent of the female student population, but . . . more than one-third of all female school-based arrests."[29]

In the end, *Brown*, though lauded as remarkable for its recognition of the need for equality in principle and practice, did not actually achieve equality, desegregation, or a significant reduction in harm for Black communities.[30] This is but one of many examples where litigation's impact went far beyond an initial court ruling, and it exemplifies legal strategies' failure to adequately plan for the impact on the movement and the community.

Below, we lay out several practices we have witnessed—and at times been party to—that harm our clients, communities, and movements. These harms are replicated during social justice movements and intensified during crises, often irreparably.

A. Undervaluing Clients and the Communities from Which the Client Comes

Formal legal education—from the curriculum, to the pedagogy, to the ideological content embedded in so-called *objectivity* and *legal reasoning* – trains lawyers to perpetuate the very systems of oppression they may seek to fight against.[31] In practice, a lawyer's access to rooms where

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[29] MONIQUE W. MORRIS, PUSHOUT: THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOLS 3 (2016) (citation omitted).

[30] Zora Neale Hurston was prophetic in this regard. In 1955, Hurston wrote a letter to the editors of the *Orlando Sentinel*, which stated: "I regard the ruling of the U.S. Supreme Court as insulting rather than honoring my race. Since the days of the never-to-be-sufficiently deplored Reconstruction, there has been current the belief that there is no great[er] delight to Negroes than physical association with whites. The doctrine of the white mare. Those familiar with the habits of mules are aware that any mule, if not restrained, will automatically follow a white mare. Dishonest mule-traders made money out of this knowledge in the old days.

Lead a white mare along a country road and slyly open the gate and the mules in the lot would run out and follow this mare. This ruling being conceived and brought forth in a sly political medium with eyes on '56, and brought forth in the same spirit and for the same purpose, it is clear that they have taken the old notion to heart and acted upon it. It is a cunning opening of the barnyard gate wit[h] the white mare ambling past. We are expected to hasten pell-mell after her . . . . I can see no tragedy in being too dark to be invited to a white school social affair. The Supreme Court would have pleased me more if they had concerned themselves about enforcing the compulsory education provisions for Negroes in the South as is done for white children . . . . Thems my sentiments and I am sticking by them . . . ." Zora Neale Hurston, Letter to the Editor, *Letter to the* Orlando Sentinel (Aug. 11, 1955), https://perma.cc/GX8V-RHQV.

[31] *See generally* Duncan Kennedy, *Legal Education as Training for Hierarchy*, *in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 54 (David Kairys ed., 1982). There is a robust body of scholarship critiquing legal pedagogy and the reproduction of racism, sexism, and classism. *See e.g.*, LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997); Derrick Bell, *A Pre-Memorial Message on Law School*

laws, policies, and settlements are made reinforces the belief that lawyers are superior to non-lawyers, permitting them to create and enforce a hierarchical relationship with their clients.[32] This dynamic inflates the value of the lawyer or legal organization and diminishes the power of the client. It is a form of condescension and oppression that can manifest in a variety of ways, including the following.

1. When lawyers fail to see clients as equal partners with relevant information to contribute

Lawyers spend a generous amount of time anticipating and strategizing around a client's perceived inability to appreciate the limitations of the law.[33] In the authors' experiences working with people who lead political actions and movements, it is lawyers who fail to appreciate the limitations of the law.

We fail to consider the invaluable information that specific clients bring to the table if that information does not fit within the restrictive confines of our legal framework. And we also fail to understand that we are asking clients to relinquish their agency to a system that, at its core, does not represent them, never has, and likely never will.

In practice, the hierarchical relationship necessitates that lawyers restrict the client's contact with the research and analysis that informs the case strategy and over-manage the client's interactions with the opposing party. This is antithetical to the reality of human existence, in that we all possess a valuable combination of specific skills, training, knowledge, motivations, intentions, experiences and understandings: "[C]lients are complex, multi-dimensional, and ever-changing, inhabiting a range of . . .

Teaching, 23 N.Y.U. REV. L. & SOC. CHANGE 205 (1997); Lolita Buckner Inniss, *"Other Spaces" in Legal Pedagogy*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 67 (2012); WENDY LEO MOORE, REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY 174 (2007).

[32] Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 12 (2016) ("[T]he typical regnant lawyer is too constrained by his privileged cultural stance, advantaged socio-economic status, and hierarchy-infused professional education and training either to understand or to 'crossover' the boundaries of client and community difference.") (citing GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 375 (1992)).

[33] *See* MODEL RULES OF PROF'L CONDUCT r. 1.2 cmt. 2 (AM. BAR ASS'N 2019). With respect to a client's autonomy and with deference to the need to foster trusting lawyer-client relationships with clients, professional rules of conduct also advise lawyers to share information with clients to a "reasonable" degree. *See id.* r. 1.4. The rules require the information should be sufficient for the client "to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." *Id.* cmt. 5. The authors believe a system of lawyering with this bare minimum interaction with clients is simply not enough to engineer sustainable social change.

roles and negotiating a variety of . . . relationships while situated in local networks of family, school, work, religion, and community."[34]

Without a client's engagement in research and strategy, lawyers limit their advocacy to their own extremely narrow understandings of complex systems.[35] By failing to meaningfully engage clients, lawyers surrender power to the judiciary and opposing parties, which unnecessarily inhibits a client's ability to control the narrative and process. The failure to engage clients also bestows the lawyer with even more power. In the authors' respective practices, we have seen this play out most clearly in class action litigation.

In a class action case, the Federal Rules of Civil Procedure require that "class counsel must fairly and adequately represent the interests of the class."[36] But in practice, in the authors' litigation experience, resources often go to managing relationships with opposing counsel and anticipating how the judge will receive the presentation of certain facts or the filing of certain motions. The work of engaging with clients is left unattended or severely under-resourced. The authors have seen lawyers develop entire litigation and policy strategies where there is no meaningful engagement with the people who are most directly targeted or impacted by the litigation.

One example shows how the failure to meaningfully engage with clients can have disastrous outcomes. The *Flores* Settlement Agreement is an agreement that governs the treatment of migrant children who are caged by the United States government.[37] For nearly 25 years, the government has been summoned to court for continually violating the agreement's terms.[38] During this time, children have endured trauma unimaginable to most human beings.[39] The apathy and inaction from the United

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[34] Alfieri, *supra* note 32, at 14 (analyzing Gerald López's book, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE).

[35] JAMES BALDWIN, NO NAME IN THE STREET 149 (Vintage Books 2007) (1972) ("[I]f one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected—those, precisely, who need the law's protection most!—and listens to their testimony. Ask any Mexican, any Puerto Rican, any black man, any poor person—ask the wretched how they fare in the halls of justice, and then you will know, not whether or not the country is just, but whether or not it has any love for justice, or any concept of it.").

[36] FED. R. CIV. P. 23(g)(4).

[37] Stipulated Settlement Agreement, Flores v. Reno, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), https://perma.cc/MS8W-XWHF.

[38] *See* Am. Immigration Lawyers Ass'n, *Documents Relating to Flores v. Reno Settlement Agreement on Minors in Immigration Custody* (Sept. 27, 2019), https://perma.cc/U4MX-FKF6.

[39] Tina Vásquez, *Attorneys Say Detained Children 'Not Adequately Represented' by Current Counsel*, PRISM (July 22, 2020), https://perma.cc/5XN3-U3VG; Jacob Soboroff, *Despite*

States government has only intensified those harms throughout the course of the COVID-19 pandemic.

The plaintiff migrant children and their families, after learning about negotiations between the lead plaintiffs' counsel and the United States, directed nonprofit immigrant justice groups to intervene on the case.[40] In a motion, the groups informed the district court that the government and plaintiffs' counsel entered into an agreement without the plaintiffs' consent. According to the groups, plaintiffs' counsel—presumably under the false assumption that migrant children are safer in the United States than with their parents anywhere else—stipulated to the possible separation of children from their families and permitted the government to delay implementing safety procedures to prevent the spread of COVID-19[41]:

> It is unclear why class counsel is advocating for consent to separate [migrant children] from their accompanying parents or a waiver of their rights under the Agreement that would inevitably lead to indefinite detention in unsafe, unsanitary, and unlicensed conditions during a pandemic as the sole alternative.[42]

One group attributed the plaintiffs' counsel's failure to integrate the desires and needs of the class members into negotiations as "an indignity," a failure to understand "the realities facing *Flores* Class Members," and a "white supremacist notion that migrant children can be saved by the United States, even after detention and being ripped away from their parents."[43]

By failing to engage with clients in strategy development, lawyers can cause harm, diminish the power of the people they represent, and risk creating a division in marginalized communities that would otherwise benefit from consolidating power to combat oppressive structures.[44]

Judge's Order, Migrant Children Remain Detained amid COVID Outbreak, NBC NEWS (July 23, 2020, 1:11 PM), https://perma.cc/9EHW-2N5D.

[40] Camilo Montoya-Galvez, *Attorneys for Families Held by ICE Challenge Lead Lawyer in Case Governing Detention of Migrant Kids*, CBS NEWS (July 21, 2020 9:26 AM), https://perma.cc/C8K2-6HMA.

[41] Proposed Intervenors' *Ex Parte* Application for Leave to Intervene at 12, Flores v. Meese, No. 2:85-cv-04544-DMG-AGRx (C.D. Cal. July 20, 2020).

[42] *Id.*

[43] *Statement: RAICES Intervenes for Children in Flores Case*, REFUGEE & IMMIGRANT CTR. FOR EDUC. & LEGAL SERVS. (July 22, 2020), https://perma.cc/NK6X-HZLD.

[44] Talila L. Lewis, a community lawyer and public scholar, put the risk of the failure to collaborate in perfect context: "What is critically important . . . [is] helping folks understand that white supremacist structures actually understand and appreciate the connections between all of these identities and as such they are working to pit marginalized communities against one another with the intention of further dealing heavy blows . . . in ways that [communities] might not be able to address if . . . just acting alone." Movement Law Lab, *Session 2: What Are We Fighting For?*, FACEBOOK (July 17, 2020), https://perma.cc/G8EB-U5WS.

2. When lawyers fail to anticipate how client work will impact the client's community and fail to consider the inherent value in working in tandem with such communities

Beyond the pursuit for lay witnesses, many lawyers fail to engage with communities to determine whether their legal strategies will have appropriate short- or long-term impacts on the community. Consider, for example, Heather Schoenfeld's analysis of how prison conditions litigation in Florida contributed to the rise of mass incarceration:

> Prisoners' rights lawyers and activists in the early 1970s were concerned about the overreliance on confinement, the overrepresentation of black Americans in the criminal justice system, and negligible treatment of [people who are confined] . . . . [L]itigating these issues meant translating them into a problem of constitutional "rights." . . . [T]he "rights" framing of prison litigation limited the ideation of the problem to the "immediate dangerous conditions" instead of, for example, the overuse of incarceration for low-level offenses.[45]

In *Costello v. Wainwright*, the parties entered into a consent decree, which, instead of emphasizing the Florida Division of Corrections' (FDOC) obligation to decrease the number of people incarcerated in their prisons, focused on the capacity of the facilities themselves.[46] This created a pathway for officials to build more prisons (to increase capacity) as opposed to reducing the number of people inside: "In [the FDOC administrators'] view, the court order was an opportunity to finally extract sufficient resources from the state."[47]

Schoenfeld's article was written in 2010. A decade later, prisoners' rights litigation has by and large not changed. Litigators are still pushing for consent decrees that will be self-monitored by the government and entered into without the public's consent or involvement.[48]

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[45] Heather Schoenfeld, *Mass Incarceration and the Paradox of Prison Conditions Litigation*, 44 L. & SOC'Y REV. 731, 757 (2010) (citations omitted).

[46] *See* Costello v. Wainwright, 397 F. Supp. 20, 35 (M.D. Fla. 1975) ("The reason the Court is giving the Division of Corrections a full year to reduce the inmate population down to emergency capacity is that . . . [the] time period will coincide with the construction of new facilities by the spring of 1976 which will provide housing for an additional 2,110 inmates and thereby increase emergency capacity.").

[47] *Id.*; Schoenfeld, *supra* note 45.

[48] *See* Margo Schlanger, *Prisoners' Rights Lawyers' Strategies for Preserving the Role of the Courts*, 69 U. MIAMI L. REV. 519 (2015) (describing settlement agreement strategies in prisoners' rights litigation).

More recently, organizers, activists, and residents formed a coalition to combat Sacramento County's plans to expand their jail and the Sheriff's Department budget.[49] The county, to buttress its long existing plans to expand the jail system, regularly uses a federal consent decree[50] as a reason to build a bigger, purportedly better jail facility.[51] Just as Schoenfeld highlighted in Florida,[52] the plaintiffs' attorneys and the court gave deference to the county in choosing how to implement the consent decree,[53] leaving the county leadership emboldened to expand the jail system. Meanwhile, the coalition—and the community it represents—is weakened, overworked, and strained for resources.[54]

The result of narrow political and litigative strategies, like the cases in Florida and Sacramento, is that communities endure the financial and

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[49] Alexandra Yoon-Hendricks, *Major Sacramento County Jail Project Stalls After Inmate Advocates Rally Against Expansion*, SACRAMENTO BEE (Nov. 7, 2019, 11:58 AM), https://www.sacbee.com/news/local/article237094234.html ("For months, activist groups have protested the expansion, arguing the county should be more focused on reducing and aiding its existing inmate population rather than planning for its growth.").

[50] [Proposed] Order Granting Approval for Preliminary Approval of Consent Decree and Class Notice, Mays v. Cty. of Sacramento, No. 2:18-cv-02081-TLN-KJN (E.D. Cal. June 20, 2019), ECF 85-1.

[51] *See* SACRAMENTO CTY. GRAND JURY, CALIFORNIA SENATE BILL 1022: A GIFT TOO GOOD TO IGNORE (2020).

[52] Schoenfeld, *supra* note 45, at 740-42. *See also* Michael J. Fieweger, *Consent Decrees in Prison and Jail Reform—Relaxed Standard of Review for Government Motions to Modify Consent Decrees*, 83 J. CRIM. L. & CRIMINOLOGY 1024, 1030-31 (1993) ("[I]nstitutional reform decrees involve a plan for the future operation of the institution, as opposed to strict prohibitions on future activity . . . . In addition the parties face the problem of devising a plan which is equitable to all parties involved . . . . Along these same lines, when the decree affects the public institution, it also affects the right of the general public to control the operation of its institutions.").

[53] Yoon-Hendricks, *supra* note 49 ("Prison Law Office['s executive director] said the consent decree does not necessarily require Sacramento County to build or expand its jail facilities to address its lack of mental health services. Though creating a new facility is one option, 'on the other hand they could reduce the jail population significantly to allow for staff to provide care to existing facilities.'").

[54] In this instance, the coalition was victorious and defeated the Sheriff's plan to use a lease revenue bond to expand the jail system—twice. *See* Foon Rhee, *A Jail Project that Won't Die*, SACRAMENTO NEWS & REV. (Sept. 18, 2020), perma.cc/ZN9F-AK3F ("After a misleading presentation by County Executive Nav Gill and his staff, Decarcerate Sacramento brought together experts and local residents to expose that this funding was not a 'grant,' but in fact a lease-revenue bond that would lock the county into jail operations for the next 30 years and eventually cost county taxpayers more than $300 million from the general fund to cover the operating costs of the Elk Grove jail."). But as one Decarcerate Sacramento organizer lamented, "Focusing on construction of new buildings has meant that there is less or no focus on what can immediately be done to improve the quality of life [of people inside], which is the goal for community, people who are incarcerated, and their families." Interview by Tifanei Ressl-Moyer with Niki Jones, Organizer, Decarcerate Sacramento, in Sacramento, Cal. (Oct. 3, 2020).

social repercussions of litigation for decades, with no (or very limited) legal or political recourse.

In her article, Schoenfeld framed prison conditions litigation's contribution to the emergence of mass incarceration as a paradox: How could lawyers predict that litigation motivated by the civil rights movement would contribute to the devastation of Black communities?[55] With the privilege of hindsight, we, the authors, suggest a different perspective: No legal strategy can stand alone against oppressive structures. Without strategic engagement and planning with communities, all litigation or policy initiatives will—with certainty—perpetuate harm.[56]

3. When lawyers choose cases for the impact on the organization rather than the impact on the clients or the community

Legal organizations incentivize their staff attorneys to prioritize bigger impact cases over relatively smaller cases. We have seen this practice inhibit the movement in multiple ways. For example, the prioritization of large cases can siphon resources from smaller, individual ones. By failing to engage in direct representation that is not in service of future impact cases, lawyers fail to build essential trust in communities, as well as miss opportunities that lawyers and legal organizations often undervalue.[57] Additionally, the disproportionate allocation of resources for impact cases hinders an organization's ability to engage in work that is timelier to community needs.

At the Southern Poverty Law Center, for example, the Alabama-based Criminal Justice Reform team has spent the better part of the past six years litigating a single prison conditions case that has resulted in few permanent remedies.[58] The Free Alabama Movement (FAM),[59] a group led by incarcerated organizers, has rightfully criticized this and other impact cases litigated by large legal organizations for exploiting incarcerated people and profiting off their misery via settlements for attorneys'

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[55] *See* Schoenfeld, *supra* note 45, at 732.

[56] Just as was witnessed in the aftermath of *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). *See supra* Part I.

[57] The authors recognize that one of the ways in which federal courts have limited the effectiveness of civil rights protections is by significantly reducing compensatory remedies and attorneys' fees. *See, e.g.*, Burbank & Farhang, *supra* note 14, at 61. ("The strategy of retrenching private enforcement of rights, rather than the rights themselves, enables justices who share the goals of the counterrevolution to avoid eroding diffuse support for the Court, even when the decisions in question do not track public opinion, because the public is unlikely to be aware of them.").

[58] *See Braggs, et al. v. Jefferson Dunn, et al.*, S. POVERTY L. CTR., https://perma.cc/Z384-ZYQL (last visited Dec. 25, 2020).

[59] *About*, FREE ALA. MOVEMENT, https://perma.cc/BCX2-JEE4 (last visited Dec. 25, 2020).

fees.[60] FAM observed that prison litigation results are often underwhelming: "a few 'improvements' in security, a little paint on the walls, a camera here and there . . . ."[61]

It is difficult to understate the impact that case selection and resource allocation can have on the people in the communities where lawyers advocate and litigate. Lawyers and legal organizations must appreciate and be responsible for anticipating and understanding the consequences. Again, this is only possible if the lawyers meaningfully engage with the communities they purport to represent.

B. Undermining or controlling narratives and resources

Lawyers, because of their status, have tremendous access to resources[62] and information. This access affords lawyers a significant amount of power when engaging with non-lawyers. The authors have witnessed lawyers wielding this power in advocacy or litigation to the detriment of the people they represent or serve.

1. When lawyers control narratives by failing to share or disseminate information

One of the more useful skills legal practitioners learn is how to request and receive data from government agencies and institutions. Too often the authors have seen legal organizations gather invaluable data and store it internally, with no community member or client ever seeing it.

The hoarding of information is an important dynamic to dissect, because one of the ways oppressive structures maintain power is by "deliberately depriv[ing] folks of needed information. This tactic increases their

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[60] FREE ALA. MOVEMENT, FREE ALABAMA MOVEMENT BOOK 2 (2019), perma.cc/J6UG-KBZ7.

[61] *Id.*

[62] Philanthropy during social justice movements is beyond the scope of this article. However, the authors heard from multiple organizers and activists that wealth-hoarding by large legal organizations is a major obstruction to community-driven work. By some accounts, philanthropists, corporations, and foundations pushed billions of dollars into racial justice programs in response to the uprisings, demonstrations, and protests in the months after George Floyd's killing. While large, well-known organizations, like the ACLU, Southern Poverty Law Center, and LDF were flooded with financial resources, local efforts that are directed by and grounded in community work received far less. For leadership in legal organizations that receive funding for wins—funding that should be attributed to the young, Black and Brown people who lead and ignite social justice movements—activists recommend the legal organizations use funds for capacity- and knowledge-building within the communities that the legal nonprofits serve. Because that is how, according to the activists the authors interviewed, social justice movements are sustained. Alternatively, the organizations should distribute the funds directly to the people of the movement.

power and diminishes the power of those who are missing timely or crucial information."[63]

One organizer (who preferred to remain anonymous) expressed to the authors that legal organizations hoarding information "is often one of the biggest challenges for organizing" "because it lends illegitimacy" to community partners or stakeholders who do not have the same knowledge or access to information.

Lawyers must understand the value of disseminating information and find creative ways to do so, whether that information is deemed by the lawyers to have any legal "value." In sharing information, lawyers can begin to cede control over narratives,[64] resulting in greater client and community agency and increased trust between lawyers and communities.

2. When lawyers, in lieu of clarity and in deference to extant power structures, sanitize language

The legal profession, by its very nature, has derived power and status by aligning with white supremacy and racial capitalism. Its accepted language—set by primarily white, cis, hetero, and neurotypical professional leadership[65]—reflects that power dynamic.

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[63] Suzanne Benoit, *Information and Power Hoarding — Excluding Coworkers*, BENOIT CONSULTING (June 21, 2019), perma.cc/2L44-74GY.

[64] Marshall Ganz, *The Power of Story in Social Movements*, *in* THE PROCEEDINGS OF THE ANNUAL MEETING OF THE AMERICAN SOCIOLOGICAL ASSOCIATION, ANAHEIM, CALIFORNIA, AUGUST 18-21, 2001 (2001), at 4, https://perma.cc/8KLD-66RK ("A newer generation of scholars has begun to go beyond framing, recognizing that story telling may be what most distinguishes social movements from interest groups and other forms of collective action. Story telling is central to social movements because it constructs agency, shapes identity, and motivates action. Story telling is how we learn to *exercise agency* to deal with new challenges, mindful of the past, yet conscious of alternative futures. It is not about following a script, but about choosing how to handle deviations from a script. Story telling engages us in an 'emplotted' account of actors proceeding in legitimate ways toward valued goals who meet unexpected trouble, to which they must respond with innovative action leading to resolution along a new pathway, toward a new goal, or go down to defeat, from which a 'moral' is drawn. They teach us how to deal with the unexpected, improvising alternative futures even while maintaining continuity with our past.") (citations omitted).

[65] According to the ABA:

[Five percent] of all lawyers are African American—the same percentage as 10 years earlier—but the U.S. population is 13.4% African American. Similarly, 5% of all lawyers are Hispanic—up from 4% a decade earlier—although the U.S. population is 18.5% Hispanic. And 2% of all lawyers are Asian—up slightly from 1.6% 10 years earlier—while the U.S. population is 5.9% Asian. Native Americans are represented in the legal profession at roughly the same proportion as their presence in the general population. Less than one-half of 1 percent of all lawyers (0.4%) are Native American—down slightly from 0.7% a decade ago—while the U.S. population is 1.3% Native American.

Roughly 86% of the national bar is white; and nearly every non-white racial group is significantly underrepresented.[66] At law firms, LGBT lawyers comprise just 2.99% of lawyers,[67] and just over half a percent (0.55%) report having a disability.[68] It is no wonder, then, that lawyers often fail to grasp the realities of people and communities who are oppressed by virtue of their membership in one or more marginalized groups.[69]

Lawyers will choose problematic terminology or language patterns because of familiarity, or because they suspect it will be more palatable to existing power structures if disruptive language is softened or sanitized.[70]

We can see the sanitization of language around discussions of the prison-industrial complex. In the summer of 2018, cries of "Abolish ICE" rang across the country as images of children held in cages emerged in the media.[71] In May 2020, after the brutal murder of George Floyd at the

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AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 2020, at 33 (2020), https://perma.cc/LRN6-AAYQ. The racial disparities by state are even more striking. For example, an overwhelming 89.6% of the Alabama bar is white, while 7.7% is African-American. *Member Statistics*, ALA. ST. BAR, https://perma.cc/K6PZ-6PUQ (last visited Dec. 24, 2020). About 69% of Alabama's population is white, and 27% of the population is Black. U.S. CENSUS BUREAU, QUICK FACTS ALABAMA (2019), https://perma.cc/D6NC-69N6.

[66] AM. BAR ASS'N, *supra* note 65.

[67] *Id.* at 39. There are no similar, reliable statistics for other sectors of the legal profession as a whole. *Id.*

[68] *Id.* at 40. As with sexual orientation, there are no reliable statistics for other sectors. *Id.*

[69] The authors call attention to the lack of diversity in the legal field not because they find diversity to be the solution to the systemic problems of the legal system but because the lack of diversity exacerbates many of the problems outlined in this article. For, as Dr. Angela Davis explains: "I have a hard time accepting diversity as a synonym for justice. Diversity is a corporate strategy. It's a strategy designed to ensure that the institution functions in the same way that it functioned before, except now that you now have some Black faces and Brown faces. It's a difference that doesn't make a difference." Angela Davis, Speech at University of Southern California Black Alumni Event (Feb. 23, 2015).

[70] This concept was discussed by Angela Davis when she spoke about ineffectiveness of watering down a potent and complex message during the Civil Rights Era:

> Now I think we should ask ourselves why . . . that first group of people want the anti-war movement to be a single-issue movement. Somehow they feel that it's necessary to tone down the political content of that movement in order to attract as many people as possible. They think that mere numbers will be enough in order to affect this government's policy. But I think we have to talk about the political content. We have to talk about the necessity to raise the level of consciousness of the people who are involved in that movement.

Angela Y. Davis, The Liberation of Our People, Speech at a Black Panther Rally in Bobby Hutton Park, Oakland, Cal. (Nov. 12, 1969).

[71] *See e.g.*, Richard Fausset, *Immigrant Children Cry Out in Audio Recorded at Detention Center*, N.Y. TIMES (June 18, 2018), https://perma.cc/RG2A-WEN5; Li Zhou, *These Photos Were the Trump Administration's Attempt to Quiet Criticism. They're Only Increasing Critics'*

hands of police, many more chanted, "Defund the Police."[72] This language, deliberate in its intent to reduce the power of violent policing institutions, has been appropriated and then altered by legal professionals looking to capitalize on the momentum of these movements, and to push forward their own agendas.

In California, for example, Attorney General Xavier Becerra rolled out a myriad of police reform proposals in the aftermath of Floyd's death and condescended to his constituents, telling the press "he want[ed] to have a better understanding of what protesters want," but went on to say "if defunding the police means 'reform the way we police in California, I am all for that.'"[73] He used the power of his office to undermine the movement's greatest call and effectively pivoted local California governments' priorities away from defunding and into decidedly ineffective[74] reform efforts.[75] Other attorneys general made similar moves throughout the United States.[76]

Horror, VOX (June 18, 2018, 3:20 PM), https://www.vox.com/policy-and-politics/2018/6/18/17474986/family-separation-border-video.

[72] Jack Brewster, *The 'Defund the Police' Movement Is Sweeping the Country—Here's What It Really Means*, FORBES (June 10, 2020, 2:06 PM), https://perma.cc/65AA-LZAF.

[73] Musadiq Bidar, *California Attorney General Announces Statewide Police Reforms*, CBS NEWS (June 16, 2020, 8:39 AM), https://perma.cc/H4NQ-ZG8S.

[74] For examples of other ineffective reform efforts, see, e.g., Matt Furber et al., *Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City*, N.Y. TIMES (May 27, 2020), https://perma.cc/69PU-DZUX; Joel Rubin, *LAPD Violence Against George Floyd Protests Erodes a Decade of Reforms*, L.A. TIMES (June 14, 2020, 5:00 AM), http://archive.md/20200615194745/https://www.latimes.com/california/story/2020-06-14/lapd-protest-history-criticism-heavy-tactics; Baynard Woods & Brandon Soderberg, *Baltimore Tried Reforming the Police. They Fought Every Change*, WASH. POST: OUTLOOK (June 18, 2020, 9:26 AM), https://perma.cc/4UFS-Q28R.

[75] Tifanei Ressl-Moyer, Opinion, *AG Becerra's Proposal to Reform Policing Misses the Mark—and Community Demands*, CALMATTERS (July 1, 2020), https://perma.cc/S8Y5-WHB3 ("Young Black people are quite literally putting their bodies and minds on the frontlines to amplify their communities' concerns about policing, and for it, they endure racialized trauma and sustain permanent disabilities. On many occasions, this type of self-sacrifice is the only way the world has been willing to pause and listen to Black voices. If Becerra and other officials move forward with their reform proposals as-is, they will have exploited the momentum of this moment created by young Black activists and silenced their calls to defund the police in order to bring forth plans that will ultimately increase police budgets and fail to protect Black people.").

[76] *See, e.g.*, Patrick Malone, *Attorney General Bob Ferguson Calls for New Washington State Law to Track and Report Police Use of Deadly Force*, SEATTLE TIMES (June 30, 2020, 5:10 PM), https://perma.cc/RMV8-78RH; Alex Napoliello & S.P. Sullivan, *N.J. Will Track Police Use of Force, Require Licensing Cops, AG Says as Protests Roil Nation*, NJ.COM (June 2, 2020), https://perma.cc/6Z9B-9KZV; Ali Watkins, *State Attorney General Calls for Stripping N.Y.P.D. Control from Mayor*, N.Y. TIMES (July 8, 2020), https://perma.cc/4YR8-UD8Z; Ken Paxton, *Op-Ed: Only Reform Will Achieve Results*, ATT'Y GEN. TEX. (June 12, 2020), https://perma.cc/64Z7-GPLH; J. Edward Moreno, *18 State Attorneys General Request Authority to Investigate Local Police*, HILL (June 5, 2020, 9:46 AM), https://perma.cc/Z6K4-JTPH;

This sanitization of language aids in painting radical movements as illegitimate. Instead of engaging with movements' concepts and working toward the goals set forth by visionaries, lawyers' adherence to palatable language undermines crucial work by people who risk their lives to make demands for themselves, their families, and their communities.

3. When lawyers fail to appreciate how systems of oppression create and sustain harm

Lawyers can perpetuate systems of oppression in their legal strategies by failing to understand the system itself, by believing too assuredly in the virtue of the systems that have inflicted harm on Black and Indigenous people for centuries.

The United States was founded by colonists who, with a goal of geographic and economic expansion, usurped and expropriated land from Native people.[77] Over the course of 400 years, colonists developed the stolen land into a capitalist nation, dependent on the brutalization and enslavement of Black people.[78] As the country developed, the codification

Ohio Leaders Announce New Police Reform Efforts, ABC 6 (June 17, 2020), https://perma.cc/NK2U-N2MM; Valerie Bonk, *VA. Attorney General Outlines Plans for Police Reform During Discussion with Faith Leaders*, WTOP NEWS (Aug. 11, 2020, 10:47 PM), https://perma.cc/3GUZ-ECXS; *Minnesota Attorney General Keith Ellison Weighs in on Police Reforms in State*, HILL (Aug. 18, 2020), https://perma.cc/GBV9-LR43; Press Release, Andrew M. Cuomo, Governor, N.Y., Governor Cuomo Announces New Guidance for Police Reform Collaborative to Reinvent and Modernize Policing (Aug. 17, 2020), https://perma.cc/SR6W-ARKF; Associated Press, *Colorado Attorney General Announces Broader Probe of Police*, L.A. TIMES (Aug. 11, 2020, 2:33 PM), https://www.latimes.com/world-nation/story/2020-08-11/colorado-attorney-general-announces-broader-probe-of-police.

[77] K-Sue Park, *Money, Mortgages, and the Conquest of America*, 41 LAW & SOC. INQUIRY 1006, 1014 (2016) ("Colonists wishing to expand their access to credit by using land as security needed to acquire lands in the first place. [This resulted in a] process of land acquisition that featured mortgage foreclosure as one of indigenous dispossession . . . . [D]ispossession was the predicate of English expansion in America, and that the tale of American growth from debt is also one of staggering loss.").

[78] *See* Robinson, *supra* note 11, at 200 ("The institution of American slave labor could not be effectively conceptualized as a thing in and of itself. Rather, it was a particular historical development for world capitalism that expropriated the labor of African workers as primitive accumulation. American slavery was a *subsystem* of world capitalism.").

of laws served to commodify land, defend the acquisition of private property,[79] and uphold racial capitalism.[80] And that same self-serving, subversive lawmaking process still exists today.

As an example, look at the summer of 2016, when Indigenous activists, led by the Standing Rock Sioux people and water protectors, endured incredible police violence—including the use of water cannons amid freezing temperatures—for protesting the construction of the oil pipeline known as the Dakota Access Pipeline.[81] The protests, which captured national attention,[82] successfully halted construction of the pipeline.[83] An alarming number of legislative efforts to criminalize protest activities and shield police forces from facing charges for various acts of violence against protesters immediately followed. North Dakota legislators introduced bills that would: protect drivers who run over protesters obstructing roads; punish wearing a mask in a public forum; increase punishment for protesting in private facilities; and punish protesters who caused $1,000 in economic harm, with five years in prison and a $10,000 fine.[84] Four of the six proposed bills went on to become law.[85] Protesters across the country have seen similar laws enacted within their states.[86] From this example, it is clear we must accept that the law in and of itself is not virtuous;

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[79] *See generally* Park, *supra* note 77, at 1024-25 ("One way colonists imposed their own conception of property on land was first to impose their own conception of money and credit on indigenous people. Colonists extended credit to indigenous people to draw them into debt, inducing them to then take out 'mortgages' on which they would later foreclose . . . . Mortgage foreclosure became regular during the 1660s, leading to the colonial laws of the 1670s instituting foreclosure.").

[80] The protection of private property remains one of the central goals of the legal system and law enforcement. Even as a deadly pandemic rages on, courts continue to grant evictions and deploy law enforcement to evict tenants, a practice that has been linked to the spread of COVID-19. *Researcher Finds Evictions Are Associated with More than 10,000 Deaths from COVID-19*, *supra* note 10.

[81] Sam Levin, *Over 70 Arrested at Standing Rock as Dakota Access Aims to Finish Pipeline*, GUARDIAN (Feb. 1, 2017, 8:48 PM), https://perma.cc/7F4K-V9LP; Julia Carrie Wong & Sam Levin, *Standing Rock Protesters Hold Out Against Extraordinary Police Violence*, GUARDIAN (Nov. 29, 2016, 3:26 PM), https://perma.cc/R645-UEYD.

[82] *See* Merrit Kennedy, *More than 1 Million 'Check In' on Facebook to Support the Standing Rock Sioux*, NPR: THE TWO-WAY (Nov. 1, 2016, 5:16 PM), https://perma.cc/7F2T-M2MP.

[83] Ryan W. Miller, *How the Dakota Access Pipeline Battle Unfolded*, USA TODAY (Dec. 2, 2016), https://perma.cc/YU63-7B4S.

[84] Lee Rowland & Vera Eidelman, *Where Protests Flourish, Anti-Protest Bills Follow*, ACLU (Feb. 17, 2017, 2:00 PM), https://perma.cc/GM96-SFLW.

[85] *Anti-Protest Bills Around the Country*, ACLU, https://perma.cc/MC9X-TVQN (last updated June, 23, 2017) (referencing H.B. 1193, 65th Legis. Assemb., Reg. Sess. (N.D. 2017); H.B. 1203, 65th Legis. Assemb., Reg. Sess. (N.D. 2017); H.B. 1293, 65th Legis. Assemb., Reg. Sess. (N.D. 2017); H.B. 1304, 65th Legis. Assemb., Reg. Sess. (N.D. 2017)).

[86] A recent study found that between 2015 and 2019, state legislators across the country proposed 116 bills to limit the right to protest and other protest-related activities. PEN AM.,

and we must study the ways in which the legal system safeguards white supremacy and racial capitalism, particularly in response to even marginal successes made possible by social movements.

Consider, also, Angela Davis's words on the tensions between reformists' and abolitionists' ideas on policing and carceral systems:

> Precisely because opposition and protests calling for reform have played such a central role in shaping structures of policing and punishment, the notion of reform has superseded other paths toward change. Ironically, many efforts to change these repressive structures—to reform them—have instead provided the glue that has guaranteed their continued presence and acceptance.[87]

Davis points out that tensions between theories for change in social justice movements can be explained by impoverished understandings of both the systems in which injustices are rooted and the historical contexts from which they were born.[88]

In another example, as issues around racialized policing and police brutality capture more attention, policy and litigation efforts often fail to appreciate how the intersection of disabled and racial identities are targeted by the criminal justice system:

> Whether under the pretense of "care" or "corrections," disabled people are highly represented in *all* carceral populations. History explains this phenomenon. The [U]nited [S]tates government and corporations have always used constructed ideas around disability and criminality alongside constructed ideas about class and race to classify, criminalize, cage, and disappear its "undesirables."[89]

Advocacy strategies that miss or ignore this intersection erase the particularly harmful and deadly effects of policing on Black and Brown

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ARRESTING DISSENT: LEGISLATIVE RESTRICTIONS ON THE RIGHT TO PROTEST 1 (2020). Of those bills, 23 have become law in 15 states. *Id.* States with some of the largest and longest-lasting protests saw dozens of attempts by state legislators to punish and criminalize protesters. *Id.* at 5-6. Prior to 2017, the number of bills restricting protests was almost negligible. *Id.* at 1.

[87] Angela Y. Davis, *Why Arguments Against Abolition Inevitably Fail*, MEDIUM: LEVEL (Oct. 6, 2020), https://perma.cc/9MS5-EPEN.

[88] *See id.*

[89] Talila "TL" Lewis, *Disability Justice Is an Essential Part of Abolishing Police and Prisons*, MEDIUM: LEVEL (Oct. 7, 2020), https://perma.cc/SSS8-2TQ5.

disabled people,[90] rendering them ineffective at actually protecting our people.[91]

In sum, without an appropriate level of understanding of history and power, legal practitioners have and will continue to create legal strategies, litigation, and legislation that uphold various forms of bigotry and oppression.

C. Failure to Collaborate

Magnified during times of crisis, we have seen lawyers and legal organizations explicitly refuse to collaborate with others, including with the communities that will be impacted by their litigation or policy advocacy. This causes a set of problems.

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[90] *See, e.g.*, Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 AM. J. PUB. HEALTH 1977 (2017); Brief for the United States as Amicus Curiae Supporting Petitioners, Cty. of L.A. v. Mendez, 137 S. Ct. 1539 (2017) (No. 16-369); Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321 (2014); Sirry Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662 (2017); Tara E. Galovski et al., *Exposure to Violence During Ferguson Protests: Mental Health Effects for Law Enforcement and Community Members*, 29 J. TRAUMATIC STRESS 283 (2016); Thema Bryant-Davis et al., *The Trauma Lens of Police Violence Against Racial and Ethnic Minorities*, 73 J. SOC. ISSUES 852 (2017); Melissa N. McLeod et al., *Police Interactions and the Mental Health of Black Americans: A Systematic Review*, 7 J. RACIAL & ETHNIC HEALTH DISPARITIES 10 (2020); Abigail Abrams, *Black, Disabled and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities*, TIME (June 25, 2020, 8:56 AM), https://perma.cc/5EJV-FYNW; Miles Holder, *We Need to Deal with the Trauma Caused by Endless Videos of Police Brutality*, ESQUIRE (June 17, 2020), https://perma.cc/UH85-UDVM.

[91] The United States Supreme Court's tiered scrutiny framework for due process and equal protection principles isolates race, sex, disability, and indigency, and wholly fails to recognize that people can suffer injuries specific to the intersections of those identities. *See generally, e.g.*, Devon W. Carbado & Kimberlé W. Crenshaw, *An Intersectional Critique of Tiers of Scrutiny: Beyond "Either/Or" Approaches to Equal Protection*, 129 YALE L.J.F. 108 (2019); Kaiya Arroyo, *Burden of Proof: How Intersectionality Can Inform Our View of the Equal Protection Intent Requirement*, 19 U. PA. J. CONST. L. 1015 (2017); Bryan K. Fair, *Intersectionality Theory, the Anticaste Principle, and the Future of* Brown, 60 ALA. L. REV. 1111 (2009). This division distorts a plaintiff's experience as a whole and weakens their chance of receiving any remedies at all. This longstanding civil rights model is unworkable and cannot effectuate protection against discrimination as most people actually experience it.

1. When lawyers duplicate efforts with no strategic objective, thereby exhausting themselves and resources

One disturbing trend the authors have seen is lawyers fighting their way to be the first to file and first to win.[92] The authors hypothesize that this is tied to a drive to receive accolades, be heroized, and race to receive funding or fees. It encourages entire legal teams to establish deadlines that are so tight, collaboration—in addition to gathering accurate political and social historical context—is impossible; and it creates an environment that promotes a false sense of urgency, something recognized widely as a tenant of white supremacy.[93]

2. When lawyers collaborate with white supremacist institutions in lieu of community-led groups that have less infrastructure or clout

As early as law school, lawyers are indoctrinated in a hyper-hierarchical understanding of systems and authority.[94] This understanding of authority presents an impoverished analysis of power for lawyers, tempting us to legitimize existing white supremacist structures—such as policing—to secure legal victories. And when lawyers move to integrate themselves into movements during political uprisings and crises, the risk cannot be understated.

The Stop LAPD Spying Coalition published a call-to-action for "communities across the country" to reject reforms from legal nonprofits that "exploit moments of mass insurgency to make state violence more expansive and more durable."[95] The coalition saliently described how the ACLU partnered with local law enforcement agencies, prosecutors, and politicians—and largely ignored community organizers—to draft a police reform bill that would ultimately harm communities:

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[92] Making matters worse, civil rights lawyers are frequently—and deservedly—criticized for litigating only winnable cases with sympathetic clients in the first place. *See* Margaret H. Lemos, *Special Incentives to Sue*, 95 MINN. L. REV. 782, 784 n.6 (2011).

[93] *See* TEMA OKUN, WHITE SUPREMACY CULTURE 2, https://perma.cc/78BQ-BWQE (last visited Dec. 25, 2020) ("[A] continued sense of urgency . . . makes it difficult to take time to be inclusive, encourage democratic and/or thoughtful decision-making, to think long-term, to consider consequences. [That sense of urgency] frequently results in sacrificing potential allies for quick or highly visible results, for example sacrificing interests of communities of color in order to win victories for white people (seen as default or norm community). [Urgency is also] reinforced by funding proposals which promise too much work for too little money and by funders who expect too much for too little.").

[94] *See* Kennedy, *supra* note 31.

[95] *See* Digital Pamphlet, *Fuck the Police, Trust the People: Surveillance Bureaucracy Expands the Stalker State*, STOP LAPD SPYING COALITION (June 2020), https://perma.cc/36ML-2PL2.

> In February 2015, we released a detailed analysis explaining our opposition to the ACLU of California's proposals for surveillance governance legislation. Later that year, we used public record laws to expose that the ACLU's local Director of Police Practices shared a draft of their model surveillance legislation with an LAPD deputy chief, asking "if you have any concerns with any of the provisions that are in here" and inviting ideas for "provisions you think should be in here but aren't." (These emails raise the question: how much police reform is written with police help? We encourage using open records requests to find out.)
>
> Two years later, in 2017, the ACLU in partnership with other reformist groups worked with municipal prosecutors and a City Council member to advance legislation like this in Los Angeles. Stop LAPD Spying and other community organizations confronted the groups and forced them to withdraw the ordinance. The ACLU then took the fight statewide with SB 1186, a law that would have empowered local authorities across California to streamline the expansion of surveillance technologies. The ACLU announced that the bill would mean "a seat at the table" and "public debate" to create community assent for surveillance. We mobilized communities across California to defeat the bill. We hope this history puts legal reformers on notice that they will face fierce resistance from our communities if they try to enact laws legitimating surveillance of our people.[96]

We hope so, too.

The recent movement to abolish police is also rife with examples of lawyers steering resources toward collaboration with white supremacist institutions. Like the erasures by attorneys general of specific demands for defunding the police in the wake of protests of George Floyd's killing by police,[97] legal nonprofits co-opted the movement's message to push for reform measures and published recommendations that centered collaboration with elected officials and law enforcement. The Equal Justice Initiative (EJI)—a legal nonprofit widely praised for educational efforts on racial injustice—issued a policing platform, "Reforming Policing in America 2020," which included at least eight specific policy proposals and called for "[t]ransforming [police] officers from occupying soldiers

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[96] *Id.*

[97] *See supra* pp. 107-09.

to guardians who serve and protect."[98] This approach not only undermines calls for abolition but attempts to control the demands of leaders in the movement to defend Black lives, while ensuring material conditions of Black people will not change.

Lawyers insisting on centering existing power structures in their legal strategies also undermine movement work by failing to reimagine the legal doctrines that underpin systemic racism. One critical example is policies surrounding use of force. In a recent letter to the Senate Judiciary Committee, the Southern Poverty Law Center called for "bold and decisive action" to address "the systemic and root causes of police violence."[99] The Southern Poverty Law Center ultimately recommended legislation that must "[r]equire the adoption of a federal standard that permits the use of force *only when necessary* and only after all other reasonable options have been exhausted."[100] Trapped in the doctrine of use of force, these efforts may have been well-intentioned, but they clearly subvert communities' desire to create a world where physical use of force is no longer a legitimate means for exerting social control.

The authors envision a legal practice where lawyers renounce collaboration with police, correctional departments, prosecutors, and other governmental and non-governmental organizations whose aims are to brutalize, incarcerate, and abuse people in defense of the status quo.

II. RECOMMENDATIONS: LOOKING FOR A WAY FORWARD

Well-meaning lawyers and legal organizations engage in harmful practices that legitimize, strengthen, and serve the dual systems of racial capitalism and white supremacy all the time. This harm is unsurprising, though, because the legal system is little more than a hegemonic tool of those dual systems. Below, the authors offer some ideas and practices to mitigate the harms of using the legal system as a means to protect people, to consolidate power with communities who are fighting for their liberation, and to harness the potential for a more radical, anti-racist practice of the law.

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[98] *See* Equal Justice Initiative, *Reforming Policing in America 2020*, FACEBOOK (June 8, 2020), https://perma.cc/YSU8-NL6M. EJI has since replaced that policing platform with a more generic statement, presumably in response to widespread criticism from the community. *Policing in America*, EQUAL JUST. INITIATIVE, https://perma.cc/W7ZV-7ANL (last visited March 4, 2021). One community member poignantly responded to the original proposal on an Instagram post that has since been deleted: "This is so disappointing and disrespectful to the work of all people on the ground doing real work to keep communities safe, particularly Black queer woman abolitionists."

[99] Statement from Margaret Huang, President & CEO, S. Poverty Law Ctr. Action Fund, to Senate Judiciary Committee (June 23, 2020), https://perma.cc/X6AK-FEF4.

[100] *Id.*

While not an exhaustive list, the ideas and practices presented below are based on the authors own experiences (and often failures) as both attorneys and activists, and, most importantly, are inspired by a myriad of discussions with organizers, activists, and abolitionists to whom the authors remain deeply indebted.

The following practices—understanding and dealing with power imbalances, embracing a diversity of tactics, and challenging conservative legal ethics—are part of, and support, the idea of movement lawyering. Unlike more traditional legal models, movement lawyering begins with the premise "that the poverty of our clients is simply a symptom of the larger disease of systemic oppression and conscious inequality."[101] From that basic principle, movement lawyers aim at supporting and working with "community organizations and other organized groups of people (i.e. worker/tenant associations, community coalitions, and unions) that shift power through collective action and strategic campaigns."[102] Therefore, the purpose and practice of movement lawyering is not simply to achieve a legal victory but to create long term change by helping to build "large-scale, democratic organizations focused on building the power and conscious leadership of poor and working people. By using legal advocacy to support organizing, community education, and leadership development, community lawyering allows lawyers to have a much larger impact tha[n] any one lawsuit."[103] Because of this, movement lawyering has the capacity to upend the harmful practices the authors discussed above and to fight, not for legal victories but for the ending of all oppressive systems.

A. Lawyers Must Understand and Fight Power Imbalances

As lawyers, we must understand and appreciate that the white supremacist and racial capitalist structures within the United States presuppose the power imbalances between non-lawyers and lawyers. The legal system is "immanent to, and emerges out of, social power relations. Law is a field of contention for social power, an extension of politics."[104] Consequently, our mere presence—with our title and degree in tow—can lend

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[101] Interview by Joseph Phelan with Purvi Shah & Chuck Elsesser, Co-Founders, Cmty. Justice Project, in Miami, Fla. (June 15, 2010), https://perma.cc/2TFJ-X6Q5.

[102] *Id.*; *see also* Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 151 ("As history has shown us time and time again, David can beat Goliath. However, doing so requires that the affected community marshals more power than those who are invested in preserving the status quo.").

[103] Interview with Purvi Shah & Chuck Elsesser, *supra* note 101.

[104] John McKay, *Power Dynamics, Social Complexity and the Rule of Law in Development Aid: Why a (Social) Scientific View of Law Should Turn Our Focus to Power*, 2 TRANSNAT'L LEGAL THEORY 25, 25 (2011).

legitimacy to or rip it away from entire social movements, even and often where unwarranted.

For example, in moments of uprisings and demonstrations, lawyers are often invited to speak on behalf of communities who are making demands. This is not because we have better personalities or a distinctly rich value to add. It is because lawyers working within the confines of the legal system are less threatening to the power structures within oppressive systems. When lawyers oblige, they take the spotlight and speak on behalf of clients or the communities from which they come; without the explicit involvement of clients or their communities, lawyers become indistinguishable from the same system that silences non-lawyers and their communities.

The legitimacy imposed on lawyers is not an inherently bad dynamic; it can be useful. But just as effective social movements require a redistribution of power from political institutions to the People, lawyers must reconcile the relational inequities between ourselves, our clients, and the communities impacted by our work.

B. Lawyers Must Name Inequities, and Clearly Define Victory

> "[Consensus practice] is work of collective liberation . . . [C]onsensus does not . . . require equal status. It rather requires equal voice."
>
> Adrienne Maree Brown, *Emergent Strategies: Shaping Change, Changing Worlds,* 2017

One way to address the danger of power imbalances is for lawyers and legal institutions to invest resources in identifying, and, in concert with clients and community partners, making explicit the unique resources that each stakeholder can advance.[105]

When collaborating with non-lawyers, it also helps when lawyers establish clear goals aligned with the movement to foster consent, appropriate technical and social dynamics in decision-making, and share power. In the authors' experience, when legal organizations or lawyers fail to set specific goals for their involvement in a case or action, the people who hold the greater sum of power in the group end up determining the agenda

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[105] *See* Jon Huggett, *Why Collaborations Fail*, STAN. SOC. INNOVATION REV. (June 4, 2018), https://perma.cc/HP3B-LLQM ("Clear roles help partners build trust, even if the new roles shift power. In other words, it's easier for me to act if I know what power I have and what power you have, even if you have much more power. It's harder when the power is ambiguous.").

and making final decisions. Often, the collaborative process becomes obsolete.

When clear goals that align with the principles of the movement are not set at the outset of a legal strategy, winning becomes the default goal. As outlined in prior sections, "winning" in litigation and in policy reform can take many forms that most often do not align with community-defined goals or movement work.[106] As many organizers and activists articulated to the authors, "winning" within the structure of the court or legislature often requires dangerous compromises—compromises that safeguard violent, white supremacist institutions.

C. Lawyers Must Build Systems of Accountability to the Community and Clients

An organizer noted that in their work:

> Lawyers will emphasize creating a mechanism for accountability, but often those mechanisms are a farce, like, for example, requiring that certain things be reviewed by the Board of Police Commissioners. However, the Board has no real power and they just rubber stamp everything the LAPD proposes, so it isn't real accountability or oversight. Even if the accountability was "real," as abolitionists we want these programs and institutions to be dismantled because they are fundamentally harmful, racist and violent."[107]

And the same lawyers that legitimized such worthless accountability mechanisms themselves failed to get community input from, or even meet with, community members before reaching a settlement with the LAPD.

Additionally, lawyers rarely have accountability mechanisms for themselves and their own work. The authors have never witnessed a case in which a system for accountability to clients and the community was created. And in the authors' experience, attorneys often wait until the last minute to discuss strategy or outcomes with clients, much less with the larger community. Attorneys should take note of organizers' systems of accountability and use them to build accountability to their clients and the community. Organizers are often very adept at creating measurable goals for campaigns and actions; and democratic movements often hold meetings to monitor a campaign's progress and debriefs after a specific action.

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[106] *See supra* Part I, Section I.C.1.

[107] Telephone Interview by Pilar Gonzalez Morales with Akhil Gopal, Activist, Stop LAPD Spying Coal. (Aug. 12, 2020).

D. Lawyers Must Understand the Value in, and Support, a Diversity of Tactics

The concept of diversity of tactics is about an intentionally disruptive civil disobedience. Effective social movements have demonstrated that in the face of unrelenting state and fascist violence, a diversity of tactics is necessary to protect participants and continue the movement.[108]

Attorneys must not only throw off the cloak of respectability but embrace the concept of diversity of tactics in their support of movement work. This means not simply tolerating that some movements may engage in violent tactics or other "effective combinations drawn from a full range of tactics that might lead to liberation from all the components of [an] oppressive system";[109] it also means understanding traditional lawyering may not be the most effective strategy and encouraging support for and uplifting unconventional movement tactics. For example, civil rights litigators often emphasize the use of class action lawsuits as a vehicle to bring systemic change. However, such lawsuits may take years to litigate and, often, when a settlement is reached or a lawsuit is won, plenty of concessions have been made.

Through movement work, attorneys can support a variety of tactics to bring about change outside of a lawsuit or legislative efforts. In discussing their work in the Shutdown Adelanto Coalition, an immigration justice organizer commented that because of their greater access to detained people, attorneys can help organizers within and outside the detention center communicate and coordinate strategies, particularly in times when a detention center is under lockdown, and access to detained people is exceptionally limited or prohibited for non-attorneys.[110] In other cases, supporting different tactics may look like joining activists in protests or ensuring that *all* protesters are provided with bail funds and legal representation.

E. Lawyers Must Challenge the Conservative, and Often Archaic, Ethics of the Legal Profession

Purvi Shah points out in her article, *Rebuilding the Ethical Compass of Law*, that the legal profession has failed to take moral responsibility for

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[108] *See Urban Riots*, C-SPAN (July 10, 2015), https://perma.cc/G8XY-PFNK.

[109] PETER GELDERLOOS, HOW NONVIOLENCE PROTECTS THE STATE 3 (2d ed. 2007) ("We believe that tactics should be chosen to fit the particular situation, not drawn from a preconceived moral code.").

[110] Telephone Interview by Pilar Gonzalez Morales with a member of the Shutdown Adelanto Coalition, who preferred to remain anonymous (Sept. 10, 2020).

the injustices plaguing the country.[111] Legal ethics call for lawyers to abstain from many things, but they do not provide a compass for what lawyers should or ought to do.[112]

In the few instances where legal codes of conduct discuss an attorney's duty to others, they are extremely narrowly tailored to their duty to a client.[113] However, a single client or a class of clients do not exist in a vacuum, and neither do the legal actions that attorneys take on their behalf. Through movement lawyering, lawyers can shape the ethics of the profession by expanding the notions of who should benefit and drive the work that lawyers do.

A key concept of democratic, community organizing is that individuals be committed to the community as a whole, not only to their own well-being. By embracing this type of to-the-whole ethical commitment, lawyers will challenge the narrowness of current legal ethics. Moreover, embracing an ethics model that focuses on the community can prevent attorneys from bringing actions that, while profitable or perhaps individually beneficial, harm the community as a whole.

For example, within the context of anti-policing work, an expansive, community-based legal ethics model would hold that attorneys have a responsibility to the communities most often and harshly impacted by police violence. Currently,

> Many lawyers have bought into the inevitability of the police and surveillance system, so their focus is often on creating policies to regulate the police and their programs. But by doing so, they are legitimizing those practices and making it harder to fight for abolition than it would [be] to fight these programs that were done extrajudicially.[114]

We ask lawyers to divest energy, time, and resources from litigating issues that will merely expand police departments or legitimize police actions and instead focus on responsibility toward the community.

CONCLUSION: THE LAW HAS NOT, WILL NOT, AND CANNOT SAVE US

Amidst a worldwide health crisis brought by the COVID-19 pandemic and a series of other crises—including continued police killings of

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[111] Purvi Shah, *Rebuilding the Ethical Compass of Law*, 47 HOFSTRA L. REV. 11, 12-13 (2018).

[112] *Id.* at 14 (citing MODEL RULES OF PROF'L CONDUCT pmbl. & scope (AM. BAR ASS'N 2018)).

[113] *See* MODEL RULES OF PROF'L CONDUCT pmbl. & scope (Am. Bar Ass'n 2020).

[114] Telephone Interview with Akhil Gopal, *supra* note 107.

Black people—attorneys can no longer ignore or underplay the ways in which the legal system and profession uphold racial capitalism and white supremacy. The authors hope this paper serves not merely to illuminate some of the problematic practices in our field, but to be part of a larger conversation regarding attorneys' roles in dismantling these systems and practices. The authors believe lawyers can serve in the struggles against racial—and other—systems of oppression, but to do so, we must challenge the ways in which we have practiced, and continue to practice, law.

Lawyers must not dismiss the creative, strategic process in which we could endeavor if we just gave our clients more time and agency over a case, shared more knowledge and resources, and encouraged clients to bring in unconventional wisdom and tools. We must practice law in a way that empowers affected communities and that actively fights to build long-term power for them. The authors caution lawyers who endeavor to collaborate with communities to also ask themselves two very important questions about the dynamics of their coalition or collaboration: Who is at the table, and who is in power? Meaningful collaboration will align enough diverse sets of experiences and power to help dismantle the very systems that gave rise to this legal system.

Dismantling systems may indeed be off-putting and even frightening to the many attorneys and members of our profession who profit and benefit from a white supremacist legal system. But for those of us committed to creating a more just society, we would do well in remembering the words of Amilcar Cabral, whose words regarding Portuguese rule over New Guinea so aptly capture the American system:

> Today, as yesterday, [the colonialists] are imbued with the same spirit in which . . . they practised the slave trade; the spirit in which they engaged in their cruel wars of conquest and occupation, in which they built up and organised, down to the smallest detail, the colonial exploitation of the country's human and natural resources, and which at present motivates the prevalent economic, police and military repression. . . .[115]

We must cast away this spirit and the calls for reform and embrace the potential for our profession to support and strengthen the movements and communities already fighting to dismantle our white supremacist, capitalism system.

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[115] AMILCAR CABRAL, REVOLUTION IN GUINEA (Richard Handyside trans., Stage 1, London, 1974).