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## **The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change**

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Gabriel Arkles  
Pooja Gehi  
Elana Redfield

### INTRODUCTION

We are at a critical moment in the movement for social justice for transgender<sup>1</sup> (trans) communities and particularly for thinking critically about the role of lawyers in that movement. A decade ago, almost no institutionalized legal advocacy around trans issues existed. Mainstream lesbian, gay, bisexual, and transgender (LGB“T”)<sup>2</sup> legal rights organizations almost entirely excluded transgender people and issues, and no transgender-specific legal organizations existed. Now, there are several transgender-specific legal organizations including the Sylvia Rivera Law Project (SRLP); the Transgender Law Center; the Transgender, Gender Variant, and Intersex (TGI) Justice Project; the Transgender Legal Defense and Education Fund; Massachusetts Transgender Legal Advocates; the Imprenta Transgender Law Project; and the Transformative Justice Law Project of Illinois. Additionally, mainstream LGB“T” organizations have begun to engage in more litigation on behalf of transgender individuals. The authors of this article are three attorneys who work at SRLP<sup>3</sup> in the areas of direct services, impact litigation, policy reform, and public education.

In our work at SRLP, the question of how best to use our privilege and skills as lawyers to help improve our clients’ health, safety, and life chances<sup>4</sup> without reinforcing systems and structures that hurt and disempower our clients has constantly challenged us. We often find

ourselves in disagreement with larger LGB“T” legal organizations when answering these questions. In particular, we have faced conflict when trying to bring the experiences and leadership of low-income trans people of color to the table to set the agenda for the movement.

Underlying much of this conflict is a question about the role of legal advocacy in empowering transgender and gender-nonconforming people who are low income and/or people of color. Broadly speaking, almost all national LGB“T” legal advocacy since its inception in the 1970s has focused on attaining “formal legal equality” in legislation and court decisions, particularly in the areas of sodomy laws and gay marriage.<sup>5</sup> The common framing is that gay people are just like everybody else—they deserve the same rights and entitlements as straight people.<sup>6</sup> This approach reinforces the idea that the entitlements of capitalism and democracy (such as privacy, property, independence, the pursuit of wealth, and formal marriage), as they exist in our current neoliberal economic system, are the things that we all (including gay and lesbian people) want, and that these entitlements benefit us more than any other goals we might otherwise pursue.<sup>7</sup> Furthermore, this thinking assumes or implies that homophobia, transphobia, violence, and premature death of trans and queer<sup>8</sup> people would be mitigated by the (hetero) normalization of gay identity within the narrative of consumerism, privacy, national security, and safety that the law embodies and protects.<sup>9</sup>

However, this same system of government results in countless forms of injustice. An alarmingly disproportionate number of African American, Native American, and Latin@ people are incarcerated as a result of the exponential expansion of prisons since the 1980s and “tough on crime” initiatives, such as the War on Drugs and the War on Poverty, which criminalize poverty and scapegoat communities of color.<sup>10</sup> Our private healthcare system is unaffordable and profit centered, and our public healthcare system fails to provide basic healthcare to those enrolled,<sup>11</sup> particularly transgender people seeking access to gender-affirming care.<sup>12</sup>

Increased gentrification of our cities results in the displacement of low-income communities through eviction, foreclosure, and increased policing.<sup>13</sup> Immigrant communities are racialized and scapegoated as terrorists and freeloaders.<sup>14</sup> Structural barriers, such as criminalization and incarceration, lack of identification, and transphobia in families and schools, make access to education functionally inaccessible.<sup>15</sup> Transgender and gender-nonconforming low-income communities and communities of color are increasingly unable to obtain shelter, jobs, public benefits, safety, or survival.<sup>16</sup>

These experiences directly impact the communities we serve. We believe these circumstances are foundational and essential to our legal system, rather than incidental to it.<sup>17</sup> Capitalism and American democracy operate on a presumption of scarcity:<sup>18</sup> if resources or the benefits of society are scarce, then they must be conferred upon some and denied to others. Thus, law privileges the “deserving” and oppresses the “undeserving.”<sup>19</sup> Whiteness, maleness, richness, greediness for wealth, Christianity, non-disabled bodies, heterosexuality, and gender normativity are some of the values privileged by American laws and social policies, and people with the most privilege have the most power in determining future laws and policies. A legal strategy that merely extends existing rights and values to include gays, lesbians, bisexual people, and transgender people without looking at the racism, classism, ableism, homophobia, transphobia, xenophobia, and corruption that maintain capitalism will only protect the structures of empire that oppress poor people and people of color.

Conversely, our analysis centers on the idea that the structures that result in decreased life chances for members of our communities, and for all people of color, poor people, trans people, queer people, and people with disabilities, are deeply rooted in and inextricably linked with the legal system as we know it. If the problems faced by our communities are rooted in and enforced by the legal system, then meaningful change would have to come from outside of it. As such, we believe in a theory of change based in

mass mobilization of communities, rather than elite (strictly legal) strategies. This belief comes from an understanding that significant change for those on the bottom has never been granted from those on top. We believe that the most significant, lasting, and sustainable way to make change is through community organizing that mobilizes those persons directly impacted. Nonetheless, we believe there are many important ways for lawyers to support social movements.

SRLP has long participated in spaces such as roundtables, conferences, and law school symposia, where lawyers may identify, discuss, adopt, and pursue various strategies for advancing the rights of queer and trans people. However, all too often, these spaces exclude nonlawyers<sup>20</sup> from participation and these spaces recreate the very forms of oppression we must dismantle to achieve social justice. This article explores the problems these exclusions cause.

As transgender legal work continues to develop and grow, we believe it is crucial to consider what lessons we can learn from lawyer participation in other social movements. In particular, we examine the ways in which lawyers may intentionally or unintentionally consolidate power in social movements and undermine the potential for systemic change and social justice. Applying these considerations to transgender legal advocacy, we offer alternative frameworks that permit lawyers to participate in and support social movements without replicating structures of oppression. These frameworks are rooted in the creation of spaces of collaboration, with community-organizing principles at their heart.

First, we discuss the history of lawyer-only spaces in the LGB“T” movement and explore our own participation, or lack of participation, in three particular spaces: the Lavender Law Conference, the LGBT Litigators’ Roundtable, and the Transgender Roundtable. We offer examples of our experiences, hopes, and concerns in these spaces.

We then seek to situate these experiences in a broader context, by looking at some of the roles lawyers have played in other social justice movements.

We will identify some patterns of public interest lawyers working in social movements and the limits they impose on those movements. We end this section with a discussion of the ways in which lawyers have (often negatively) impacted the agenda and outcomes of the LGB“T” movement.

Next, we explore alternative ideas for how lawyers may participate in social movements. We begin by discussing a framework for social change, with a focus on community-organizing principles. Then, using an “empowerment” lawyering model for public interest lawyers, we discuss the ways in which lawyers can take leadership from, and support the goals of, community-organizing projects, particularly in the context of trans liberation.

Last, we discuss three examples of agenda-setting by the most impacted communities—the campaign to end trans discrimination at New York City’s Human Resource Administration, the prison-abolitionist work of the Transforming Justice Alliance, and the People’s Movement Assemblies of Project South—as means for setting movement goals. We explain the ways that lawyers have participated in those projects, and argue that these models can guide us as legal advocates toward supporting a truly radical movement for transgender liberation.

#### I. LAWYER-ONLY SPACES IN THE LGB AND TRANS MOVEMENT

Lawyer-only spaces<sup>21</sup> are common within the legal profession. Events at law schools typically function as a space in which only current and future members of the profession converge to share information, discuss, debate, and strategize around a specific area of law.<sup>22</sup> Since we began practicing, we have spoken at many law symposia as well as other, smaller panel discussions at law schools. At almost all of these discussions, every panelist has been either a lawyer or law professor. As we prepare for these discussions, we anticipate an all-lawyer audience with an all-lawyer panel that is centered on all-legal rhetoric.

These spaces are problematic for a number of reasons, but particularly in that they generally fail to share knowledge outside of the profession. Instead, these spaces reinforce the notion that only the opinions of judges, legislators, and other attorneys are worthwhile considerations for lawyers making legal decisions.

As attorneys who focus specifically on transgender rights, LGB“T” legal advocacy is of particular interest and importance to us. Since the 1980s, if not earlier, LGB“T”-focused lawyers have convened exclusive, professional spaces to discuss the future of the LGB“T” movement in the same ways that lawyer-only spaces are typically used in the profession.<sup>23</sup> These spaces take the form of panels and symposia at law schools as well as multi-day conferences. Below, we describe three of these spaces and use these examples to ground our critique.

In each of these settings, we have observed troubling dynamics where lawyers take center stage, where the voices of people with the most privilege in our communities are centralized, where knowledge stays within the legal profession rather than being shared outside of it, where an intersectional analysis is lacking, and where decisions about priorities are made in isolation from many key movement leaders and the people who are most impacted by the issues. We and others have struggled to make responsible decisions about when and how to engage in such spaces.

#### *A. Lavender Law Conference*

Perhaps the most well-known LGB“T” law conference is Lavender Law. As Julie Shapiro explains, “Lavender Law is the title of the annual conference of the National Lesbian and Gay Law Association. The conference attracts lawyers, law students, legal academics, and legal activists from around the country. It is the largest gathering of its kind in the United States.”<sup>24</sup> In *Chronicling A Movement: 20 Years Of Lesbian/Gay Law Notes*,<sup>25</sup> Arthur Leonard explains that in 1978 he placed a “personals ad” in the Village Voice to start an organization for gay lawyers in New

York.<sup>26</sup> In his article, he chronicles the early beginnings of this group, first called the Law Group and then incorporated as Bar Association for Human Rights of Greater New York in 1984.<sup>27</sup> It began publishing a newsletter called Lesbian/Gay Law Notes and eventually “came out of the closet” and became a 501(c)(3) organization called the Gay and Lesbian Association of Greater New York (LeGaL).<sup>28</sup> In 1988, the first ever Lavender Law Conference was organized by an ad hoc committee formed at the 1987 March on Washington. The National Lesbian & Gay Law Association (NLGLA) developed out of this work and has sponsored all successive conferences.<sup>29</sup>

Since then, the Lavender Law Conference has been one of the most important gatherings of lawyers working on LGB“T” issues around the country<sup>30</sup> with symposia and special topics examining issues of same-sex marriage,<sup>31</sup> sodomy laws,<sup>32</sup> and “Don’t Ask Don’t Tell.”<sup>33</sup> While these topics stimulate discussion among lawyers and law students, they do not offer an intersectional analysis or reflect the needs or priorities of low-income, transgender communities of color. Not coincidentally, attorneys and others from SRLP have submitted workshop proposals for the past four years with topics including attaining identity documents for transgender people, transgender individuals and the prison industrial complex, and transgender healthcare. NLGLA has rejected nearly all of our recent proposals.

Setting the agenda at Lavender Law is, of course, not the same as setting the agenda for all of LGB“T” legal advocacy. However, given the centrality of the conference for networking, sharing information, and showcasing issues and advocacy strategies within in the LGB“T” legal world, the two are not entirely separate. Only seeing certain types of people engaged in certain types of work, and only gaining information about particular areas of LGB“T” legal advocacy, influences the work of law students and practitioners who attend. These spaces set a foundational culture for law students who are about to enter the profession. As a result, this kind of lack



of accountability is presented as normal and standard, reifying a hierarchy of power and professionalism.

*B. The LGBT Litigators' Roundtable*

The LGBT Litigators' Roundtable is a different sort of intentional, lawyer-only space that also has a strong impact on the priorities of the "movement." The LGBT Roundtable plays a more explicit role than Lavender Law in determining litigation priorities and coordinating national legal strategy.

This roundtable began loosely in the early 1980s with Abby Rubinfeld, who became Legal Director for LGB" T" litigation-giant Lambda Legal in 1983.<sup>34</sup> As William Eskridge explains, the LGBT Roundtable began with a meeting of gay rights lawyers in 1983 after the district court loss in *Bowers v. Hardwick*.<sup>35</sup> The lawyers gathered from the American Civil Liberties Union (ACLU), Gay and Lesbian Advocates and Defenders (GLAD), and a couple other gay or lesbian rights organizations. In 1986, the name of the group changed from the Ad-hoc Task Force to Challenge Sodomy Laws to the Litigators' Roundtable.<sup>36</sup>

Since then, the Litigators' Roundtable has become the body of legal experts with whom attorneys should consult to strategize about LGB" T" impact litigation priorities.<sup>37</sup> Today, the LGBT Roundtable is organized jointly by Lambda Legal, National Center for Lesbian Rights (NCLR), ACLU Lesbian and Gay Rights Project, and GLAD. The semiannual Roundtable focuses on national LGBT legal organizations that engage in impact litigation to secure "equal rights for LGBT people," and, at times, invites policy organizations to participate.<sup>38</sup> While the invitation list has traditionally been small, there have been a few additions over the years. For example, the 2009 list included attorneys from Lambda Legal, ACLU, a GLAD, Equality Advocates of Pennsylvania, NCLR, Human Rights Campaign (HRC), Service Members Legal Defense Network, Transgender Legal Defense and Education Fund, Transgender Law Center, National Gay

and Lesbian Task Force, Immigration Equality, SRLP, Just Detention International, Family Equality Council, and Freedom to Marry, as well as a handful of law professors formerly affiliated with invited organizations.<sup>39</sup>

SRLP worked hard to secure an invitation to this exclusive space to ensure that the needs of low-income transgender communities of color were on the table in these discussions. Around 2003, we were invited to our first LGBT Roundtable. Although we were enthusiastic to be included in this space with brilliant attorneys and appreciated learning and sharing updates and strategies from around the country, we quickly became concerned with some of the dynamics of the meetings.

Throughout our participation in the LGBT Roundtable, transgender people and people of color have always been a very small minority in the room.<sup>40</sup> To our knowledge, very few participants have lived in poverty and very few have been openly HIV-positive or disabled.<sup>41</sup> Valuing only privileged voices in planning legal strategy exacerbates the hierarchies and societal power imbalances that we believe movements must dismantle and shift in order to achieve meaningful social change.<sup>42</sup>

In addition, the conversations at the roundtables showed a lack of caution concerning the role for lawyers in social justice movements. We occasionally heard complaints about the “community”—referring to white, middle-class, and wealthy non-transgender gay men who are not attorneys—engaging in activism on marriage and other issues without approval from the attorneys.<sup>43</sup> On one occasion, a participant in the Litigators’ Roundtable forcefully expressed the opinion that the role of attorneys in the movement was to tell the community what to do, never the other way around.<sup>44</sup> The very existence of the LGBT Roundtable as a lawyer-only space considering “movement” priorities tacitly supports this opinion.<sup>45</sup>

Perhaps the most disconcerting aspect of the LGBT Roundtable is its failure to prevent attorneys from taking a narrow, legalistic view of issues, which can lead to limited options and counterproductive outcomes.<sup>46</sup> When

community members and organizers are not even permitted in the room, we, as attorneys, do not learn how to defer to their leadership. This may result in our taking action that wastes resources or harms our communities. Most of the other attorneys in attendance at the Roundtable do not engage in direct services or work closely with community organizers, so the potential for an overly narrow focus and lack of accountability is all the more severe.

Discussions at the LGBT Roundtable also typically lack intersectional analysis, leading to a prioritization of issues favoring the most privileged members of queer and trans communities rather than those most vulnerable to violence and discrimination. Most topics have centered on marriage or other issues of, at best, minimal concern for low-income transgender communities of color.<sup>47</sup> While some past topics have been, on a superficial level, considerably more relevant to our communities and at times reflective of our suggestions,<sup>48</sup> they were often given relatively little time. Additionally, some of these topics were discussed in breakout sessions competing against other very important topics. For example, one year “Transgender,” “HIV,” and “Parenting” were held as competing breakout sessions, while most other topics were given the attention of the full group. Trans communities of color have shockingly high HIV rates,<sup>49</sup> but advocates had to decide to attend one session or the other, thus precluding effective intersectional discussions of these topics.

The other, perhaps unsurprising, disappointment was (and continues to be) that all discussions at the LGBT Roundtable are run by lawyers, the self-identified “experts” on each topic. Even when we request that certain attorney colleagues, often attorneys of color engaging in work related to poverty, racism, transphobia, and homophobia be permitted to join, our requests are usually rejected. Thus, even discussions on topics that could have been helpful were very limited and often focused on issues that served the most privileged of the relevant group.

For example, discussions on “parenting” are relatively common at the LGBT Roundtable, but they tend to focus on access to adoption or assistive

reproductive technology for non-trans middleclass or wealthy gay and lesbian people. The discussions disregard low-income transgender people of color whose parenting and reproduction issues are more likely to concern coerced and/or involuntary sterilization, separation from children through state “child protective services” intervention, separation from children through deportation and/or incarceration, and transphobic restrictions on child visitation. The intersection of transphobia, homophobia, racism, ableism, and classism is common in custody decisions involving low-income transgender people. Low-income trans people often do not have the ability to support children or other family members because of a combination of job discrimination, racist and anti-poor welfare policy, suspicion of the “realness” of trans families and trans people’s ability to have children, and agency unwillingness to consider trans people and/or people who have a past history of criminal “justice” system involvement as foster or adoptive parents.<sup>50</sup>

These issues are located at the complicated intersections of LGb“T” advocacy with movements for economic justice, disability justice, immigrant justice, prison abolition, and reproductive justice, rather than the narrowly construed issues of the mainstream LGb“T” movement, and thus receive scant if any attention at the LGBT Roundtable. By focusing on single-issue politics (in this case, gay and lesbian oppression), the LGBT Roundtable centers individuals who are only affected by one part of their identity. In turn, this focus might benefit individuals who are “just gay” but might also hurt people who encounter other types of oppression such as racism, transphobia, poverty, and incarceration.<sup>51</sup>

### *C. The Transgender Roundtable*

Concerns about the continued marginalization of transgender people in the LGb“T” community, as well as a sense that transgender rights attorneys wanted a space to discuss specific litigation strategies,<sup>52</sup> led to a proposal from a practicing attorney and a law professor for a transgender-specific

roundtable. One of the authors of this article expressed concern that trans people of color, particularly trans women of color, were seriously underrepresented as participants and planners of the discussion. He also explained our concerns about involving only lawyers.<sup>53</sup>

To our knowledge, after hearing these concerns, the only additional people the organizers invited to the first Roundtable were a white non-transgender attorney who does not engage in litigation and a white non-attorney transgender woman who is the Executive Director of a national organization engaging in federal lobbying and transgender policy work.<sup>54</sup> Even the attorneys of color we suggested were not invited at that time. The invitation list, in fact, was strikingly similar to the list of LGBT Roundtable attendees, including, but not limited to, attorneys from the ACLU, GLAD, Lambda Legal, and NCLR,<sup>55</sup> with some additional private practice transgender attorneys.

Similarly, we made suggestions for topics of discussion including media strategies, coordination of litigation and community-organizing strategies, ID access, homeless shelter access, Medicaid, immigration, foster care and juvenile justice systems, and police profiling and violence. Again, very few of our suggestions were incorporated in the agenda for the Roundtable.<sup>56</sup> The agenda also very closely resembled the LGBT Roundtable agenda—except for the focus on trans rights.<sup>57</sup> “Trans rights” in this context essentially referred only to securing rights for wealthy, white transgender people.

The Transgender Roundtables have been almost all or all white each year we have attended. Like the LGBT Roundtable, we have discovered that even when topics seemed highly relevant to our communities, the discussion gave them an abstract, academic focus or narrowed them to the issues impacting mostly middle-class and wealthy white transgender people. For example, one topic involved whether or not we should be working towards securing court-ordered sex changes. While this discussion could be useful if conducted with an intersectional analysis, the Roundtable

discussion focused on a narrow interpretation of a legal remedy that applied to mostly middle-class or wealthy trans people. As it was discussed, a court-ordered sex change would likely require a “surgery standard.” The Roundtable discussion minimized the reality that most low-income people of color cannot access expensive surgery. This outcome favors more privileged transgender individuals and furthers the already existing class divide within our communities. It deprioritizes solutions that instead focus on de-medicalizing standards in administrative processes for gender change, which would have a much greater practical impact on the ability of low-income transgender people of color to secure identification that accurately reflects gender.

The youth section of the Roundtable had a similarly narrow focus. In our experience working with youth, we hear primarily about homelessness, police profiling and brutality, psychiatric confinement and abuse, harassment and denial of needed healthcare in foster care group homes and juvenile detention facilities, and expulsion from school. However, the discussion focused on the recent controversy in the media over transition for very young, white transgender children. No youth community organizers or youth-focused service providers were at the Roundtable where this discussion took place, even though people with relevant experience working with transgender youth were available locally. For example, we had suggested inviting (1) an attorney and non-trans woman of color from the Peter Cicchino Youth Project, the only legal organization nationally to provide direct legal services exclusively to queer and trans youth (the vast majority of whom are low-income people of color); and (2) a community organizer, trans person of color, and director of FIERCE!, the only by/for community-organizing project in the country dedicated to building the leadership and power of trans and queer youth of color.<sup>58</sup> If these experienced leaders had been allowed to facilitate the discussion on youth issues, the content and dynamics of that discussion would have been very different.

Discussions about the structure of the Roundtable have also been problematic. Different visions for the roundtable emerged, including visions of (1) a space for attorneys engaged in work for transgender rights to share strategies and plan priorities for impact litigation, similar to the LGBT Litigators' Roundtable; (2) a space for private-practice transgender attorneys to support one another in addressing challenges in their work and in bringing more paying clients into their practices; and (3) a space where community organizers and attorneys engaged in struggles for trans liberation could collaborate, build awareness about intersections of oppression, seek ways to work more effectively with one another, and share models from around the country for building community power and making institutional change. When concerns were raised about the racial composition of the group and the impact white privilege would have on decisions about priorities, some responses were defensive. Some participants expressed hope that attorneys of color would choose to join in the future. Some said that as white transgender people we understood and adequately represented "the community." Other participants also gave assurances that the speakers were aware of the needs of transgender communities of color because they had engaged in research surveying the communities and/or because they maintained personal friendships with trans people of color.

At one Roundtable, held in Chicago in 2007, Lambda and SRLP attorneys pushed to include non-lawyer community leaders in the meeting and partially succeeded. A few hours of the roundtable were open to local non-lawyer transgender activists. However, predictably the slight opening of such a lawyer-focused space had mixed results.

Non-attorneys who attended included white professionals, such as social workers, who worked closely with local low-income transgender youth of color. Their presence was helpful because some of them consistently interrupted, demanding attention to the police profiling, incarceration, and psychiatric abuse confronting transgender youth of color in the local

community. They informed us of the issues trans communities in Chicago faced and asked important questions, such as how we, as a group of legal professionals purportedly committed to trans rights, could disregard criminal defense in our discussions.

However, that portion of the agenda remained problematic, in part because we remained exclusively a group of white professionals. Also, some attorneys directed their comments only to the other attorneys in the room and/or spoke in a patronizing tone to non-attorneys in attendance. These dynamics led us to worry that if low-income trans youth of color had been present, instead of their white service providers, they would have been treated even worse.

Discouraged from our past experiences and committed to increasing our accountability to low-income trans communities of color, we struggled with the decision about whether to attend subsequent roundtables. Our main concern was the risk that this new structure in the development of transgender legal advocacy would merely shift us from a place of marginalization within the broader LGB“T” movement to a place of marginalizing the most vulnerable within trans communities.

When it came time for the most recent transgender roundtable in the fall of 2009, we decided not to attend. We maintained dialogue with the other members of the group, whom we profoundly respect and with whom we want to continue to build and collaborate.

We explained our position and suggested that all of us participate in an anti-oppression training at a future meeting. As of publication of this article, we continue to strategize with allied organizations about the best way to interact with and (hopefully) transform this space.

We raise these concerns because we hope to work with our colleagues to re-shape the way that trans legal advocacy is determined. We do not mean to imply that it is always bad for lawyers to strategize together or that the LGBT Litigators’ Roundtable or Transgender Roundtable lack value. On the contrary, we believe it is *critical* for lawyers to share knowledge and



experience and engage in joint strategizing. We have greatly appreciated being a part of these spaces and learning and sharing from our colleagues. We do, however, believe that this work would be far more effective and accountable if done in collaboration with, rather than in isolation from, community organizers and other movement leaders with a commitment to centering the voices of those who experience intersections of oppression based on gender, race, class, sexuality, disability, and citizenship.<sup>59</sup>

## II. THE DANGERS OF LAWYER-LED STRATEGIES IN MOVEMENTS FOR SOCIAL JUSTICE

In this section, we examine the impact that lawyers have had on other social movements, with a focus on the pitfalls of centering movement strategies on lawyers and legal remedies. We then use this background to reflect on lessons learned from other social movements and on the problematic role lawyers have often taken in these movements.

### *A. Problematic Aspects of Lawyer Participation in Movements for Social Justice*

Attorney involvement in movements for social justice has a long history. Unfortunately, while attorneys have played important positive roles in these movements,<sup>60</sup> we have also often hindered this work rather than advanced it. The central limitation to attorney work for social change is that typical tools of legal advocacy, such as direct services, impact litigation, and lawyer-led advocacy for policy reform, do not, at their core, shift broader problems of misdistribution of wealth and life chances in our culture. Rather, these strategies can exacerbate those power differences, reifying elite professionals as leaders.<sup>61</sup> Below, we discuss five major drawbacks to legal strategies in movements for social justice, particularly drawing from economic and racial justice struggles.

### **1. Limited or Counterproductive Impact on Material Conditions**

Typical legal advocacy tools often lead to disappointing outcomes. As Alan Houseman states in the context of poverty law: “The increasing poverty of many Americans and the widening income gap between rich and poor will not be solved by the activities of legal services lawyers acting through impact or “focused case” representation. Legal services cannot end poverty; nor are the courts going to redistribute wealth.”<sup>62</sup>

Direct services traditionally address immediate, urgent legal needs of clients using existing law and administrative procedures.<sup>63</sup> As such, these services are often unlikely, in and of themselves, to result in even relatively modest or superficial law reform.<sup>64</sup> They are even less likely to create fundamental systemic change or meaningfully redistribute societal power or means of production.<sup>65</sup> Additionally, even in a short term sense, several commentators have seriously questioned the quality of the legal services provided in most traditional settings.<sup>66</sup> Enormous caseloads, inadequate staffing and supervision, junior attorneys, high turnover, restrictive conditions on funding, and lack of relevant legal education are just a few of the factors that contribute to severe limits on even the most dedicated and intelligent advocate’s ability to achieve the kind of results their clients might want, need, and deserve.<sup>67</sup>

Impact litigation, on the other hand, is typically intended to make significant systemic change (hence its name). However, in reality its possibilities for change are still profoundly limited, for three major reasons.

First, as described above, the legal system itself must be considered part of the problem. The current U.S. legal system maintains the same racialized property statuses upon which this country was founded. The system was constructed to maintain capitalist exploitation, which as many critical scholars explain, is constructed around an “individual’s rights” model that exists specifically to legitimize power over ongoing relationships of exploitation.<sup>68</sup> Our courts and systems of government are deeply invested in white supremacy, capitalism, patriarchy, heterosexism, and a coercive

binary gender system; therefore, those systems cannot, and will not, eliminate those social problems.<sup>69</sup> Derrick Bell's principle of *interest convergence* provides that "[t]he interest of blacks in achieving racial equality will only be accommodated when it converges with the interests of whites."<sup>70</sup> His principle helps explain how seeming advances in racial justice can be made through the courts without ever disturbing the material societal privileging of white people over people of color.<sup>71</sup> This principle extends easily to all social justice causes, including causes of the mainstream LGB" movement. For example, capitulations and improvements in the lives of gays and lesbians will only be made within the legal system if they reinforce heteronormativity and preserve the status quo.<sup>72</sup>

As a result, many impact litigation cases undertaken to advance justice for marginalized groups lose in court, worsening conditions for beneficiaries or people similarly situated. For example, in *Dandridge v. Williams*,<sup>73</sup> the poverty lawyers who litigated the case hit a limit of reform through their efforts. The case was brought on the heels of several promising legal developments in poverty litigation that suggested federal courts might finally find the state had affirmative duties to provide for the poor. However, in its *Dandridge* decision, the U.S. Supreme Court abdicated a role in reviewing allocation of state resources for public assistance and upheld a state's cap on the amount of welfare grants, which allowed poor children in large families to receive even less support than poor children in small families.<sup>74</sup> The effect was a surprising and permanent rollback of the modest victories achieved through previous litigation. As Allen Redlich describes, "*Dandridge* shattered the hopes of those who thought social change could quickly be achieved in courts."<sup>75</sup>

Even more disturbing, though, is that those cases or statutes that appear to result in extraordinary victories for marginalized groups typically translate into little positive change and, in some cases, even change for the worse in these communities. For example, scholars and activists have

pointed out that despite the momentous legal victory of *Brown v. Board of Education*,<sup>76</sup> public schools remain segregated with white children receiving much more resources and higher quality education than black children.<sup>77</sup>

Similarly, a deep investment in the “perpetrator perspective” has undermined the potential for Title VII to address employment discrimination. The perpetrator perspective views racial discrimination as actions inflicted on a victim by a perpetrator; whereas, conversely, the “victim perspective” sees racial discrimination as those conditions of actual social existence as a member of an underclass, including lack of jobs, money, housing, choice, and recognized individuality.<sup>78</sup> Judicial prioritizing of the “intent” of the perpetrator rather than the actual impact on the victim has undercut the ability of anti-discrimination law to change conditions for people of color experiencing discrimination.<sup>79</sup>

Second, even if a court grants the relief demanded in an impact case, the relief sought may not be the relief most beneficial to the community. Lawyers acting on what they *believe* to be best for a marginalized community without taking leadership from that community will often fail to generate the most effective solutions and may actually propose counter-productive solutions.<sup>80</sup> Even where the lawyer(s) come from the marginalized group themselves, the problem does not disappear. They are still often in a position of power and privilege as compared to other members of the group, and their thinking is framed by legal theories as well as legal limitations.<sup>81</sup> Deferring to the client on issues of relief sought does not entirely resolve the problem either. As parties in a lawsuit, individuals or small groups do not have the same opportunities they have in community organizing to share and learn from other people’s experiences, build political analysis, and develop solutions dynamically with others from their community.<sup>82</sup> In fact, the attorney(s), out of concern for confidentiality, privilege, and the possibility of statements being used against the individuals in the lawsuit, may specifically discourage joint meetings with

community organizers or discussions of the case with others in the client's communities.<sup>83</sup>

Louise Trubek discusses several experiences where a solution she and/or other lawyers initially found attractive, ultimately proved disingenuous.<sup>84</sup> For example, she describes the temptation of many lawyers to create new agencies or overhaul existing agencies as a way to address problems in communities.<sup>85</sup> She writes:

I supported the creation of a state agency to regulate hospital rates, with the goal of controlling hospital costs to insure services for patients who lacked resources. No sooner was the agency created than hospital interests co-opted it. As a result, the agency clearly favored hospital interests and ignored the interests of needy clients . . . I have rethought that approach. I am thinking much more in terms of creating community programs.<sup>86</sup>

Third, and finally, for the above reasons, impact litigation does not change fundamental hierarchical capitalist structures.<sup>87</sup> Courts and lawyers remain firmly in charge. Marginalized communities are at best “spoken for” but do not have the platform or opportunity to take their own power or speak in their own voices<sup>88</sup>—which leads to disempowerment, the next problematic aspect we discuss.

## **2. Substituting Lawyers' Goals for the Goals, Desires, and Objectives of Those Most Directly Impacted by Laws and Policies**

William Quigley summarizes the problems of traditional public interest lawyering strategies in terms of power:

Both [direct services and impact litigation] focus the power and the decisionmaking in the lawyer and the organization which employs the lawyer. The lawyer decides if she will take the case. The lawyer decides what is a reasonably achievable outcome. The lawyer and her employer decide how much time and resources can be committed to the effort. Both approaches individualize or compartmentalize the problems of the poor and powerless by not addressing their collective difficulties and lack of power.<sup>89</sup>

The dynamic between lawyer and client in a direct services setting is often paternalistic and disempowering.<sup>90</sup> A charity framework often comes into play, reinforcing rather than challenging the power dynamics between lawyer and client.<sup>91</sup> Lawyers frequently take the lead in the relationship, even to the point of defining the client's as well as the community's goals.<sup>92</sup> This dynamic can be even more severe in impact litigation, particularly for those organizations that practice only impact litigation with no direct services.<sup>93</sup> Here, there is typically not even a client, community, or movement to whom the attorney may feel accountable, at least in the initial stages.<sup>94</sup> Rather, attorneys alone determine what goals they wish to pursue through litigation and then seek out an appropriate plaintiff.<sup>95</sup> Once there is a client, attorneys still frequently proceed as if they are the primary agents in creating social change, rather than the client.<sup>96</sup> "[T]he notion that legal services lawyers should lead the charge reinforces lawyer domination and does little or nothing to empower the poor to assert their own rights and interests."<sup>97</sup>

When lawyers work with community-organizing groups, they often take over, push traditional legal strategies as a means to make change, and take leadership away from others who are more directly impacted.<sup>98</sup> As a result, lawyers place additional structural barriers to keep those impacted from the center of decision-making processes.<sup>99</sup> If anything, individuals develop a sense of "dependency" on the lawyer, which profoundly circumscribes their ability to make change on their own behalf.<sup>100</sup> Far from changing fundamental balances of power, traditional hierarchies are reiterated once again as the professional with educational privilege assumes control and takes the spotlight.<sup>101</sup> Indeed, "the lawyer, even the well-intentioned public interest lawyer, has a share of power that is only the result of others not having access to it."<sup>102</sup> As community organizer Ron Chisom has said, "reliance on [the white legal] system is a contradiction to development of collective power in a community organization."<sup>103</sup>

### 3. Reinforcing the Status Quo by Quelling Dissent

Direct legal services have at times been explicitly supported as a means to reduce social dissent and preserve capitalism.<sup>104</sup> Providing enough services to prevent some premature deaths of members of marginalized groups and to create an appearance of access to justice for the poor can undermine the urgency of demands from marginalized groups for more radical or systemic change.<sup>105</sup>

In fact, this understanding of the role of direct legal services is foundational and has made its continued funding possible. Not long after the inception of the Legal Aid Society in the early twentieth century, bar associations saw that funding the Society was in their own interest.<sup>106</sup> “As immigration increased [from southern and eastern Europe], so did the ‘lawlessness and disorder’ of the ghettos and the potential for social unrest unless clients were shown that ‘their rights could and would be enforced by the mechanisms of the existing capitalist order.’”<sup>107</sup> In more recent decades, foundation and government funding have supported the same ends, increasing an emphasis on service provision and disconnecting it from politicized work. Dean Spade and Rickke Mananzala point out that “[b]y ameliorating some of the worst effects of capitalist maldistribution, then, these services became part of maintaining the social order.”<sup>108</sup>

In recent years, a growing critique of what activists and scholars are calling the “Non-Profit Industrial Complex” (NPIC) has developed across several social justice movements. Many authors have described the means through which the non-profitization of social justice has resulted in co-optation of our work to support the status quo and replace accountability to communities with accountability to wealthy donors and institutions.<sup>109</sup> Dylan Rodriguez defines the NPIC as the industrialized incorporation of pro-state liberal and progressive campaigns and movements into a spectrum of government-proctored nonprofit organizations.<sup>110</sup> The restrictions on Legal Services Corporation funding are a particularly striking example of this dynamic, as they specifically prohibit recipients of this funding from

engaging in class-action litigation, providing legal services to immigrants or prisoners, participating in boycotts or pickets, or representing clients in cases regarding abortion or school desegregation.<sup>111</sup> Alan Houseman argues that one reason why legal services should not be seen as a catalyst for change is that such a view would deter funding.<sup>112</sup>

Institutionalizing the provision of direct services can also serve to normalize the conditions that create the need for those services. Paul Kivel maintains that “[i]nstitutionalizing soup kitchens leads people to expect that inevitably there will be people without enough to eat; establishing permanent homeless shelters leads people to think that it is normal for there not to be enough affordable housing.”<sup>113</sup> By developing long-term infrastructures for attorneys to provide direct legal services to people who are victims of intimate-partner violence or police violence, who are unlawfully denied public benefits, who are raped or denied healthcare in prison, or who are facing deportation, we may contribute to a vision of current conditions of widespread interpersonal and state violence, profound poverty, mass incarceration, and xenophobia as a natural and inevitable state of affairs.<sup>114</sup>

Similarly, impact litigation can result in symbolic victories that produce an appearance of achieving justice through the courts, thus reducing demands for more fundamental social change on the streets. According to Derrick Bell, white fear of black anger and disillusionment was one factor that led to the decision in *Brown v. Board of Education*.<sup>115</sup> Thus, a desire to preserve the white supremacist status quo from the potential challenge of widespread black anger was one reason why the Supreme Court permitted the legal challenge to segregation in public schools to succeed.<sup>116</sup>

Well-intended work by lawyers in the policy reform arena can also serve to undermine broader dissent. The authors of a community organizing manual list several “Tricks the Other Side Uses,” for organizers to be aware of and avoid.<sup>117</sup> While many of the “tricks” listed are familiar to almost anyone doing social change work, lawyers are particularly vulnerable to one



of them. The authors describe it as: “*You are reasonable but your allies aren’t. Can’t we just deal with you?*”<sup>118</sup> In this tactic, institutions resisting change can divide coalitions, decreasing their power and tempering their demands, by bringing those who have the most invested in the status quo into the “inner circle” to negotiate, in theory, for the full group’s interests.<sup>119</sup> Lawyers often have an easier time getting meetings with decision makers precisely because we are seen as more “reasonable,” i.e., amenable to the status quo, and we are too often tempted to accept this access rather than insisting on solidarity with more radical leaders from affected communities.<sup>120</sup>

The manual quotes a consultant speaking to a group of corporate executives to explain this tactic,

Activists fall into three basic categories: radicals, idealists, and realists. The first step is to isolate and marginalize the radicals. They’re the ones who see inherent structural problems that need remedying if indeed a particular change is to occur.<sup>121</sup> The goal is to sour the idealists on the idea of working with the radicals. Instead, get them working with the realists. Realists are people who want reform, but don’t really want to upset the status quo; big public interest organizations that rely on foundation grants and corporate contributions are a prime example. With correct handling, realists can be counted on to cut a deal with industry that can be touted as a “win-win” solution, but that is actually an industry victory.<sup>122</sup>

When this tactic is used successfully, a relatively minor yet counterproductive change occurs; the institution that communities wanted to change works to preserve its perceived legitimacy instead and more radical demands lose some of their energy and power to persuade.<sup>123</sup>

#### **4. Lack of Intersectional Analysis and Action**

While not solely a problem among lawyers, many lawyers in social change movements have focused on a “single issue,” disregarding the impact of intersections of oppression and the diversity of experiences within

marginalized communities. For example, John A. Powell maintains that a lack of focus on the needs of poor people of color makes poverty legal services effective only for poor whites.<sup>124</sup>

A recent Vietnamese immigrant requires poverty-related services different from those needed by a Mexican American migrant worker, each of whom is different from the inner-city black, or a suburban or rural white. In order for a legal services organization to provide assistance effectively to these various groups, it must be sensitive to their various needs.<sup>125</sup>

Legal service organizations that claim to provide “universal” poverty legal services ultimately end up erasing the needs of low-income people of color, causing more and more communities of color to find the services offered irrelevant to their lives.<sup>126</sup>

Louise Trubek caught herself, on more than one occasion, making assumptions about the needs of low-income communities that did not take into account the unique impact of a policy proposal on low-income women and/or low-income people of color.<sup>127</sup> For example, a proposal to create a universal healthcare program turned out to be inadequate to address the needs of people of color living in the inner city, because almost no clinics existed in their neighborhoods (and almost no physicians of color practiced in those few that did exist).<sup>128</sup> In another situation, a proposal for legislation emphasizing keeping older people at home initially did not take into account the increase in uncompensated caretaker work that low-income women would be expected to shoulder as a result.<sup>129</sup> Using the intersections of poverty with race and gender in her analysis enabled her to develop proposals that would be more effective for the various communities she hoped to benefit, with less risk of unintended consequences.<sup>130</sup>

Even when attorneys have recognized intersectionality, courts have been reluctant to do so, again limiting the potential for effective social change through the law. Paulette Caldwell describes this phenomenon in *Rogers v. American Airlines*, a case where the court held that firing a black woman

for wearing a braided hairstyle did not constitute discrimination on the basis of race or sex.

[T]he court treated the race and sex claims in the alternative only. This approach reflects the assumption that racism and sexism always operate independently even when the claimant is a member of both a subordinated race and a subordinated gender group. The court refused to acknowledge that American's policy need not affect all women or all blacks in order to affect black women discriminatorily. By treating race and sex as alternative bases on which a claim might rest, the court concluded that the plaintiff failed to state a claim of discrimination on either ground.<sup>131</sup>

Legal systems' reluctance to acknowledge the reality of intersections of oppression means that legal systems only produce results, if at all, for the members of subordinated groups that have the most other forms of privilege—wealthy, black, non-transgender, straight, able-bodied, U.S. citizen men, but not poor, black women; and wealthy, white, non-transgender, straight, disabled, U.S. citizen men, but not disabled, Latina, trans immigrants.

### **5. Undermining Leadership and Expertise of Directly Impacted Community Members**

As Gerald López points out, “experts”<sup>132</sup> dominate the various public and private systems that regulate our daily lives—such as healthcare, education, public benefits, media, politics, and the law. As we participate in these systems, we typically identify elites such as lawyers, doctors, and politicians to be the people worth listening to and learning from because of their knowledge, experience, and legitimacy within those institutions.

Lawyers, for example, are the experts on understanding how to use the law and the legal system. It is important to note that our *legitimacy* is at stake when we make our professional decisions; all of the power that we have to make change or advocate for our causes within the system is granted to us by the system itself. Thus, if we are setting the agenda for the

movement, our outcomes will almost certainly legitimize the legal system and the imbalance of power. This dynamic has been the traditional character of lawyering in the public interest.

But what about those whose food, shelter, families, health, and lives are at stake? Members of low-income communities are the experts on issues of poverty; people of color are the experts on issues of racism and xenophobia; transgender and gender-nonconforming people are the experts on transphobia; and people who face multiple forms of oppression are the experts on the impact of those intersections. If the goal of a social justice movement is to identify and change conditions that lead to instability, suffering, and premature death within disenfranchised communities, it is the experiences of those most directly affected that should make them the experts.

Not surprisingly, we often find lawyer-only spaces confronting LGB“T” “issues”<sup>133</sup> to be disconnected from the realities our clients experience as low-income transgender people of color experiencing multiple forms of oppression. Yet in these spaces, only we (the attorneys), and never they (the clients), are seen as experts worthy of sharing their opinion at a podium.

Analyzing these dynamics is essential to understanding how inclusion of some non-lawyers in an otherwise lawyer-only space does not remedy the underlying problems. In the rare instance in which a non-lawyer is either in the audience as a participant or on the panel as a speaker in a law conference or symposium, we often observe that the person is set up<sup>134</sup> and/or tokenized.<sup>135</sup> Although excluding the voices of the actual “experts” —our clients—in these limited roles is part of our critique of lawyer-only spaces, when non-lawyers are included, these spaces continue to fail.

For example, one of the authors attended a law school symposium on gender justice and the prison industrial complex where almost all of the speakers were white, non-transgender attorneys who had never been incarcerated.<sup>136</sup> The author was struck by several racist, homophobic, sexist, and transphobic comments made by other participants that were not

challenged. In contrast, a formerly incarcerated, transgender, woman of color who survived rape in detention and recently won an appellate case also spoke. She had tremendous expertise in the area, as well as more at stake in the subject matter of the conference than the rest of us. However, she was invited to speak in a classroom over lunch, unlike the rest of the speakers who were either on a panel or delivering a keynote address behind a podium in a lecture hall. Rather than share her analysis of problems or ideas for change, she was encouraged to share her personal story.

As a result a different dynamic emerged. The trans woman of color shared the painful details of her experience of rape in prison, at times breaking into tears, in a room full of distracted “experts.” Very few people seemed to take her seriously as an agent for social change. It seemed that her pain was put on display for us in order to make us feel better about “doing good work,” rather than as a meaningful opportunity for former prisoners and attorneys to learn from and build with one another, or for non-trans white people to practice accountability to trans communities of color.

Even when attorneys attempt to include non-lawyer voices in such spaces in a thoughtful, non-tokenizing manner, we still often fail. Part of the reason is that the model is at best “inclusion,” rather than centralizing the voice of the non-lawyer as the “expert.” In other words, someone from a group that has typically been excluded is included, but without making any fundamental changes to the way the space is organized or to the values of knowledge and experience.<sup>137</sup> William Quigley’s description of the culture clash surrounding litigation rings true in many ways for legal gatherings as well:

[W]hat is important in the context of a lawsuit is often not at all important in the real world of people. Everything from dress codes to language patterns, from the race and gender roles to the emphasis on the written word, not to mention the obvious role that wealth and power play in all phases of litigation, work against the poor and powerless role in litigation.<sup>138</sup>

*B. How Lawyer-Centered Leadership has Co-Opted the Struggles of LGB“T” Communities*

Agenda-setting is one of the most critical moments for recognizing and taking leadership from the most-affected members of a vulnerable group. Unfortunately, attorneys engaged in LGB“T” movement work have certainly done no better, for the most part, than attorneys engaged in other forms of social justice work. As a group, we do not seem to have taken seriously many of the critiques of traditional models of public interest lawyering or lessons learned in struggles for racial and economic justice. Throughout the history of the LGB“T” “movement,”<sup>139</sup> lawyers have co-opted grassroots trans and queer organizing in an attempt to cohesively move (our) goals forward. These goals—mainly overturning anti-sodomy laws, securing anti-discrimination and hate crimes legislation, and more recently, legalization of same-sex marriage<sup>140</sup> are not, and have never been, reflective of the needs of trans and queer people who are most marginalized.<sup>141</sup> As Dean Spade and Rickke Mananzala explain:

Countless scholars and activists have critiqued the direction that gay rights activism has taken since the incendiary moments of June 1969 when criminalized gender and sexual outsiders fought back against police harassment and brutality at New York City’s Stonewall Inn. What started as street resistance and nonfunded ad hoc organizations, initially taking the form of protests and marches, institutionalized in the 1980s into non-profit structures that became increasingly professionalized. Critiques of these developments have used a variety of terms and concepts to describe the shift, including charges that the focus became assimilation, that the work increasingly marginalized low-income people, people of color, and that the resistance became co-opted by neoliberalism and conservative egalitarianism. Critics have argued that as the gay rights movement of the 1970s institutionalized into the gay and lesbian rights movement in the 1980s—forming such institutions as Gay and Lesbian Advocates and Defenders, the Gay and Lesbian Alliance Against Defamation, the Human Rights Campaign (HRC), Lambda Legal Defense and Education Fund,

and the Gay and Lesbian Task Force—the focus of the most well-funded, well-publicized work on behalf of queers shifted drastically.<sup>142</sup>

The assimilation and co-optation of the LGB“T” movement is easily detectable through the ways in which trans and queer people are and are not presented in the media—which people are hyper visible, which people are made invisible, and how various identities are portrayed.<sup>143</sup> Nowhere is there a discussion of discrimination against trans and queer people of color or the ways in which homophobia and transphobia intersect with other forms of oppression. Rather, the most common images are of (mostly) white, wealthy, monogamous, same-sex, non-trans, gay or lesbian couples struggling for “equal rights,” but never housing, healthcare, jobs, or education.<sup>144</sup> Not coincidentally, the same rights model portrayed in U.S. media is replicated, almost exactly, in the legal landscape. In this context, however, it is named a “movement,” rather than “popular culture.”

For example, gay marriage is a “movement” topic that receives a large amount of publicity, funding, and hours of legal work within the mainstream LGB“T” rights framework.<sup>145</sup> However, many scholars and activists have critiqued the quest for marriage inclusion from feminist, racial justice, anti-capitalist, anti-ableist, and other critical perspectives. Securing the right for GLB people to participate in this institution only replicates already existing capitalist structures. As Marlon Bailey explains, the gay marriage movement is led by white, middleclass gays and lesbians who would largely benefit from it. Because these people already have a fair amount of societal privilege, marriage is “the icing on the cake.”<sup>146</sup> However, that movement has thus far failed to address the needs of disenfranchised people of color.<sup>147</sup> Winning the right to same-sex marriage will not help trans or queer people—unless they are already privileged in our society or if they are partnered with people who already have access to privileges, such as wealth, immigration status, jobs, healthcare, and housing.

Most large, well-funded LGB“T” legal organizations only engage in impact litigation and commonly select priorities based on conversations with other attorneys. Some LGB“T” impact litigation organizations even have language in their retainer agreements to permit them to withdraw from representation if the client takes a position that the organization, in its sole judgment, determines to be detrimental to the social justice goals of the organization. By doing this, these organizations explicitly set the attorneys’ views of what would best promote social change over the view of their client, who is also presumably the person most impacted by the outcome of the case.<sup>148</sup>

As in other movements, legal victories for LGB“T” communities sometimes have disappointingly limited impact. For example, *Lawrence v. Texas*<sup>149</sup> appears to be an extraordinary litigation victory, overturning virulently homophobic case law that allowed state law criminalizing sodomy to stand. However, if one hope for *Lawrence* was that it would decriminalize consensual queer sex, it has fallen woefully short. While many (white) queers celebrated the victory in the streets, and we (queer attorneys) congratulated our colleagues on their outstanding work, conditions did not improve for many thousands of trans and queer people. For example, low-income and homeless individuals are criminalized for surviving through sex work;<sup>150</sup> youth are criminalized for consensual sex through selective enforcement of age of consent laws;<sup>151</sup> people without access to safe private spaces are criminalized for having public sex;<sup>152</sup> people in prison are punished with solitary confinement and loss of good time for consensual affectionate or sexual contact with other prisoners;<sup>153</sup> HIV-positive people are criminalized for having sex with HIV-negative people;<sup>154</sup> and people of color are arrested for literally no reason other than transphobia, racism, and homophobia.<sup>155</sup> While *Lawrence* ended certain anti-sodomy laws, it resulted in the false impression that the criminal justice system was no longer homophobic. Thus, the law shifted to make the



system look facially neutral while continuing and preserving the status quo.<sup>156</sup>

Not unlike other movements, legal victories on behalf of our communities may ultimately work against the very same communities. A good example is hate crimes legislation.<sup>157</sup>

We are deeply concerned with hate violence perpetrated against our communities, whether by the state or individuals. We are keenly aware that transgender women of color and other queer and trans people experiencing multiple forms of oppression are particularly vulnerable to being murdered for being who they are. Many queer and trans people in our communities are in fear for their lives. Our communities need and deserve real support for survivors of violence and means to prevent further violence.

Hate crimes legislation purports to reduce violence against vulnerable communities, but in reality the legislation only increases the resources of the criminal punishment system and expands the prison industrial complex, without any proven effect on limiting violence against vulnerable communities.<sup>158</sup> In fact, hate crimes legislation is often used to punish members of the same vulnerable communities (people of color, queer people, and transgender people) for acts allegedly committed against members of non-vulnerable groups (white people, straight people, and non-trans people), increasing the incarceration, vulnerability, and death of members of those groups, and thus perpetuates the same systematic oppression it is purported to protect against.<sup>159</sup>

For this reason, SRLP opposed the federal Matthew Shepard/James Byrd, Jr. Hate Crimes Prevention Act (HCPA) in conjunction with community groups both locally and nationally.<sup>160</sup> Nonetheless, the bill was passed, and many other “trans inclusive” hate crime laws exist or are being proposed on the state level. Those who support these types of laws are often from communities that, because of race, class, gender, and/or other privilege, perceive law enforcement and prisons as protecting, rather than targeting them; these are the voices that our legal system is designed to hear and

accommodate. Thus HCPA, which notably includes no funding for antiviolenace education or support for survivors of hate violence, but does earmark funds for expansion of the wars in Iraq and Afghanistan, is a typical example of how the needs of trans and queer low-income communities and communities of color cannot be met by traditional legal advocacy.<sup>161</sup>

We challenge lawyers to consider these examples, and to think about the ways that legal service provision, impact litigation, and policy negotiation offer only limited solutions that remain entrenched in a context of structural violence against poor communities, trans and queer communities, and communities of color. For a truly transformative social justice movement, we as lawyers must recognize that we do not belong at the center of leadership; directly impacted communities should govern the agenda and we should follow their lead.

### III. RETHINKING THE ROLES OF LAWYERS IN THE MOVEMENT FOR TRANS LIBERATION

While agenda-setting by lawyers can lead to the replication of patterns of elitism and the reinforcement of systems of oppression, we *do* believe that legal work is a necessary and critical way to support movements for social justice. We must recognize the limitations of the legal system and learn to use that to the advantage of the oppressed. If lawyers are going to support work that dismantles oppressive structures, we must radically rethink the roles we can play in building and supporting these movements and acknowledge that our own individual interests or even livelihood may conflict with doing radical and transformative work.<sup>162</sup>

#### *A. Community Organizing for Social Justice*

When we use the term *community organizing* or *organizing*, we refer to the activities of organizations engaging in base-building and leadership development of communities directly impacted by one or more social

problems and conducting direct action issue campaigns intended to make positive change related to the problem(s). In this article, we discuss community organizing in the context of progressive social change, but community-organizing strategies can also be used for conservative ends.

Community organizing is a powerful means to make social change. A basic premise of organizing is that inappropriate imbalances of power in society are a central component of social injustice. In order to have social justice, power relationships must shift. In *Organizing for Social Change: Midwest Academy Manual for Activists* (hereinafter, “the Manual”),<sup>163</sup> the authors list three principles of community organizing:<sup>164</sup> (1) winning real, immediate, concrete improvements in people’s lives; (2) giving people a sense of their own power; and (3) altering the relations of power.<sup>165</sup>

Before any of these principles can be achieved it is necessary to have leadership by the people impacted by social problems.<sup>166</sup> As Rinku Sen points out:

[E]ven allies working in solidarity with affected groups cannot rival the clarity and power of the people who have the most to gain and the least to lose . . . organizations composed of people whose lives will change when a new policy is instituted tend to set goals that are harder to reach, to compromise less, and to stick out a fight longer.<sup>167</sup>

She also notes that, “[I]f we are to make policy proposals that are grounded in reality and would make a difference either in peoples’ lives or in the debate, then we have to be in touch with the people who are at the center of such policies.”<sup>168</sup>

We believe community organizing has the potential to make fundamental social change that law reform strategies or “movements” led by lawyers cannot achieve on their own. However, community organizing is not always just and effective. Community-organizing groups are not immune to any number of problems that can impact other organizations, including internal oppressive dynamics. In fact, some strains of white, male-dominated

community organizing have been widely criticized as perpetuating racism and sexism.<sup>169</sup> Nonetheless, models of community organizing, particularly as revised by women of color and other leaders from marginalized groups, have much greater potential to address fundamental imbalances of power than law reform strategies. They also have a remarkable record of successes.

Tools from community organizers can help show where other strategies can fit into a framework for social change. The authors of the Manual, for example, describe various strategies for addressing social issues and illustrate how each of them may, at least to some extent, be effective.<sup>170</sup> They then plot out various forms of making social change on a continuum in terms of their positioning with regard to existing social power relationships.<sup>171</sup> They place direct services at the end of the spectrum that is *most accepting* of existing power relationships and community organizing at the end of the spectrum that *most challenges* existing power relationships.<sup>172</sup> Advocacy organizations are listed in the middle, closer to community organizing than direct services.<sup>173</sup>

The Four Pillars of Social Justice Infrastructure model, a tool of the Miami Workers Center, is somewhat more nuanced than the Manual.<sup>174</sup> According to this model, four “pillars” are the key to transformative social justice.<sup>175</sup> They are (1) the pillar of service, which addresses community needs and stabilizes community members’ lives; (2) the pillar of policy, which changes policies and institutions and achieves concrete gains with benchmarks for progress; (3) the pillar of consciousness, which alters public opinion and shifts political parameters through media advocacy and popular education; and (4) the pillar of power, which achieves autonomous community power through base-building and leadership development.<sup>176</sup> According to the Miami Workers Center, all of these pillars are essential in making social change, but the pillar of power is most crucial in the struggle to win true liberation for all oppressed communities.<sup>177</sup>

In their estimation, our movements suffer when the pillar of power is forgotten and/or not supported by the other pillars, or when the pillars are seen as separate and independent, rather than as interconnected, indispensable aspects of the whole infrastructure that is necessary to build a just society.<sup>178</sup> Organizations with whom we work are generally dedicated solely to providing services, changing policies, or providing public education. Unfortunately, each of these endeavors exists separate from one another and perhaps most notably, separate from community organizing. In SRLP's vision of change, this separation is part of maintaining structural capitalism that seeks to maintain imbalances of power in our society. Without incorporating the pillar of power, service provision, policy change, and public education can never move towards real social justice.<sup>179</sup>

#### *B. Lawyering for Empowerment*

In the past few decades, a number of alternative theories have emerged that help lawyers find a place in social movements that do not replicate oppression.<sup>180</sup> Some of the most well-known iterations of this theme are “empowerment lawyering,” “rebellious lawyering,” and “community lawyering.”<sup>181</sup> These perspectives share skepticism of the efficacy of impact litigation and traditional direct services for improving the conditions faced by poor clients and communities of color, because they do not and cannot effectively address the roots of these forms of oppression.<sup>182</sup> Rather, these alternative visions of lawyering center on the empowerment of community members and organizations, the elimination of the potential for dependency on lawyers and the legal system, and the collaboration between lawyers and directly impacted communities in priority setting.<sup>183</sup>

Of the many models of alternative lawyering with the goal of social justice, we will focus on the idea of “lawyering for empowerment,” generally. The goal of empowerment lawyering is to enable a group of people to gain control of the forces that affect their lives.<sup>184</sup> Therefore, the goal of empowerment lawyering for low-income transgender people of

color is to support these communities in confronting the economic and social policies that limit their life chances.

Rather than merely representing poor people in court and increasing access to services, the role of the community or empowerment lawyer involves:

organizing, community education, media outreach, petition drives, public demonstrations, lobbying, and shaming campaigns . . . [I]ndividuals and members of community-based organizations actively work alongside organizers and lawyers in the day-to-day strategic planning of their case or campaign. Proposed solutions—litigation or non-litigation based—are informed by the clients’ knowledge and experience of the issue.<sup>185</sup>

A classic example of the complex role of empowerment within the legal agenda setting is the question of whether to take cases that have low chances of success. The traditional approach would suggest not taking the case, or settling for limited outcomes that may not meet the client’s expectations. However, when our goals shift to empowerment, our strategies change as well. If we understand that the legal system is incapable of providing a truly favorable outcome for low-income transgender clients and transgender clients of color, then winning and losing cases takes on different meanings.

For example, a transgender client may choose to bring a lawsuit against prison staff who sexually assaulted her, despite limited chance of success because of the “blue wall of silence,” her perceived limited credibility as a prisoner, barriers to recovery from the Prison Litigation Reform Act, and restrictions on supervisory liability in §1983 cases. Even realizing the litigation outcome will probably be unfavorable to her, she may still develop leadership skills by rallying a broader community of people impacted by similar issues. Additionally, she may use the knowledge and energy gained through the lawsuit to change policy. If our goal is to familiarize our client with the law, to provide an opportunity for the client

and/or community organizers to educate the public about the issues, to help our client assess the limitations of the legal system on their own, or to play a role in a larger organizing strategy, then taking cases with little chance of achieving a legal remedy can be a useful strategy.

Lawyering for empowerment means not relying solely on legal expertise for decisionmaking. It means recognizing the limitations of the legal system, and using our knowledge and expertise to help disenfranchised communities take leadership. If community organizing is the path to social justice and “organizing is about people taking a role in determining their own future and improving the quality of life not only for themselves but for everyone,” then “the primary goal [of empowerment lawyering] is building up the community.”<sup>186</sup>

### *C. Sharing Information and Building Leadership*

A key to meaningful participation in social justice movements is access to information. Lawyers are in an especially good position to help transfer knowledge, skills, and information to disenfranchised communities—the legal system is maintained by and predicated on arcane knowledge that lacks relevance in most contexts but takes on supreme significance in courts, politics, and regulatory agencies. It is a system intentionally obscure to the uninitiated; therefore the lawyer has the opportunity to expose the workings of the system to those who seek to destroy it, dismantle it, reconfigure it, and re-envision it.

As Quigley points out, the ignorance of the client enriches the lawyer’s power position, and thus the transfer of the power from the lawyer to the client necessitates a sharing of information.<sup>187</sup> Rather than simply performing the tasks that laws require, a lawyer has the option to teach and to collaborate with clients so that they can bring power and voice back to their communities and perhaps fight against the system, become politicized, and take leadership. “This demands that the lawyer undo the secret wrappings of the legal system and share the essence of legal advocacy—

doing so lessens the mystical power of the lawyer, and, in practice, enriches the advocate in the sharing and developing of rightful power.”<sup>188</sup>

Lawyers have many opportunities to share knowledge and skills as a form of leadership development. This sharing can be accomplished, for example, through highly collaborative legal representation, through community clinics, through skill-shares, or through policy or campaign meetings where the lawyer explains what they know about the existing structures and fills in gaps and questions raised by activists about the workings of legal systems.

#### *D. Helping to Meet Survival Needs*

SRLP sees our work as building legal services and policy change that directly supports the pillar of power.<sup>189</sup> Maintaining an awareness of the limitations and pitfalls of traditional legal services, we strive to provide services in a larger context and with an approach that can help support liberatory work.<sup>190</sup> For this reason we provide direct legal services but also work toward leadership development in our communities and a deep level of support for our community-organizing allies.

Our approach in this regard is to make sure our community members access and obtain all of the benefits to which they are entitled under the law, and to protect our community members as much as possible from the criminalization, discrimination, and harassment they face when attempting to live their lives. While we do not believe that the root causes keeping our clients in poverty and poor health can be addressed in this way, we also believe that our clients experience the most severe impact from state policies and practices and need and that they deserve support to survive them.<sup>191</sup> Until our communities are truly empowered and our systems are fundamentally changed to increase life chances and health for transgender people who are low-income and people of color, our communities are going to continue to have to navigate government agencies and organizations to survive.



Therefore, we provide direct services with two goals in mind: helping our communities survive and helping our communities organize. Toward the first end, we represent people in name-change hearings, public benefits “fair hearings,” and immigration proceedings; we advocate with state and local agencies, criminal courts, homeless shelters, and prisons; and we litigate cases when doing so is consistent with our values and the values and interests of our clients. Toward the second end, we strive to provide direct services in a way that helps stabilize lives, build political analysis, and share knowledge, while connecting clients and community members with organizing projects that address their concerns and interests.

*E. Supporting Community Organizations*

In order to shift power to the experts at the intersections of oppression, we must be willing to take leadership from those with the most at stake. Lawyers can play important roles in supporting community-organizing projects, as long as we are careful to support their work in the ways that they identify as helpful, rather than slip into a role where we begin telling (or “advising”) organizations what they should or should not do to achieve social justice, or speaking for the organization to the media or public.<sup>192</sup>

Quigley points out that litigation can be appropriate when it is *defensive*.<sup>193</sup> The need for defensive legal action can arise in a number of contexts, such as when police or immigration raids target the organization’s leaders or when a landlord seeks to evict the organization from its offices.<sup>194</sup> In these cases, lawyers can serve an incredibly important and appropriate role in defending the organization against attacks on its ability to function and achieve its social justice goals.<sup>195</sup> Transactional work representing organizations may also be helpful and appropriate.<sup>196</sup> The Manual, for example, cautions organizers against getting lawyers involved in campaigns, but encourages organizers to seek professional advice about organizational legal and financial matters.<sup>197</sup>

Lawyers can also appropriately support affirmative campaigns of community-organizing projects, which is another area where SRLP is active. For example, community organizers often seek legal support for direct actions. Lawyers and other legal workers can play key support roles as legal observers and/or on-call criminal defense attorneys, in order to provide back up should police attack and/or arrest participants in the action. Lawyers can also help share information about legal systems that will be directly useful in the campaign. We can also provide community members who access our services with a direct link to community-organizing projects. At SRLP, we strive to offer this resource to community members in a variety of ways, such as referring them to become active participants in a campaign, encouraging them to come to a meeting to hear about fighting back against injustices that affect them, or offering them the opportunity to fill out a survey or sign a petition.

While a considerably more delicate role, in some cases community organizations may ask attorneys to attend meetings with targets in positions of power, such as agency administrators, corporate executives, and/or elected officials, without taking a major role in the negotiations with them. The goal may simply be to use the lawyer's presence, privilege, and consistent, even conspicuous, deference to community members to promote their leadership in the eyes of the target. Another goal may be for the lawyer to respond to certain topics should they arise, such as to rebut a target's claim that the community's demand is a "legal impossibility," and otherwise remain silent and observe. These forms of lawyer participation, as long as they are supportive and collaborative, rather than monopolizing and domineering, can also help promote social justice.

#### IV. THREE TRANSFORMATIVE MODELS FOR SETTING THE SOCIAL JUSTICE AGENDA

By avoiding the pitfalls and working around the limitations of lawyers' roles in social movements, we can achieve extraordinary results, including

genuine liberation and justice in our communities. Below, we discuss three examples of trans social justice work in which lawyers are involved and play important roles—but not the *most* important roles. We begin with a local campaign where lawyers worked to support community members and organizers work on a specific issue that impacted low-income trans communities of color. Next, we describe a national conference and alliance focusing on issues of transgender imprisonment led mainly by formerly incarcerated transgender people of color. Finally, we discuss the People’s Movement Assemblies developed by Project South. This grassroots strategy builds momentum by utilizing the issues on a regional level, finding resolutions for action, and sharing those resolutions with other groups on a national level to find solidarity and develop shared political analysis.

We offer these examples to illustrate our belief that lawyers have a place in social justice movements, and our hope that we can continue to work with our allies toward a truly accountable and revolutionary movement for trans liberation.

*A. Legal Support for a Community-Organizing Campaign: NYC Human Resources Administration Campaign*

The Human Resources Administration (HRA) administers the welfare system for New York City, including cash assistance, food stamps, Medicaid, and HIV and AIDS services.<sup>198</sup> Because there was no policy directive on how to work with transgender people, case managers treated transgender people in highly inconsistent and (almost always) disrespectful ways. While some would honor a client’s gender identity and preferred name at least some of the time, others would vehemently refuse to acknowledge the existence of transgender people. Some clients were ejected from HRA offices for using the restroom, some were told to return “dressed like a man,”<sup>199</sup> and some were told that “only God can change gender.”<sup>200</sup>

In 2004, three white transgender professionals with a tremendous amount of experience working with low-income transgender community members,

including an SRLP attorney, were appointed as “experts” to compile a “best practices” guide to help the HRA work more effectively with transgender communities. Together, the three compiled a document with many outstanding policy proposals, tentatively entitled “Best Practice Guide for working with Transgender and Gender NonConforming Individuals.” The document, unfortunately, languished for years due to HRA bureaucracy. Later, the Audre Lorde Project, Queers for Economic Justice, and Housing Works decided to bring a campaign to address HRA’s discrimination against trans people.

Early in the effort, SRLP lawyers were called in for two main purposes: (1) to review revised policy proposals from a legal perspective; and (2) to observe several direct actions outside and inside the HRA offices. We also played a few additional support roles. For example, the organizers created a postcard campaign to urge HRA to pass the new policy and we distributed those postcards in our office. The organizers also sought documentation of harassment and discrimination instances in HRA offices and worked with several interested SRLP clients to document their experiences in the way the organizers had requested. We also offered information and encouragement for those clients who wanted more involvement in the campaign. SRLP attorneys attended the regular meetings for the campaign steering committee and participated in advocacy strategizing discussions. However, the decisions regarding action steps were all made by members of the campaign—trans people of color—most of whom were eligible for the benefits HRA administers. They considered input from SRLP attorneys, but a “legal agenda” did not dominate.

On December 23, 2009, the HRA implemented a new procedure for working with transgender clients, which prohibits most of the abuses that trans people experience when trying to access public benefits.<sup>201</sup> Thanks to the efforts of the Audre Lorde Project, Housing Works, and community members, with the legal support of SRLP, HRA has made a formal commitment to end the transphobia experienced by its clients.<sup>202</sup> The

resulting policy is likely superior to anything we could have achieved through litigation or through lawyer-led policy advocacy work alone. Even more importantly, the process built leadership in the communities directly affected and contributed to shifting the balance of power in the ways we need to succeed in the big picture.

*B. Lawyers at the Table with the Most Impacted Community Members:  
Transforming Justice*

Transforming Justice is another excellent example of ways that lawyers can work with community activists to set and work toward movement goals. SRLP began this work in 2006 through contacting activists and attorneys across the country, including the TGI Justice Project, Critical Resistance, Justice Now, Communities United Against Violence, NCLR, and Lambda Legal, to start a national conversation about issues of transgender imprisonment. The momentum picked up and the Transforming Justice convening was held in San Francisco in 2007. As the organizers describe:

[A] vibrant coalition of local and national organizations came together to plan Transforming Justice, the first-ever national gathering of LGBTIQQ former prisoners, activists, attorneys, and community members to develop national priorities towards ending the criminalization and imprisonment of transgender communities . . . Over 250 people from 14 states attended . . . with over 100 participating for the entire event. Twenty scholarships to low-income former prisoners were distributed. Approximately 60% percent of the conference attendees were transgender and gender nonconforming people who had at some point in their lives been in prison, jail, or juvenile or immigration detention. Though the conference was free, simultaneous translation, childcare, and meals were provided.<sup>203</sup>

At the convening, lawyers and community organizers worked together with community members to discuss how to deconstruct the systems of poverty and homelessness, criminalization, and incarceration that impact

their lives. Led by community members, the participants agreed on the following points of unity:

- We recognize cycles of poverty, criminalization, and imprisonment as urgent human rights issues for transgender and gender non-conforming people.
- We agree to promote, centralize, and support the leadership of transgender and gender-nonconforming people most impacted by prisons, policing, and poverty in this work.
- We plan to organize in order to build on and expand a national movement to liberate our communities and specifically transgender and gender-nonconforming people from poverty, homelessness, drug addiction, racism, ageism, transphobia, classism, sexism, ableism, immigration discrimination, violence and the brutality of the prison industrial complex.
- We commit to ending the abuse and discrimination against transgender and gender-nonconforming people in all aspects of society, with the long-term goal of ending the prison industrial complex.
- We agree to continue discussing with each other what it means to work towards ending the prison industrial complex while addressing immediate human rights crises.<sup>204</sup>

The above determinations laid the groundwork for the following action steps:

- Develop a national platform on transgender immigrant rights issues and ask others to sign on to it;
- Foster local conversations about responding to anti-LGBTQQ<sup>205</sup> and interpersonal violence without relying on the prison industrial complex;
- Create and strengthen local resources for transgender and gender-nonconforming people coming out of prison and jail;

- Create a national coalition that can support local transgender organizing to end the cycles of poverty, criminalization, and imprisonment.<sup>206</sup>

When the participants left the conference, they had a clear sense of action priorities because their solutions came from outside the existing power structures. The space effectively shifted vision and power to many communities while creating multiple opportunities for lawyers and activists to support the movement. Were it not for the combination of local grassroots community building, regional and geographic collaboration, and connection with national issues and organizations, Transforming Justice could not have effectively achieved such a meaningful shared analysis.

This project is a testament to non-lawyer-centered empowerment strategies. While lawyers played an important role in this conference and participated in all aspects of knowledge sharing, consensus building, and priority setting, formerly incarcerated transgender people of color comprised the majority of leaders and participants. The relationships, learning, and analysis that occurred as a result of the gathering and subsequent work were more informed, accountable, and transformative than what we had experienced in any lawyer-led gathering. Using the four action steps from the convening, SRLP gained direction and found an opportunity to use our resources. We have worked to incorporate the information gleaned from these communities into our bigger picture analysis, direct services provision, and impact litigation. Furthermore, the developing alliance has new pathways for community members to take on decisionmaking and leadership roles within local and national organizations.

*C. Priority Setting by the Most Impacted Communities: Project South and People's Movement Assemblies*

“The People’s Movement Assembly was the culmination of a process of convergence, integration, and declaration and occupies a unique location as

a method that could be evolved to cohes both local movements and mass scale.”<sup>207</sup>

The United States Social Forum is a biannual convergence intended to develop solutions to economic and ecological crisis, drawing activists from a wide range of disciplines and causes.<sup>208</sup> In this space, groups build relationships and develop points of unity with one another. Challenges that organizers and participants have considered include: (1) maximizing the participation of members of impacted communities who cannot attend the convergence in person, (2) building toward real consensus and solidarity, and (3) optimally utilizing a space where representatives from local and national organizations converge and discuss political analysis and strategy.<sup>209</sup>

In 2007, an organization called Project South decided that it would coordinate a series of “People’s Movement Assemblies” to develop resolutions that articulate clear political positions from local and regional groups, and to build momentum in anticipation of the Social Forum that year. As Project South explains:

The People’s Movement Assembly process is part of the organizing methodology we developed to complement and strengthen the potential of the Forum’s open space. Assemblies can bring political and tactical forces together to take action in an open space—drafting a blueprint for change from the grassroots.<sup>210</sup>

Regional or “sector” caucuses of Project South were convened prior to the Social Forum. In each region or sector, organizers explained how the Social Forum worked, and helped each caucus develop a list of demands, resolutions, and tactics on issues that were based in the respective regions. For example, one regional caucus demanded freedom for the Cuban Five, a group of men incarcerated for four life sentences for attempting to defend Cuba against planned bombings by right-wing groups in the United States;<sup>211</sup> another group called for an end to evictions of people from public housing in Atlanta.<sup>212</sup>



Representatives read the regional resolutions to the Social Forum attendees in a large assembly and encouraged attendees to carry out the actions beyond the Social Forum. As a result, groups working on a broad range of social justice issues were able to bring national attention to regional issues, find cross-movement support and solidarity, and develop shared political analysis, tactics, and points of unity.

We, as SRLP lawyers, are inspired by this model of priority setting. Not only do the regional caucuses provide an opportunity for community members to freely determine the most important issues they face, but this strategy offers an excellent example of the way that lawyers can be part of a social movement without compromising it. Once regional caucuses develop and pass resolutions, lawyers have a clear charter for movement goals and can follow the lead of the caucuses or organizing bodies that developed the resolutions. Lawyers can do the same on a national scale; thus, national litigation and policy strategy will be determined, not by the existing legal landscape, but by the political visions of those most directly impacted by many pressing social issues across the country.

Since the fall of 2009, SRLP has been working with both local and national organizations to conduct People's Movement Assemblies on queer and trans issues in anticipation of the 2010 Social Forum. We believe that this structure will be a useful and accountable way for lawyers to take direction locally and nationally from the people most impacted by oppression. It is an excellent opportunity to help clarify the policy objectives and set the agenda for trans legal advocacy during the coming years.

#### CONCLUSION

As attorneys working for trans liberation, as individuals with our own experiences of privilege and oppression, and as activists and scholars committed to building accountable social movements and a more just world, we are constantly experimenting, making mistakes, learning, trying

something else, and struggling to improve. We continue to question our own roles in lawyer-only spaces such as law conferences and roundtables. We make choices about when to participate in the existing spaces, when to critique and collaborate to improve these spaces, and when to step away and invest our time and energy in building other types of relationships and means for accountability. As we conduct our lawyering, we also continue to evaluate our own priorities and methods and seek ways to improve our accountability to the communities we serve. We are not at all convinced that we have always made the most helpful decisions. We *know* that we do not have all the answers.

In this article, we shared how we experienced and learned about pitfalls lawyers face in social movements. The experiences and writing of community organizers and other attorneys committed to community empowerment offer us rich resources to avoid these pitfalls and create structures that will support us in empowering communities experiencing transphobia, racism, poverty, ableism, sexism, homophobia, and xenophobia.

While trans legal advocacy is still relatively young as an institutionalized phenomenon, we have an opportunity to build on the foundations of what others have learned. Already, we and other attorneys in our movements have participated in some alternative frameworks that hold great promise for building trans legal advocacy that can genuinely contribute to shifting balances of power in the ways that are necessary for true justice for our communities. We seek to build alliances and work together in this critical moment toward a new vision of the lawyers' role in the movement for trans liberation.

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<sup>1</sup> We use the term *transgender* or *trans* to refer to people who have a gender identity or gender expression different from that traditionally associated with their assigned sex at birth. People use many different terms to describe their gender identity and expression, all of which should be respected. Some examples are femme queen, cross dresser, transsexual, genderqueer, FTM, MTF, A.G., man, woman, or trans. We use the terms

transgender and trans because they are often understood as umbrella terms that encompass many different gender identities. Trans women are people who now identify as women. Trans men are people who now identify as men.

<sup>2</sup> LGBT is a common acronym for lesbian, gay, bisexual, and transgender. We use Lgb“T” to acknowledge that historically, and to a large extent currently, even organizations that have claimed to work on LGBT issues have actually focused on gay and lesbian issues, with little specific attention to bisexual issues and exclusion or false inclusion of trans issues within organizational priorities.

<sup>3</sup> The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP is founded on the understanding that gender self-determination is inextricably intertwined with racial, social, and economic justice. To achieve this goal, SRLP represents people low-income people and people of color who are transgender, gender-nonconforming and/or intersex. We provide direct legal services and engage in impact litigation, policy reform, public education, and organizing support. SRLP is a collectively run organization with no hierarchical positions and with majority trans people and majority people of color in leadership positions. The authors of this article are a non-trans woman of color, a white transgender man, and a white transgender woman. For more information, see Sylvia Rivera Law Project, <http://srlp.org/about>.

<sup>4</sup> Dean Spade, Keynote Address at the State University of New Jersey Symposium: Trans Law Reform Strategies, Co-Optation, and the Potential for Transformative Change (July 1, 2009), in 30 WOMEN’S RTS. L. REP. 288, 292 (citing Ruth Wilson Gilmore, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 28 (2007)).

<sup>5</sup> See Chai R. Feldblum, *Gay Is Good: The Moral Case for Marriage Equality and More*, 17 YALE J. L. & FEMINISM 139, 140 (2005). See generally Edward Stein, *Marriage or Liberation?: Reflections on Two Strategies in the Struggle for Lesbian and Gay Rights and Relationship Recognition*, 61 RUTGERS L. REV. 567 (2009) (explaining the case for equal rights through gay marriage).

<sup>6</sup> See generally Anna M. Agathangelou, M. Daniel Bassichis & Tamara L. Spira, *Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire*, RADICAL HIST. REV., Winter 2008, at 120.

<sup>7</sup> *Id.*

<sup>8</sup> While “queer” has been, and still is, used as a pejorative term, many have reclaimed the term and use it to refer to ourselves and our communities. Queer has also been used as a politicized term that avoids implicit support of a binary view of gender and refuses assimilation into dominant straight cultural norms. Here, we use queer as an umbrella term referring to people with sexual orientations other than straight or heterosexual, including gay, lesbian, bisexual, pansexual, queer, and same-gender loving.

<sup>9</sup> See generally Agathangelou, Bassichis, & Spira, *supra* note 6; JASBIR PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* (2007).

<sup>10</sup> See generally ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003).

<sup>11</sup> See, e.g., MARC PILISUK & JENNIFER ACHORD ROUNTREE, *WHO BENEFITS FROM GLOBAL VIOLENCE AND WAR: UNCOVERING A DESTRUCTIVE SYSTEM* 127 (2007).

<sup>12</sup> See generally Gabriel Arkles & Pooja Gehi, *Unraveling Injustice: Race and Class Impact of Medicaid Exclusions of Transition-Related Health Care for Transgender People*, 4 SEXUALITY RES. & SOC. POL'Y 7 (2007).

<sup>13</sup> See, e.g., Dayo Folayan Gore, et al., *Organizing at the Intersections: A Roundtable Discussion of Police Brutality Through the Lens of Race, Class, and Sexual Identities*, in ZERO TOLERANCE: QUALITY OF LIFE AND THE NEW POLICE BRUTALITY IN NEW YORK CITY 251 (Andrea McArdle & Tanya Erzen eds., 2001).

<sup>14</sup> See generally Pooja Gehi, *Struggles From The Margins: Anti-Immigrant Legislation And The Impact On Low-Income Transgender People Of Color*, 30 WOMEN'S RTS. L. REP. 315 (2009).

<sup>15</sup> SYLVIA RIVERA LAW PROJECT, SYSTEMS OF INEQUALITY: CRIMINAL JUSTICE, [http://srlp.org/files/disproportionate\\_incarceration.pdf](http://srlp.org/files/disproportionate_incarceration.pdf) [hereinafter SLRP CRIMINAL JUSTICE]; SYLVIA RIVERA LAW PROJECT, SYSTEMS OF INEQUALITY: POVERTY & HOMELESSNESS, [http://srlp.org/files/disproportionate\\_poverty.pdf](http://srlp.org/files/disproportionate_poverty.pdf) [hereinafter SLRP POVERTY & HOMELESSNESS].

<sup>16</sup> SLRP CRIMINAL JUSTICE, *supra* note 15; SLRP POVERTY & HOMELESSNESS, *supra* note 15.

<sup>17</sup> See generally Agathangelou, Bassichis & Spira, *supra* note 6.

<sup>18</sup> See, e.g., MICHAEL HARDT AND ANTONIO NEGRI, EMPIRE 173 (2000).

<sup>19</sup> *Id.* at 193 (explaining “the hierarchy of the different races is determined only by a posteriori, as an effect of their cultures—that is, on the basis of their performance. According to imperialist theory, then racial supremacy and subordination are not a theoretical question, but arise through free competition, a kind of market meritocracy of culture”).

<sup>20</sup> We use the term “non-lawyer” as a convenient term to describe people who are not attorneys, but not without reservations. “Non-lawyer” as a term can inappropriately insist on the importance of lawyers, dividing the world’s population based on their belonging or not belonging in a way that few other professions or occupations use.

<sup>21</sup> We primarily use the term “lawyer-only spaces” throughout this article. However, we acknowledge that some of the spaces to which we refer include and/or are organized by law students and are at least nominally open to other non-lawyers. By “lawyer-only,” we intend to highlight the fact that these spaces are typically only organized by current or future lawyers, and the only audience specifically catered to are other current or future lawyers. Certain spaces, discussed *infra*, are specifically restricted only to lawyers with rare limited exceptions for certain individuals of whom the lawyer organizers specifically approve.

<sup>22</sup> See, e.g., American Bar Association, International Rule of Law Symposium, <http://www.abanet.org/rolsymposium/> (last visited Feb. 19, 2010) (the symposium focused on what the legal profession and organized bar can do to promote the rule of law); United Nations University-Institute of Advanced Studies, Polar Law Symposium, [http://www.ias.unu.edu/sub\\_page.aspx?catID=640&ddlID=620#1](http://www.ias.unu.edu/sub_page.aspx?catID=640&ddlID=620#1) (last visited Feb. 19, 2010) (“The purpose of the symposium is to bring together the world’s leading scholars in international law and policy to identify emerging and re-emerging issues in international law and policy ... and to map out a research agenda for future research beyond the International Polar Year.”); UCLA Law Review, Symposia, Sexuality and

Gender Law: Assessing the Field, Envisioning the Future, [http://uclalawreview.org/?page\\_id=46](http://uclalawreview.org/?page_id=46) (last visited Feb. 19, 2010) (“This conference will bring together leading scholars from both inside and outside the field to reflect on how sexuality and gender has changed the law, and how the field itself is likely to change.”).

<sup>23</sup> While our focus here is on LGB“T” work, lawyer-only spaces exist to set “the agenda(s)” for other movements as well, such as civil rights, immigration, prisoners’ rights, abortion rights, and domestic violence.

<sup>24</sup> Julie Shapiro, *A Lesbian-Centered Critique of Second-Parent Adoptions*, 14 BERKLEY WOMEN’S L.J. 17, n.1 (1999).

<sup>25</sup> Arthur A. Leonard, *Chronicling A Movement: 20 Years Of Lesbian/Gay Law Notes*, 17 N.Y.L. SCH. J. HUM. RTS. 415 (2000).

<sup>26</sup> *Id.* at 415.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 416–17.

<sup>29</sup> *Id.* at 444.

<sup>30</sup> *Id.*; William B. Rubenstein, *In Communities Begin Responsibilities: Obligations at the Gay Bar*, 48 HASTINGS L.J. 1101, 1115 (explaining “[t]hese conferences have provided opportunities for strategizing about lesbian/gay legal rights. But they have also served a professional function, enabling members of the private bar to meet their counterparts throughout the country. Typically, the conferences include workshops devoted to issues such as being out in the law firm and developing lesbian/gay community practices”); *Lawyers Gather for Conference on Gay and Lesbian Issues*, THE OREGONIAN, Oct. 22, 1994, at C07.

<sup>31</sup> See generally Bryan H. Wildenthal, *To Say “I Do”: Shahr v. Bowers, Same-Sex Marriage, and Public Employee Free Speech Rights*, 15 GA. ST. U. L. REV. 381 (1998); David B. Cruz, *The New “Marital Property”: Civil Marriage And The Right To Exclude?*, 30 CAP. U. L. REV. 279 (2002); Phyllis Randolph Frye & Alyson Dodi Mesiselman, *Same-Sex Marriages Have Existed Legally In The United States for a Long Time Now*, 64 ALB. L. REV. 1031 (2001); Jeffery J. Ventrella, *Square Circles?! Restoring Rationality to the Same-Sex “Marriage” Debate*, 32 HASTINGS CONST. L.Q. 681 (2005); Evan Wolfson, *Marriage Equality and Some Lessons for the Scary Work of Winning*, 14 LAW & SEXUALITY 135 (2005).

<sup>32</sup> See generally Wildenthal, *supra* note 31; Libby Adler, *The Future of Sodomy*, 32 FORDHAM URB. L.J. 197 (2005); Arthur S. Leonard, *Thoughts on Lawrence v. Texas*, 11 WIDENER L. REV. 171 (2005).

<sup>33</sup> Duke Journal of Gender Law & Policy, *Harvard Law School Lambda Second Annual Gay and Lesbian Legal Advocacy Conference “Don’t Ask, Don’t Tell,”* 14 DUKE J. GENDER L. & POL’Y 1173 (2006).

<sup>34</sup> WILLIAM N. ESKRIDGE JR., *DISHONORABLE PASSIONS: SODOMY LAWS IN AMERICA, 1861–2003* 234 (2008).

<sup>35</sup> *Bowers v. Hardwick*, 478 U.S. 186 (1986) (upholding a state statute criminalizing homosexual sodomy as constitutional).

<sup>36</sup> ESKRIDGE, *supra* note 34, at 234.

<sup>37</sup> See ELLEN ANN ANDERSON, *OUT OF THE CLOSETS AND INTO THE COURTS: LEGAL OPPORTUNITIES, STRUCTURE AND GAY RIGHTS LITIGATION* 121 (2006) (explaining how

the “[t]he Litigator Roundtable . . . played an important role in facilitating this decision [of whether or not to incorporate federal constitutional claims into its sodomy cases].” Similarly, Anderson explains, when Lambda needed to revisit the issue of whether or not to ask the Supreme Court to overturn *Bowers v. Hardwick* or to proceed solely with an equal protection claim [in the *Lawrence v. Texas* case], the litigators roundtable was the body of lawyers with whom they consulted. *Id.* at 131.

<sup>38</sup> Conversations with Roundtable organizers (approx. Sept. 2008).

<sup>39</sup> Invitation list on file with the authors.

<sup>40</sup> Since 2003, at least one attorney from SRLP has attended almost every one of the semiannual roundtables. This is based on the authors’ observations when we have attended these meetings and conversations with other participants.

<sup>41</sup> This is based on the authors’ observations and conversations. To the authors’ knowledge, during the time in which we have attended these meetings, only one participant has openly identified as HIV-positive and/or disabled. While we acknowledge that there may be more openly HIV-positive and/or disabled participants than we realize, we believe the number would still be small.

<sup>42</sup> *See infra*, Part II.

<sup>43</sup> For example, one conversation at a roundtable in 2007 centered around the ways in which we, as lawyers, need to “control” activism around same-sex marriage so that it would not ruin our litigation strategies.

<sup>44</sup> This conversation occurred around the spring of 2007.

<sup>45</sup> Not only are these roundtables “lawyer-only,” but they are also exclusive to a very specific type of impact litigator primarily from well-funded, single issue LGB“T” organizations.

<sup>46</sup> *See infra*, Part I.

<sup>47</sup> Examples of past topics of discussion with extremely limited relevance to low-income transgender communities of color include: cross-jurisdictional family law disputes involving same-sex couples’ marriages, civil unions, domestic partnerships, and adoptions (2005); federal, state, and local treatment of other jurisdictions’ grant of legal status to same-sex relationships (2005); government censorship and speech (2005); military impact litigation (2005); marriage (2006); polling and messaging (2006); same-sex relationships (2007); marriage equality statutes (2009); new challenges in parenting litigation (2009); and inter-jurisdictional relationship issues (2009).

<sup>48</sup> These topics have included foster care and juvenile justice issues (2005); youth and HIV confidentiality (2006); prisoners’ rights (2006); sex discrimination claims (2007); responding to attacks from the right on transgender issues (2008); identity documents (2008); class and LGBT issues (2009); and relationships in prison (2009).

<sup>49</sup> *See, e.g.*, K. Clements-Nolle et al., *HIV Prevalence, Risk Behaviors, Health Care Use, and Mental Health Status of Transgender Persons: Implications for Public Health Intervention*, 91 AM. J. PUB. HEALTH 915 (2001) (noting that transgender women were found to have an HIV prevalence of 35 percent).

<sup>50</sup> Primarily drawn from the authors’ experiences. *See also* Morrill v. Morrill, 175 N.C. Ct. App. 794, 625 S.E.2d 204 (2006); Petition in Doe v. Suffolk Co. Dep’t Soc. Serv., 18607/05 (Suffolk Cty. Sup. Ct. Aug. 9, 2005) (unpublished decision); Human Rights

Program at Justice Now, *Prisons as a Tool of Reproductive Oppression*, 5 STANFORD J. OF CIV. RTS. & CIV. LIBERTIES (publication forthcoming).

<sup>51</sup> See, e.g., Cathy J. Cohen, *Punks, Bulldaggers and Welfare Queens: The Radical Potential of Queer Politics?*, 3 GLQ: J. LESBIAN & GAY STUD. 437 (1997).

<sup>52</sup> Email on file with authors (stating “[a] few people who work on transgender rights were talking and decided that it may be time to get together to discuss strategies for advancing the legal rights of transgender persons”).

<sup>53</sup> Email on file with author. The authors listed some organizations that we felt should be included such as the Transgender, Gender Variant, Intersex Justice Project (TGIJP), Gender Identity Project, TransJustice, The Audre Lorde Project (ALP), FIERCE!, Gays and Lesbians of Bushwick Empowered (GLOBE), Housing Works, Gay Men’s Health Crisis (GMHC), Queers for Economic Justice (QEJ), The Peter Cicchino Youth Project (PCYP), and Immigration Equality.

<sup>54</sup> Primarily drawn from author’s conversations with invitees and those not invited. Emails on file with authors.

<sup>55</sup> Primarily drawn from author’s conversations with invitees and those not invited. Emails on file with authors.

<sup>56</sup> Agenda and email on file with authors.

<sup>57</sup> Agenda on file with authors.

<sup>58</sup> The Peter Cicchino Youth Project has been invited to subsequent roundtables; F.I.E.R.C.E. has not.

<sup>59</sup> We do not mean to imply that some sessions geared primarily toward lawyers and legal workers could never be appropriate, such as a workshop specifically sharing deposition or voir dire skills in trans cases. However, based on our experiences above, even spaces that claim to be about lawyers sharing skills specific to our profession commonly incorporate elements of setting the agenda for trans law and policy work with other lawyers.

<sup>60</sup> See *infra* Part III.

<sup>61</sup> See generally Spade, *supra* note 4.

<sup>62</sup> Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1705 (1995).

<sup>63</sup> See generally Paul Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. Rev. 1101 (1990) (discussing the applications of direct services and the use of “triage” strategies to address urgent legal needs); Martha Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973*, in CASES AND MATERIALS ON POVERTY LAW: THEORY AND PRACTICE 189, 192 (2004).

<sup>64</sup> See, e.g., Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1535 (1995).

<sup>65</sup> *Id.*

<sup>66</sup> See generally Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. L. REV. 311 (1996).

<sup>67</sup> See, e.g., Allen Redlich, *Who Will Litigate Constitutional Issues for the Poor*, 19 HASTINGS CONST. L.Q. 745, 760 (1992); Feldman, *supra* note 64, at 1535.

<sup>68</sup> See, e.g., Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993); see Angela P. Harris, *From Stonewall to the Suburbs?: Toward a Political Economy of*

*Sexuality*, 14 WM. & MARY BILL RTS. J. 1539 (2006) [hereinafter *Political Economy of Sexuality*]; FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971).

<sup>69</sup> William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 459 (1994) (quoting community organizer Ron Chisom: “The white legal system perpetuates the white power system”).

<sup>70</sup> Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 20, 22 (Kimberlé Crenshaw et al., eds. 1995).

<sup>71</sup> *Id.* at 22.

On a normative level, as a description of how the world *ought* to be, the notion of racial equality appears to be the proper basis on which *Brown rests* . . . yet on a positivistic level—how the world *is*—it is clear that racial equality is not deemed legitimate by large segments of the American people, at least to the extent it threatens to impair the societal status of whites.

<sup>72</sup> See PUAR, *supra* note 9, at 38–39 (defining “homonationalism” and linking heteronormativity, capitalism, and the nation-state: “gay subjects [are] embroiled in a ‘politics that does not contest dominant heteronormative forms but upholds and sustains them’ . . . We see simultaneously both the fortification of normative heterosexual coupling and the propagation of sexualities that mimic, parallel, contradict, or resist this normativity”) (internal citation omitted).

<sup>73</sup> *Dandridge v. Williams*, 397 U.S. 471 (1970).

<sup>74</sup> *Id.* at 487.

<sup>75</sup> Redlich, *supra* note 67, at 755.

<sup>76</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>77</sup> See, e.g., Bell, *supra* note 70, at 25; see Alan David Freeman, *Legitimizing Racial Discrimination through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 29 (Kimberlé Crenshaw et al. eds., 1995) (“Under the combined force of *Rodriguez* and *Milliken*, black city residents are thus worse off in terms of legal theory than they were under the “separate but equal” doctrine of pre-*Brown* southern school litigation, where a claim of equivalent resources for black schools was at least legally cognizable”); *Political Economy of Sexuality*, *supra* note 68.

<sup>78</sup> Bell, *supra* note 70, at 24.

<sup>79</sup> *Id.*

<sup>80</sup> Quigley, *supra* note 69, at 462 (“[O]ftentimes lawyers come in with their own reality, their own world view, and think or assume that this is everybody’s reality and they just start moving along”) (quoting Barbara Major).

<sup>81</sup> Gerald P. López describes this dynamic within the “regnant” approach to lawyering:

This self-regard helps explain, too, how lawyers operating within the regnant idea can, with such apparent aplomb, convert social situations into problems and solutions they ‘just happen’ to be most familiar with or do best. It becomes



more understandable, for example, how social disputes seem routinely to become litigated cases—with only fitful regard to whether litigation rather than some other strategy or combination of strategies makes more sense, to whether litigation itself might not be reimagined to accommodate greater involvement by subordinated people themselves, or to whether litigation or any other strategy actually penetrates the social situation lawyers hope and often claim to change. Lawyers in the regnant idea seem habitually to equate what they do best, or at least most comfortably, with what most helps the politically and socially subordinated.

Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1610 (1989).

<sup>82</sup> Quigley, *supra* note 69, at 460–61.

<sup>83</sup> *Id.*

<sup>84</sup> Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, in CASES AND MATERIALS ON POVERTY LAW: THEORY AND PRACTICE 236, 240–41 (Julie Nice & Louise Trubek eds., 1997).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Quigley, *supra* note 69, at 471; Bell, *supra* note 70, at 20.

<sup>88</sup> Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Poverty Law Practice*, 100 YALE L.J. 2107, 2125 (1991) (describing the concept of interpretive violence, by which attorneys reshape clients narratives of their experiences by situating the client as inferior and subordinate and excluding normative meanings from the narratives).

<sup>89</sup> Quigley, *supra* note 69, at 465.

<sup>90</sup> *See, e.g.*, Redlich, *supra* note 67, at 750; *see also* Davis, *supra* note 63, at 198.

<sup>91</sup> Redlich, *supra* note 67, at 750–51.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Houseman, *supra* note 62, at 1705.

<sup>98</sup> This is based on the authors' observations; Rickke Mananzala & Dean Spade, *The Nonprofit Industrial Complex and Trans Resistance*, 5 SEXUALITY RES. & SOC. POL'Y 53, 57 (2008).

<sup>99</sup> KIM BOBO, ET AL., ORGANIZING FOR SOCIAL CHANGE: MIDWEST ACADEMY MANUAL FOR ACTIVISTS 12 (3rd ed. 2001) [hereinafter THE MANUAL]. In fact, in its opening description of how direct action organizing gives people a sense of their own power, the authors state, "Direct action organizations avoid shortcuts that don't build people's power, such as bringing in a lawyer to handle the problem."

<sup>100</sup> Quigley, *supra* note 69, at 457–58 (quoting Ron Chisom).

<sup>101</sup> Bell, *supra* note 70, at 22.

<sup>102</sup> Quigley, *supra* note 69, at 477; *see generally* Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975).

<sup>103</sup> Quigley, *supra* note 69, at 477, 459 (quoting Ron Chisom).

<sup>104</sup> *See* Davis, *supra* note 63, at 198.

<sup>105</sup> *Id.*

<sup>106</sup> *See generally* Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 LAW & SOC'Y REV. 79 (2007).

<sup>107</sup> Davis, *supra* note 63, at 195.

<sup>108</sup> Mananzala & Spade, *supra* note 98, at 57.

<sup>109</sup> *See, e.g.*, Paul Kivel, *Social Services or Social Change?*, in THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 129 (INCITE! Women of Color Against Violence ed., 2007); Dylan Rodriguez, *The Political Logic of the Non-Profit Industrial Complex*, in THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 21 (INCITE! Women of Color against Violence ed. 2007); Spade & Mananzala, *supra* note 98. Of course, those lawyers who do social change work outside of the NPIC are not immune from financial controls and limitations. Attorneys at law firms doing pro bono work typically face pressure to prioritize work for paying clients. The focus of firms on the bottom line leads pro bono work to be marginalized and isolated. Because firms engage in pro bono work in part in order to improve public relations, politically unpopular clients and politically radical causes may be disfavored and declined. For example, at SRLP, we have had the experience of firms declining our cases because the client was incarcerated. Attorneys in small, plaintiff-side firms have their own financial considerations, which can lead to pressure to serve only wealthy clients or to take only cases that are highly likely to succeed and where either a class action can be brought or particularly egregious legally cognizable injuries have occurred.

<sup>110</sup> Rodriguez, *supra* note 109, at 21.

<sup>111</sup> 42 U.S.C. § 2996 (1964).

<sup>112</sup> Houseman, *supra* note 62, at 1705 (“Government today refuses to fund far less threatening activities, such as welfare reform litigation, and foundation support for legal advocacy, which has never been substantial, is not increasing”).

<sup>113</sup> Kivel, *supra* note 109, at 139–40.

<sup>114</sup> Bell, *supra* note 70, at 20.

<sup>115</sup> *Id.* at 23.

<sup>116</sup> *Id.*

<sup>117</sup> THE MANUAL, *supra* note 99, at 21.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> John A. Powell, *Race and Poverty: A New Focus for Legal Services*, 27 CLEARINGHOUSE REV. 299, 299–300 (1993).

<sup>125</sup> *Id.* at 307.

<sup>126</sup> *Id.* at 306.

<sup>127</sup> Trubek, *supra* note 84, at 242–43.

<sup>128</sup> *Id.* at 243.

<sup>129</sup> *Id.* at 242.

<sup>130</sup> *Id.* at 243.

<sup>131</sup> Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race & Gender*, 1991 DUKE L.J. 365, 377 (1991).

<sup>132</sup> Gerald P. López, *Changing Systems, Changing Ourselves*, 12 HARV. LATINO L. REV. 15, 30 (2009).

<sup>133</sup> Similarly, I use the term “issues” with caution because the term is loaded with subjectivity and inappropriately appropriated by professionals within these spaces.

<sup>134</sup> I use the term “set up” to explain the ways in which the non-lawyer is always going to be an outsider in the all-lawyer space. Lawyer spaces are specifically insular in that there is a shared dialect with specific reference points such as case law, statutes, regulations, specific laws, and even other lawyers and law firms. Regardless of what the non-lawyer expresses, it appears out of place, uninformed, and/or out of context.

<sup>135</sup> Tokenization occurs in particular at public interest conferences and symposiums when a non-lawyer, who is generally a person impacted by the legal discussion at hand, is added to a panel discussion to get a “personal story.” This is extremely problematic when the one “personal story” is commented and reflected on by “experts in the field.” See also Jayne W. Barnard, *More Women on Corporate Boards? Not So Fast*, 13 WM. & MARY J. WOMEN & L. 703 (2007) (explaining the tokenization of women on corporate boards); Craig Willse & Dean Spade, *Freedom in a Regulatory State?: Lawrence, Marriage, & Biopolitics*, 11 WIDENER L. REV. 309 (2005); Margaret M. Russell, *Beyond “Sellouts” and “Race Cards”*: *Black Attorneys and the Straitjacket of Legal Practice*, 95 MICH. L. REV. 766 (1997).

<sup>136</sup> Symposium of the Women’s Law Journal at UCLA School of Law (2009).

<sup>137</sup> For a helpful resource on creating law school events and other conferences that support social change rather than reproducing oppressive systems, see Dean Spade, *Tips for Students Interested in Organizing Conferences* (publication forthcoming on SRLP Website, currently on file with authors).

<sup>138</sup> Quigley, *supra* note 69, at 470.

<sup>139</sup> See generally Mananzala & Spade, *supra* note 98. As stated,

We have reservations about whether *movement* is an appropriate term for the advocacy, policy, and law reform work that has been engaged over the last 25 years seeking, for the most part, lesbian and gay rights or rights of same-sex couples. The co-optation of the word *movement* itself, to signify work that does not engage in base-building or bottom-up strategies or promote leadership of those vulnerable to the most severe manifestations of heterosexism, is a concern of this article.

See also SUZANNE PHARR, PRESENTATION FOR SESSION ONE: SOCIAL JUSTICE MOVEMENTS AND NON-PROFITS—HISTORICAL CONTEXT, Session held at The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex Conference, Santa Barbara, CA. (Apr. 30, 2004).

<sup>140</sup> Even the term “same-sex marriage” reflects transphobic assumptions legitimizing a binary gender system and often invalidating the gender identity of transgender people.

<sup>141</sup> See generally Mananzala & Spade, *supra* note 98.

<sup>142</sup> *Id.* at 59.

<sup>143</sup> See Helene E. Shugart, *Reinventing Privilege: The New (Gay) Man in Contemporary Popular Media*, 20 CRITICAL STUD. IN MEDIA COMM. 67 (2003); Larry Gross, *Out of the Mainstream: Sexual Minorities and the Mass Media*, in REMOTE CONTROL: TELEVISION, AUDIENCES, AND CULTURAL POWER 130 (Ellen Seiter et al. eds., 1989).

<sup>144</sup> Shugart, *supra* note 143; Gross, *supra* note 143.

<sup>145</sup> See National Center for Lesbian Rights, <http://www.nclrights.org> (listing four features on front page of website that concern marriage) (last visited Jan. 30, 2010); Lambda Legal, Docket, <http://www.lambdalegal.org/our-work/in-court/cases/docket.html?page=1> (listing four pending cases concerning marriage or relationship recognition) (last visited Jan. 30, 2010); American Civil Liberties Union, LGBT Rights, <http://www.aclu.org/lgbt-rights> (listing 11 relationship recognition cases) (last visited Jan. 30, 2010); Gay and Lesbian Advocates and Defenders, Cases: Marriage, <http://www.glad.org/work/cases-browse/c/marriage/> (listing ten marriage cases) (last visited Jan. 30, 2010). In 2006 and 2005, marriage received around 9 percent of foundation grants made for LGBTQ work, nearly \$6 million each year. FUNDERS FOR LESBIAN AND GAY ISSUES, LESBIAN, GAY, BISEXUAL, TRANSGENDER, & QUEER GRANTMAKING BY U.S. FOUNDATIONS (calendar year 2006), at 18–19 (2008), available at <http://www.lgbtfunders.org/files/FLGI%202006.report.final.pdf>. That amount was more than four times the amount of grants made for gender identity work. *Id.* at 19. However, that figure represents only a small portion of the overall funding going toward marriage. Over \$44 million was raised to oppose the ban on gay marriage, Proposition 8, that was passed in California. *Tracking the Money: Final Numbers*, L.A. TIMES (last updated Feb. 3, 2009), <http://www.latimes.com/news/local/la-moneymap,0,2198220.html> story.

<sup>146</sup> Marlon M. Bailey, Priya Kandaswamy, & Mattie Udora Richardson, *Is Gay Marriage Racist?*, in THAT’S REVOLTING!: QUEER STRATEGIES FOR RESISTING ASSIMILATION 87, 91 (Mattilda Bernstein Sycamore ed., 2004).

<sup>147</sup> *Id.*

<sup>148</sup> This is gleaned from the authors’ experiences working with some of these organizations and reviewing their retainer agreements.

<sup>149</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>150</sup> SYLVIA RIVERA LAW PROJECT, IT’S WAR IN HERE: A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN’S PRISONS 15 (2007), available at <http://srp.org/files/warinhere.pdf>.

<sup>151</sup> KATAYOON MAJD, JODY MARKSAMER, & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 62 (2009), available at [http://www.nclrights.org/site/DocServer/Hidden\\_Injustice.pdf?docID=6701](http://www.nclrights.org/site/DocServer/Hidden_Injustice.pdf?docID=6701).

<sup>152</sup> Yasmin Nair, *Private Parts & Public Sex*, WINDY CITY MEDIA GROUP, Aug. 1, 2005, <http://www.windycitymediagroup.com/ARTICLE.php?AID=9037>.

<sup>153</sup> Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention*, 18 TEMP. POL. & CIV. RTS. L. REV. 515, 535–36 (2009).

<sup>154</sup> THE CENTER FOR HIV LAW & POLICY, PROSECUTIONS FOR HIV EXPOSURE IN THE UNITED STATES, 2008–2009 1 (2009), available at <http://www.hivlawandpolicy.org/resources/view/456>.

<sup>155</sup> AMNESTY INTERNATIONAL, STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. 12 (2005), available at <http://www.amnestyusa.org/outfront/stonewalled/report.pdf>; see generally Willse & Spade, *supra* note 135.

<sup>156</sup> *Political Economy of Sexuality*, *supra* note 68.

<sup>157</sup> Dean Spade & Craig Willse, *Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique*, 21 CHICANO-LATINO L. REV. 38 (2000); Lisa A. Crooms, “EVERYWHERE THERE’S WAR”: A RACIAL REALIST’S RECONSIDERATION OF HATE CRIMES STATUTES, 1 GEO. J. GENDER & LAW 41, 44 (1999).

<sup>158</sup> See generally KATHERINE WHITLOCK, IN A TIME OF BROKEN BONES: A CALL TO DIALOGUE ON HATE VIOLENCE AND THE LIMITATIONS OF HATE CRIMES LEGISLATION (2001), available at <http://srlp.org/files/Broken%20Bones-1.pdf>.

<sup>159</sup> *Id.* at 8.

<sup>160</sup> Sylvia Rivera Law Project, *SRLP Announces Non-support of the Gender Non-discrimination Act*, Apr. 6, 2009, <http://srlp.org/genda>; Sylvia Rivera Law Project, *SRLP Opposes the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*, <http://srlp.org/fedhatecrimelaw> (last visited Mar. 5, 2010).

<sup>161</sup> Matthew Shepherd & James Byrd, Jr. Hate Crimes Prevention Act, H.R. 2647, Pub. L. No. 111–84, Division E (2009).

<sup>162</sup> See, e.g., Sameer Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879 (2007); Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007); Michael McCann & Helena Silverstein, *Rethinking Law’s “Allurements”: A Relational Analysis of Social Movement Lawyers in the United States*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 261 (Austin Sarat & Stuart Scheingold eds., 1998); Deborah Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008); Ann Southworth, *Lawyers and the “Myth of Rights” in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469 (1999).

<sup>163</sup> THE MANUAL, *supra* note 99, at 12–13.

<sup>164</sup> The authors of *The Manual* use the term “direct action organizing” for what we call “community organizing” and describe essentially all efforts for social change done through organizations as “community organizing.” For clarity’s sake, we use the term “community organizing” as we have defined it above in place of the terms used by the Manual’s authors.

<sup>165</sup> THE MANUAL, *supra* note 99, at 11–12.

<sup>166</sup> Quigley, *supra* note 69, at 467 (“If the goal is getting a stop sign, then litigation may well be the superior method to use. If the goal is taking, developing, and sharing power, then litigation is not effective”).

<sup>167</sup> RINKU SEN, *STIR IT UP: LESSONS IN COMMUNITY ORGANIZING AND ADVOCACY* 25 (2003).

<sup>168</sup> *Id.* at 18; Stephen Wexler, *Practicing Law for Poor People*, 79 *YALE L.J.* 1049, 1053 (1970) (“Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together”).

<sup>169</sup> SEN, *supra* note 167, at xlix.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> THE MANUAL, *supra* note 99, at 11.

<sup>173</sup> *Id.*

<sup>174</sup> MIAMI WORKERS CENTER, *FOUR PILLARS OF TRANSFORMATIVE SOCIAL JUSTICE INFRASTRUCTURE 1* (2004) (on file with author) [hereinafter *FOUR PILLARS*].

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 2–5.

<sup>177</sup> *Id.* at 1.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> See generally Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 *N.Y.U. J. LEGIS. & PUB. POL’Y* 35, 37–38 (2004–2005).

<sup>181</sup> Villazor does an excellent job summing up the various nuanced approaches to this type of lawyering, and includes seminal works from the various schools of thought. *Id.* at 49–50.

<sup>182</sup> *Id.* at 51.

<sup>183</sup> See generally Quigley, *supra* note 69.

<sup>184</sup> *Id.* at 455–56.

<sup>185</sup> Villazor, *supra* note 180, at 50. We understand this statement to mean that the lawyer’s job may be to do anything that needs doing in order to support community empowerment and action, which may include organizing tactics, not that lawyers should believe ourselves to be somehow automatically skilled as community organizers or that we should take over leadership of those forms of work.

<sup>186</sup> Quigley, *supra* note 69, at 465–78.

<sup>187</sup> *Id.* at 477.

<sup>188</sup> *Id.*

<sup>189</sup> See *FOUR PILLARS*, *supra* note 174.

<sup>190</sup> Mananzala & Spade, *supra* note 98, at 62.

The Four Pillars model allows for recognition of the vital need for all four pillars: Direct services are not simply a Band-Aid, as is sometimes argued, but instead can be understood as an essential aspect to building mass power. Direct services not only allow the base of people affected to survive and politically participate but also can be a road to participation if those services are provided in a politicized context where people come to understand their need for

services as linked to broader political structures that affect many others like them.

<sup>191</sup> See generally PIVEN & CLOWARD, *supra* note 68.

<sup>192</sup> We are fortunate to practice in an area where several extraordinary community-organizing projects by and for low-income queer and trans people of color are operating. We realize that in many areas of the country, similar organizations may not exist locally. However, there may still be opportunities for local lawyers to support community organizations. For example, some community-organizing groups not focused explicitly on trans issues narrowly conceived may have strong trans leadership and strong positive impact on trans communities. Lawyers can consider who, if anyone, is doing organizing locally around prison change, HIV/AIDS, reproductive justice, sex worker rights, or other issues. These organizations may already prioritize trans people and issues and may welcome accountable legal support. While less ideal, lawyers can also support community organizations from other localities that are regional or national in scope. Attorneys may be tempted to try to start community-organizing projects themselves. Based on our observations, attorneys who have tried to start organizing campaigns on issues that do not directly impact them have not succeeded in fulfilling community-organizing principles; attorneys have monopolized positions of power and remained in control and/or directly impacted community members have felt abandoned, unsupported, and set up to fail. It is not necessarily impossible for attorneys to responsibly support new community-organizing efforts at their earliest stages, but it is very challenging. If an attorney works with many clients with similar problems who talk about wanting to make change, for example, the attorney may be able to provide initial space for them to meet without charge (and without strings attached), contacts with other community organizers who may be able to provide training or advice, and other accountable support as described above. We encourage attorneys in these positions to be extremely cautious, creative, and mindful of their privilege when considering or making such efforts.

<sup>193</sup> Quigley, *supra* note 69, at 468.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> THE MANUAL, *supra* note 99, at 318.

<sup>198</sup> See generally NYC Human Resource Administration: Department of Social Services, <http://www.nyc.gov/html/hra/html/home/home.shtml>.

<sup>199</sup> Letter from Z Gabriel Arkles, Staff Attorney, Sylvia Rivera Law Project to Whom it May Concern (Aug. 24, 2006) (on file with author).

<sup>200</sup> Personal telephone communication to an SRLP Staff Attorney from an HRA case worker (2009).

<sup>201</sup> Memorandum from The City of New York: The Human Resource Administration, Serving Transgender, Transsexual and Gender Nonconforming Individuals (Dec. 23, 2009), available at <http://srlp.org/files/HRA%20Serving%20Transgender%20Transsexual%20and%20Gender%20Nonconforming%20Individuals.pdf>.

<sup>202</sup> We were not able to achieve every one of our original demands, such as a clear, easy, and accessible process for gender marker change on the benefits card. However, most of our key points were adopted in the agency procedure.

<sup>203</sup> Transforming Justice, Conference Report and Summary, Nov. 29, 2007, <http://transformingjustice.org/summary.html> (last visited Mar. 5, 2010).

<sup>204</sup> *Id.*

<sup>205</sup> LGBTQQ is an acronym for Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning.

<sup>206</sup> *Id.*

<sup>207</sup> Project South, People's Movement Assemblies, [http://www.projectsouth.org/index.php?option=com\\_content&view=article&id=10&Itemid=34](http://www.projectsouth.org/index.php?option=com_content&view=article&id=10&Itemid=34) (last visited Mar. 5, 2010).

<sup>208</sup> US Social Forum, About, <http://www.ussf2010.org/about> (last visited Mar. 5, 2010).

<sup>209</sup> This statement is based on conversations the authors have had with organizers and attendees of the U.S. Social Forum.

<sup>210</sup> Project South, *supra* note 207.

<sup>211</sup> US Social Forum, Resolution on the Cuban Five Political Prisoners and Luis Posada Carriles, [http://www.ussf2007.org/en/cuban\\_five](http://www.ussf2007.org/en/cuban_five) (last visited Mar. 5, 2010).

<sup>212</sup> US Social Forum, Atlanta Housing Authority Promoting Homelessness, [http://www.ussf2007.org/en/Atlanta\\_Housing\\_Authority\\_Promoting\\_Homelessness](http://www.ussf2007.org/en/Atlanta_Housing_Authority_Promoting_Homelessness) (last visited Mar. 5, 2010).