ARTICLE: BRIDGING THE JUSTICE GAP: BUILDING COMMUNITY BY RESPONDING TO INDIVIDUAL NEED

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LexisNexis Summary

… Rather than resigning ourselves to the pervasive dichotomy between either the representation of isolated individual clients or the exclusive provision of legal support to community organizing, this article introduces a hybrid model of lawyering, "collaborative individual law" (CIL), that uses strategic engagement of individual legal assistance within a community group setting as a catalyst toward community-building and social change. … Pro bono efforts from the private bar, whether voluntary or mandatory, cannot, however, be the solution to the dire need for access to legal services in poor communities. … In this context, community education programs address legal rights and obligations and encourage individuals and groups to pursue their rights as advocates or pro se within reason. … During the first semester, the law students worked in an interdisciplinary environment, practiced basic lawyering skills, learned the law pertaining to the domestic violence provisions of immigration law, and utilized techniques to enhance their cross-cultural competency. … Personal Reflection Broadening the context and purpose of individual litigation to reach social justice goals is a rich endeavor for seasoned attorneys and law students alike. … In the CUNY/SEPA Mujer collaboration, the community participants all understood that the Self-Prep course led afterward to assignment of counsel, but that the course itself did not constitute representation.

Highlight

It is the beauty of our legal era that there is no longer a single "correct" way to lawyer. According to the literature, the public interest lawyer has progressed on a continuum from a well-intended (albeit regnant) attorney acting on behalf of the poor to a (rebellious) community lawyer, working in collaboration with community groups to fuel social change. Still, the unmet legal need in low-income communities grows ever larger; as a profession, we are failing to make the law accessible and the legal process empowering. We have yet to substantially impact the root causes of the problems our indigent clients face. As progressive-minded attorneys, we struggle to determine where to direct our resources, whom to serve, and how to construct collaborative projects while being mindful of our professional obligations.

This article examines the unmet need in marginalized communities and teases out criteria helpful in selecting and evaluating different lawyering approaches. It reviews a variety of lawyering trends and identifies a missed
opportunity for progressive lawyers to bridge the gap between aiding isolated, under-served individuals and working toward social justice by supporting mobilized community organizations. Rather than choosing to focus our work in one arena or the other, lawyers can transform the gap itself, by turning the breadth of immediate individual need into an incentive to bring isolated individuals into collective action. The article presents “collaborative individual law” (CIL) as a model for doing so. It describes and critically examines a CIL project to illustrate the model's benefits and potential pitfalls. It also addresses how CIL can be structured to adhere to professional ethics rules and how those rules might be modified to facilitate greater experimentation.

**Text**

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Introduction

[Praxis] is action and reflection. Men and women are human beings because they are historically constituted as beings of praxis, and in the process they have become capable of transforming the world. ¹

I suppose it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail. ²

This article revisits the perpetual tension between law and organizing and its impact on movement building toward social justice. Like competitive siblings, law and organizing are innately bound together when it comes to social justice movements; they are destined to co-exist, yet continually struggle through their family differences. In the hopes of reconciling and reinvigorating their relationship, this article encourages progressive lawyers to continue to press through the conflicts. Rather than resigning ourselves to the pervasive dichotomy between either the representation of isolated individual clients or the exclusive provision of legal support to community organizing, this article introduces a hybrid model of lawyering, “collaborative individual law” (CIL), that uses strategic engagement of individual legal assistance within a community group setting as a catalyst toward community-building and social change. This model embraces the unique opportunity for progressive lawyers to assist in community-building— which I define as the interim stage of sociopolitical development for one who begins as an isolated individual and evolves into an active member of a mobilized group.

The tensions between the goals of individual representation and broader social change play out daily in the legal trenches. Every legal service provider litigating one case after another inevitably grows weary of the endless need for services and ultimately must confront frustration with the inability to have a lasting impact. ³ Similarly, community organizations lament that the immediacy of short-term needs (such as housing, safety, public benefits or custody) overshadow long-term organizing efforts and often suffocate movement-building by exhausting limited resources. ⁴ The ideal balance of roles and the appropriate locus of leadership and decision-making between lawyers and community advocates remain unsettled. ⁵

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Based on these competing demands, many scholars and practitioners have deliberated the inherent conflicts between the goals of individual client representation and those of broader social change, leaving unresolved if or how they are reconcilable. A multitude of conflicts can emerge from the very act of representing an individual, which in and of itself, can limit an attorney's perspective and diminish her problem-solving effectiveness by fragmenting the instant problem from the whole and the individual client from her environment. Typically, law offices with large, specialized dockets attempt to efficiently package a client's case in a predetermined manner, easily digestible to the courts, but decontextualize the individual in the process. Worse still, once a client's personal interest is satisfied, she may lose her impetus to participate with others to solve this particular wrong in her community.

This article asserts that the perception of the misfit between law and organizing reflects the extent to which the legal academy perpetuates a limited view of the professional legal role, obscured by the thick walls of the traditional lawyering box. Standard professional training provided by law schools equips new attorneys with powerful tools for intervening to correct individual wrongs, but it too often impairs their capacity for creative or broad-based, systemic analysis of the pervasive problems our clients seek to remedy and the potential strategies for doing so. While the literature on progressive lawyering contains bright beacons of innovation and creativity (discussed in Part II below), law schools' standard, predominantly myopic, preparation for legal practice becomes too many lawyers' proverbial hammer in Maslow's schema. We are trained to represent isolated individual claims, we hone and test those skills, and, predictably, isolated, individual litigation is what we offer our clients.


See Jessica A. Rose, Rebellious or Regnant: Police Brutality Lawyering in New York City, 28 Fordham Urb. L.J. 619, 650 (2000) (highlighting opposing perspectives where lawyers focus on legal strength of individual cases, while community organizers look at individual cases within larger historical context). See also Stuart A. Scheingold, The Politics of Rights: Lawyers, Public Policy, and Political Change 5 (2d ed. 2004) (1974) ("Legal frames of reference tunnel the vision of both activists and analysts leading to an oversimplified approach to a complex social process - an approach that grossly exaggerates the role that lawyers and litigation can play in a strategy for change.").


See Jennifer Gordon, We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change, 30 Harv. C.R.-C.L. L. Rev. 407, 441 (1995) (describing active worker who left organizing campaign once he received cash settlement from individual claim); Lucie White, Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice, 1 Clin. L. Rev. 157, 168 (noting that as participants addressed their individual needs, their group affiliation and commitment to community change weakened).

See supra note 2. For influential critiques of legal education's preparation of its graduates for law practice, see William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, Educating Lawyers: Preparation for the Profession of Law (2007) ("Carnegie Report" recognizing tensions between academy and preparation for practice of law and proposing ways that law schools can offer more integrative approach to educating lawyers); American Bar Association, Section of Legal Education and Admissions to the Bar, An Educational Continuum Report of The Task Force on Law Schools and the Profession:
Progressive-minded lawyers know instinctively that this is ineffectual, but within the conventional professional framework defining the lawyer's role, few options appear available or legitimate. Nonetheless, it is has become apparent that the routine service model is incapable of reaching social justice goals. At the same time, it is short-sighted for progressive lawyers to abandon individual client representation as a tool for social change without fully exhausting its potential for individual transformation and community-building.

A harmonious balance between law and organizing can only be realized through a fresh and enhanced set of lawyering options. In addition to individual client representation, we must continue to design alternative models of social justice lawyering that partner with community-based organizations and that utilize the law to assist in community-building as a step toward fortifying sustainable movements.

By community-building, I mean the formation of short- or long-term partnerships between lawyers and community-based organizations engaged in social change efforts to meet the individual legal needs of community members as part of a strategy to draw new individuals into the movement. I do not use the term, as some philanthropic foundations do, to describe an approach, driven by outsiders, that encourages community organizations to consolidate agendas or neighborhood capital and enter into "consensual working partnerships with government officials and policymakers." Nor is community-building, as I intend the term, the provision of legal services to support members already connected to an organization that is engaged in an organizing or mobilizing campaign. Rather, community-building serves a supportive role of consciousness-raising and recruitment to bring individuals into the work of the community-based group. The methodology folds into the preparation of their legal claims an introduction to community analysis and collective action for previously isolated individuals who begin as unfamiliar with or disinterested in collective mobilization. I will illustrate community-building through a detailed description and analysis of an instance of what I call "collaborative individual law" ("CIL"), a model that deliberately shapes individual client work to achieve community-building.

Part I of this article reviews three dimensions of the practice of law that impact our ability to meet the need for legal assistance in marginalized communities: access to legal assistance, the nature and quality of the available representation as a tool for empowerment, and the ability to reach the core social problems plaguing those communities. Carefully examining these dimensions can assist us to clarify the goals and assess the success of social justice endeavors.

Part II briefly surveys the diverse approaches of a broad range of alternative lawyering movements that have developed to improve provision of legal services in the arenas outlined above. From unbundling legal services to collective mobilization, each has successfully increased access to legal assistance in low-income communities by making difficult choices in organizational priorities and resource allocation.

Part III presents Collaborative Individual Law as a hybrid model of community lawyering that reconciles the duality of individual representation and community organizing. To exemplify this model, I use a collaborative project between a community-based organization working with Latina survivors of domestic abuse (SEPA Mujer) and Narrowing the Gap (1992), available at http://www.americanbar.org/groups/legal education/publications/maccrate.html ("MacCrate Report" reviewing teaching of skills and values, and advocating for enhancing professional development in law schools).


13 See Ashar, supra note 6, at 390 (programs governed by collective mobilization approach only represent individual clients when their cases advance interests of other "similarly situated clients" or "create or sustain some form of collective resistance").

14 SEPA Mujer stands for Servicios Para el Avance de la Mujer, or Services for the Advancement of Women.
law and social work faculty and students from the City University of New York School of Law (CUNY Law). The CIL model is described in terms of methodology and pedagogy. While individual case preparation to regularize the survivors' immigration status was the immediate motivation for the project, the organization's long-term goal of community-building toward social change was paramount and remained an intrinsic part of the lawyering strategy. To accomplish these goals, the program implemented popular education and interdisciplinary techniques that required a reconceptualization of the traditional attorney-client relationship consistent with the collaborative partnerships promoted by Gerald Lopez and like-minded lawyering theorists described in Part II.  

Part IV reviews the CIL model utilized in the SEPA Mujer/CUNY project through the dimensions delineated in Part II: access, quality of representation, and contribution to social justice. It reflects on the successes and challenges of the project, identifying lessons that might guide those who will venture into this fertile territory.

Part V analyzes and resolves some of the ethical challenges that arise when lawyers step outside the standard legal role to engage in CIL. It argues that community lawyering models can enhance the quality of legal representation in the very areas that the ethical rules were created to protect, in addition to allowing for the possibility of furthering social justice causes. The assumption that one-on-one representation is the best structure to protect a client's confidences and to optimize representation often proves false for clients from marginalized communities, especially for those who have been victimized. In many instances, the intensely individual nature of traditional practice heightens the imbalance of power between attorney and client and exacerbates the separateness and isolation that victims experience.

The article concludes by reasserting the possibility of a harmonious relationship between law and organizing, one in which individual legal service acts as a theoretical bridge and a practical strategy toward community-building. The aim of the article is to assist progressive lawyers to sort through the tensions presented as we continue to creatively imagine new models through which law can purposefully impact social justice.

I. Current Provision of Legal Services to Marginalized Communities

To assess the unmet need for legal services in low-income communities, we must analyze three separate dimensions of legal practice. First, we must confront the sheer number of people who have legal needs but do not have access to legal representation. Similarly, we must consider how well the legal profession has adapted its practice to accommodate language and cultural diversity. Second, we need to examine the quality of the lawyering provided, assessing both the attorney-client relationship and the legal product. I will argue that as the collaborative quality of that relationship improves, so will the sophistication and depth of the legal product. Finally, we must evaluate the effectiveness of our legal system to resolve the underlying systemic problems distressing low-income communities, as opposed to simply remedying one individual's immediate plight.

A. Access to Legal Services

1. Available Legal Service Providers


The very functioning of a democracy requires that all have access to justice, but the legal profession has consistently failed to reach this ideal. The contrary, in each of the past five decades, authors have alerts the bar that their era was the worst in our history with regard to the legal profession's ability to meet the needs of the poor. The most recent comprehensive study from the American Bar Association (ABA) found that three quarters of the legal needs of low-and moderate-income households do not get addressed by the justice system. The consequences of confronting the legal system pro se are severe.

Legal Services lawyers alone cannot be expected to shoulder this burden. Their caseloads are untenable and their efforts have been impeded by serious budget cuts and harsh restrictions on the clients they are permitted serve. The politics behind these severe limitations has been the basis of much commentary and critique.

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23 See David Udell & Rebekah Diller, Brennan Center for Justice, Access to Justice: Opening the Courthouse Door 5 (2007) (discussing federal limitations on LSC representation involving class actions, court order fee awards, policy making, certain immigrants, incarcerated people or drug offenders); J. Dwight Yoder, Justice or Injustice for the Poor?: A Look at the Constitutionality of Congressional Restrictions on Legal Services, 6 Wm. & Mary Bill Rts. J. 827 (1998).
The ABA recognizes the responsibility of the legal profession toward the tremendous unmet need and encourages attorneys through its Model Rules to contribute pro bono services. Over the last 25 years, and even into the current economic downturn, these initiatives have reportedly increased pro bono activity. Pro bono efforts from the private bar, whether voluntary or mandatory, cannot, however, be the solution to the dire need for access to legal services in poor communities. In short, it simply will never be enough. At a more fundamental level, greater activity within a lawyering framework that already disenfranchises marginalized community members cannot alone be the solution.

2. Language and Cultural Accessibility

Further complicating access to legal services is the increasing diversity of the U.S. population. In the last decade, U.S. households with limited English proficiency nearly doubled. The rising demand for competent interpreters has led to many proposals for changes in the implementation of the Court Interpreter's Act. This increased diversity also challenges access to justice for community members from cultures that do not share similar concepts of rights and judicial proceedings and that therefore cannot appreciate or meaningfully participate in the

24 See Model Rules of Prof'l Conduct, pmbl. para. 6 (2004), available at http://www.americanbar.org/groups/professional responsibility/publications/model rules of professional conduct/model rules of professional conduct preamble scope.html (directing lawyers to be mindful of deficiencies in administration of justice for those who cannot afford legal assistance and stating that all lawyers should devote professional time and resources to ensure equal access).


27 Hon. Denise J. Johnson, The Legal Needs of the Poor as a Starting Point for Systemic Reform, 17 Yale L. & Pol'y Rev. 479, 488 (1998) (arguing that our society has outgrown our judicial system beyond what pro bono or legal services offices can fix and need for systemic reform).


29 See Angelo N. Ancheta, Community Lawyering, 81 Cal. L. Rev. 1363, 1397 (1993) (noting dilemma with which progressive lawyers and legal workers struggle every day in advocating for change under system of laws and legal institutions that disfavors change and limits possibilities of effecting it).


highly adversarial U.S. system. 32 Warnings abound regarding the dangers to both the individual and the judicial system of failing to meet this demand for language interpretation. 33

In exceptional cases, judges have considered invalidating verdicts or court settlements where the defendant clearly lacked any understanding or knowledge of the U.S. judicial process. 34 Lastly, the predominance of whiteness in the legal profession has real practical consequences for marginalized communities. 35 As the dominant culture, even progressive white lawyers and judges can fail to ask the right questions, accurately assess credibility, or appreciate the goals of their clients of color. 36

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B. Quality of Representation

In assessing the quality of representation we begin with an examination of the nature of the attorney-client relationship and then extend to the caliber of the legal product. The relationship alone has the potential to shift the traditional hierarchy by engaging the client in the analysis, theory, and plan for the case, as a tool toward resolution of the underlying issues provoking the legal interaction. Through a more collaborative process, the quality of the legal product will necessarily be improved.

1. Client-Attorney Relationship

Whether recognized or not, there is always an underlying lawyering philosophy that governs the nature of interactions between lawyer and client. The lawyer can define the relationship as either a business transaction, in


34 See, e.g., Richard W. Cole & Laura Maslow-Armand, The Role of Counsel and the Courts in Addressing Foreign Language and Cultural Barriers at Different Stages of a Criminal Proceeding, 19 W. New Eng. L. Rev. 193, 223-25 (1997) (noting that culture was factor examined by court in analysis of totality of circumstances). See also Com v. Areu, 463 N.E.2d 1184, 1186-87 (Mass. 1984) (waiver could not be voluntary and knowing where defendant had no notion of jury); U.S. v. Gallego-Zapata, 630 F. Supp. 665 (D. Mass. 1986) (rejecting consensual search where defendant did not know he had right to refuse); U.S. ex rel. Negron v. New York, 434 F.2d 386, 390 (2d Cir. 1970) (defendant may not have had notion of rights or any 'privilege' to assert them).


36 Many scholars and practitioners recognize that claiming colorblindness ignores that the legal system accepts the assumptions, standards and stereotypes of the white race as the norm, while it casts doubt on the reasonableness and credibility of other races' views, behaviors and attitudes. See Critical White Studies: Looking Behind the Mirror 1 (Richard Delgado & Jean Stefancic eds., 1997); Stephanie M. Wildman, Privilege Revealed: How Invisible Preference Undermines America 29, 40, 90 (1996); Edward A. Adams, Race and Gender of Judges Make Enormous Differences in Rulings, Studies, ABA Journal Find, ABA J., Feb. 6, 2010 (reporting on two studies showing direct relationship between case outcomes and judges' race and gender and validating U.S. Supreme Court Justice Sonia Sotomayor's "wise Latina" remark during her confirmation hearing); Ancheta, supra note 29, at 1391 (noting that lawyers trying to institute change must therefore adopt strategies that confront racism directly and challenge ideological underpinnings of "color-blind" society). See also Peggy C. Davis, Law as Microaggression, 98 Yale L.J. 1559, 1560-65 (1989).
which she decides how to act on behalf of a client, or as a collaborative endeavor, in which both lawyer and client define and work toward a common end. In the conventional lawyering blueprint, the client does not know how to resolve a matter and seeks out the attorney, as the legal authority, to resolve the problem for her. The lawyer "exercises predominant control of and responsibility for the problem solving delegated passively to him by the client." The client-centered model shifted the lawyer's role away from acting as sole decision-maker toward a focus on the client's autonomy, informed decision-making, and satisfaction. The attorney under this model was charged with maintaining the appearance of neutrality and refraining from dispensing direct advice.

Newer conceptions of social change lawyering have sparked further openings in the framing of this relationship. Progressive lawyers have seized the opportunity to transform the power dynamic at play, leaving the client emboldened to own, fully understand, and actively participate in the resolution of her case. For a progressive lawyer, the traditional hierarchy is damaging, reinforcing a powerlessness of the client who must completely rely on the professional expert. As critiqued by Gerald Lopez, the latter scheme reflects the philosophy of the "regnant lawyer," whose use of the law, perhaps unwittingly, maintains subordination of marginalized communities. The regnant lawyer is disconnected from clients and community groups, and perpetuates the role of "noble problem solver," involving clients only superficially. Within the bounds of conventional lawyering, the attorney can certainly be kind and compassionate and can provide to the client choices and analysis of potential avenues; however, the attorney traditionally remains in full control of the options presented and the process. Without a fundamental shift in power, there is little possibility for a shift in consciousness or growth by either party.

For the lawyering process to have transformative potential, it must disrupt the standard hierarchy of power in the traditional client-attorney relationship and undergo a paradigm shift. The renowned educator and theologian, Paulo Freire, describes this new paradigm in his methodology of teaching for liberation. For the educator, the professional goal goes far beyond the simple transfer of knowledge and instead aims to foster self-actualization. Transformational learning involves a meta-cognitive process of critically assessing the assumptions and expectations that support our beliefs and form the bases of our world view.

It is the quality of the relationship rather than the content of this interaction that allows for such growth--and when it occurs, both lawyer and client can be transformed. Most attorneys have experienced or at least witnessed such a peak moment--perhaps even occurring inside of the classic one-on-one lawyering model--in which the lawyer-client interaction has been transformative for both parties. It is a profound moment of recognition of our common humanity in which there is no power differential, no hierarchy of knowledge, no cultural conflict--only

41 See Cochran, et al, supra note 37, at 11 (asserting that in many cases lawyer has already decided on legal outcome goal, even before client has finished explaining case).
42 See Lopez, supra note 15, at 23-24 (summarizing mentality and practices of regnant lawyers).
45 See id. at 44 (stating that true education allows people a return to becoming more fully human).
human beings. Freire writes that the pursuit of full humanity cannot be carried out in isolation or individualism, but only in fellowship and solidarity. 47

There are, of course, those who criticize excessive attention to the therapeutic nature of the attorney-client relationship. These critics charge that overemphasis on the relationship and the process of the legal interaction only serve to divert progressive lawyers’ attention from the political climate and broader social change. 48 However, if the lawyering process is to be an effective tool for social justice, the means cannot be inconsistent with the ultimate goals. 49 Further, to ignore the importance of the attorney-client relationship as an instrument of individual transformation toward social change simply promotes the lawyer-dominated model.

2. Quality of Legal Product

Commonly, lawyers for disenfranchised clients manage the time and cost of large dockets by specializing in an area of law, pre-packaging legal cases to quickly process similar claims. 50 Without a cooperative [*628] partnership between counsel and community member, however, the legal product prepared will be flawed.

Lack of collaboration feeds a degenerative dynamic that slowly degrades the legal work. When the client is not treated as a vital partner, from the very outset, the crafting of the client's narrative and the formation of the case theory are limited to the experience of the attorney. 51 The client generally follows the attorney's lead in responding to questions, enabling the attorney to validate her own conception of the case. The client learns what is relevant to the legal process from the attorney's line of questioning and selects what information to share accordingly, often editing out pertinent facts in which the attorney seems disinterested. Next, the attorney filters the responses through her own level of understanding of the client's culture and environment and then prepares the pleadings and affidavits based on her imperfect, personal interpretation. The client signs the documents, only verifying that the facts the attorney has selected to include are correct. Even where the story doesn't quite feel like her own, the client typically trusts the attorney's judgment and rarely challenges a mischaracterization of tone or nuance.

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47 See Freire, supra note 44, at 85. Freire's idea that fellowship and solidarity were essential for an authentic transformative exchange stand in sharp contrast to earlier conceptions described by Anthony Kronman of a lawyer's special talents for discovering where the public good lies and fashioning the arrangements to secure it in a sympathetic, but detached manner. See Anthony T. Kronman, The Lost Lawyer: Failing Ideals of the Legal Profession 14-17 (paperback ed. 1995).

48 For examples of the critique, see Ancheta, supra note 29, at 1389 (critiquing shortcomings of Lopez's focus on dismantling microdynamics of attorney-client relationship against broader political and social problems); Ashar, supra note 6, at 381-83 (challenging models of practice that emphasize lawyer-client psychology and narrowly conceived lawyering techniques that overlook relationship between legal action and pre-existing political engagements of both lawyer and client). For a response to the critique, see Ascanio Piomelli, Appreciating Collaborative Lawyering, 6 Clin. L. Rev. 427, 433-49 (2000) (debunking myth that community lawyers and scholars had been misguidedly distracted and beguiled by internal dynamics of one-on-one attorney-client relationship, losing sight of opportunities for collective action and institutional change). Although Ashar clarified his concern that emphasis on the microcosm of the lawyer-client relationship can discourage poverty lawyers from learning how to use law to achieve social justice, I find the characterization of attention to the power dynamic of that relationship as "therapeutic" dismissive of the metagoal of ensuring that the community lawyering endeavor has integrity of process in order to dismantle embedded hierarchies.

49 See Shin Imai, A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering, 9 Clin. L. Rev. 195, 197 (2002) (warning that both process of lawyering itself, and relationship of lawyer to community, can determine whether lawyer is force of liberation or agent of domination); see also Freire, supra note 44, at 67 ("When people are already dehumanized, due to the oppression they suffer, the process of their liberation must not employ the methods of dehumanization.").

50 See Ancheta, supra note 29, at 1371 (noting that law offices constantly struggle with this tension as they strive for maximum effectiveness with very limited resources).

Opposing counsel or the presiding judge, however, can capitalize on subtle inconsistencies between the prepared papers and client's in-court statements. The credibility of the client is suddenly cast into doubt. The bar might see this friction as a byproduct of a necessarily imperfect but productive system, but for social justice lawyering, it is a serious failure.

This phenomenon is what Anthony Alfieri labels "interpretive violence," using boilerplate, winning case-theory documents, only varying small details from case to case. While it may appear immediately expedient, it blurs the uniqueness of the individual, trivializes the clients' stories and strategies of resistance, and ultimately diminishes the strength of the legal claim.

Adding to the complexity, the marginalized communities we serve are often comprised of a variety of legal immigration statuses, mandating that lawyers working in these communities understand the relevance immigration status may have in their work. Determining status may be arduous, given the frequency of mixed statuses in families and the fluidity of those categories. Immigration status can have a direct impact on remedies available to our clients and the consequences to the immigrant of deportation can be dire.

C. Towards Social Justice

A third dimension of the legal system in working toward social justice is the design of the types of redress offered and their ability to address the social, political, and economic roots of the causes of actions brought by or against poor clients. Certainly, major advances have been won through class action litigation in the struggles for civil rights, women's rights, LGBT rights, and workers' rights. However, for individual claims precipitated by poverty, racism, or other social injustices, traditional jurisprudence, even with ideal access to representation, is generally inadequate to remedy the problem. As Steven Wexler observed in 1970, individual litigation of client claims may provide relief in the moment, but it does nothing to address the conditions of poverty that led to their problems.

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52 See Alfieri, supra note 8, at 2126-28 (pointing to "pre-understanding," or applying standard narrative to clients' stories, as paving way for "interpretive violence").

53 See Alfieri, supra note 51, at 619 (advocating that collaborative practice enables clients to assert autonomy consistent with community).


55 Courts have begun to embrace this responsibility. The U.S. Supreme Court recently charged defense counsel with an affirmative duty to advise a client of the immigration consequences of a criminal conviction, rejecting previously accepted analysis of these consequences as collateral and of only actual mis-advice as ineffective assistance of counsel. Padilla v. Kentucky, 559 U.S. 137, 1475-78 (2010).


58 See Menkel-Meadow, supra note 32, at 7 (critiquing courts' often "limited remedial imaginations" and arguing that courts may not be best institutional settings for resolving disputes brought before them).

Gerald Lopez has observed that "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 ..." 60 The narrow individual focus of traditional one-on-one litigation can blind both the attorney and the client to other possibilities. The individual focus ignores the connections with other similarly situated individuals, the comprehensive circumstances in the client’s life or community, and the full social and political context—locally or globally. 61 This separation of the individual from her environment creates isolation from other community members. 62

In spite of this reality, many attorneys continue to habitually use individual, isolated litigation as the predominant tool for redress, in Maslow’s terms, making it our proverbial hammer. Even where legal programs are aware of the failings of individual litigation, attorneys are torn in identifying the preferred path, caring for the individual versus long-term community impact. 63 Whether or not litigation is deemed the appropriate tool to reach a particular social justice goal, Lopez encourages lawyers to strive to work collaboratively with their clients to devise problem-solving techniques and create space for their clients’ empowerment and growth. Progressive lawyers must follow the path of social justice innovators in crafting projects that broaden the use of our skills to impact the social, political and economic inequities causing the need for litigation. 64 The following section examines some of these paths, assessing their effectiveness in overcoming the three systemic deficiencies outlined above.

II. Alternative Options

Each of the different lawyering models developed over the last two decades has undertaken to improve one of the dimensions outlined in Part I. A progressive lawyer today has many more options regarding where to participate on the legal stage. Before making such decisions, a lawyer must chose a legal focus area, assess her long-term objectives, and select the form in which she will practice law consistent with her goals. In assessing which model would be appropriate for a new project, an attorney might use these dimensions to help clarify her objectives.

A. Unbundling

The goal of unbundling, or discrete task lawyering, is to increase access to justice by making legal services more affordable to people who are financially unqualified for free legal services, but are unable to afford private bar fees for full service representation. Discrete task lawyering "unbundles" the work of a full case representation into separate discrete components, allowing for contracting of partial services at reduced fees by the lawyer and

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60 Lopez, supra note 43, at 1610. See also Margaret Martin Barry, A Question of Mission: Catholic Law School's Domestic Violence Clinic, 38 How. L.J. 135 (1994) (diagnosing legal profession with “unfortunate romance” and “obsession” with litigation” and noting that litigation frequently fails to solve problems facing poor people); Ronald C. Siye, Community Institution Building: A Response to the Limits of Litigation in Addressing the Problem of Homelessness, 36 Vill. L. Rev. 1035, 1049-51 (1991) (criticizing litigation’s inability to address larger social problems that lead to homelessness and proposing “community institution building” in its place).


62 See Ashar, supra note 6, at 375 (addressing isolation experienced by clients during individual representation). See also Ancheta, supra note 29, at 1387 (noting that work with battered immigrant women requires attention to isolation they experience).

63 See Tremblay, supra note 6, at 1103.

64 See Roger C. Cramton, Delivery of Legal Services to Ordinary Americans, 44 Case W. Res. L. Rev. 531, 592-94 (1994) (stating there is no evidence that law reform and political action models of legal services movement have actually produced beneficial results for the poor).
leaving other tasks for the client to manage with coaching. The conception of the lawyer as coach and the client as a capable partner begins to shift the traditional roles, as does having the client charged with defining the parameters of the legal relationship.

B. Community Education

Community education is the most common approach to extending legal access by delivering information about legal rights and concepts to an underserved community. Its methods can include group presentations, as well as media campaigns through newspaper, radio and internet sites. For community lawyers, community education is used far more broadly than simply the transfer of knowledge and information. Organizations use community education strategically to increase the legal knowledge of a specific community or about a particular issue or to support individuals in developing their own problem-solving skills. The lawyer would look to facilitate interactive and dynamic discussion, to collectively and critically explore the content and its meaning to that community. In this context, community education programs address legal rights and obligations and encourage individuals and groups to pursue their rights as advocates or pro se within reason. When reaching its full potential, community education can advance social justice agendas by planting seeds for leadership development, community empowerment, and mobilization.

C. Relational Approaches

What I call relational approaches - therapeutic jurisprudence, mediation, and restorative justice - were designed to eliminate the societal wounds caused by our adversarial system in favor of optimizing human well-being. These models aim to negotiate solutions more directly tailored to the needs of the parties, giving all a more satisfying process and a sense that justice has been served.


66 See Ingrid V. Eagly, Community Education: Creating a New Vision of Legal Services Practice, 4 Clin. L. Rev. 433, 441-42 (1998) (listing community education examples, such as school or community workshops, pamphlets, "do it yourself kits," news columns, and television and radio shows).

67 See Louise G. Trubek, Critical Lawyering: Toward a New Public Interest Practice, 1 B.U. Pub. Int. L.J. 49, 51 (1991) (describing media as "major resource" for "critical lawyers"). See also Gordon, supra note 9, at 434 (describing media coverage of activities and victories, interviews with Project staff, columns treating labor rights issues, and free advertisements).

68 See Wexler, supra note 59, at 1049-50.

69 See Eagly, supra note 66, at 433-37.


71 See Bryant Garth, Neighborhood Law Firms for the Poor 195 (1980). See also Eagly, supra note 66, at 442.

72 See Joshua D. Blank & Eric A. Zacks, Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation, 110 Penn St. L. Rev. 1, 37-38 (2005) (noting that projects must be careful not to dilute legal assistance available to poor community members who have more complex legal needs). See also See N.Y. Jud. Law § 478 (McKinney 2005); Quinton Johnstone, Unauthorized Practice of Law and the Power of State Courts: Difficult Problems and their Resolution, 39 Willamette L. Rev. 795, 795 (2003) (stating that powerful forces within bar are opposed to easing restrictions and favor stricter enforcement of existing legal restraints on unauthorized law practice).

73 See Lopez, supra note 15, at 38. See also Angelo N. Ancheta, Community Lawyering, 1 Asian L.J. 189, 210 (1994) (reviewing Lopez, supra note 15).

D. Rebellious/Community Lawyering

In the 1970s, scholars explored litigation as a tool for social and political change, focusing public concern on systemic problems and creating momentum for legislative or administrative change. Regardless of its good intentions and often favorable legal outcomes, litigation disempowered poor communities in the long run by reinforcing a dependence on the legal system to redress injustice.

Since that time, a myriad of titles and definitions have been generated to describe lawyering practices designed to address systemic change but that are rooted in community. "Rebellious lawyering," coined by Gerald Lopez, describes work grounded in the lives and the communities of the subordinated that continually evaluates the interaction between legal and non-legal approaches to problems. Similarly, Lucie White describes "activist lawyering," working both with and sometimes against public and private sources of power, on local, national, and international stages. She notes that lawyering is no longer a unidirectional "professional service," but rather, a collaborative communicative practice. Anthony Alfieri, borrowing from the educator and theologian Paulo Freire, proffers "dialogic empowerment," through which poor clients can empower themselves from positions of subordination by direct interchange with the attorneys and others in their community.

"Community lawyering," the more common term for the 21st Century construction of social justice lawyering, shares the same critical paradigm as rebellious lawyering. Its characteristics continue to evolve as scholars and practitioners further develop the field. Some proponents emphasize that a community lawyering practice is one that is located in poor, disempowered, and subordinated communities and dedicated to serving the communities' goals. Others have described it as a practice in which the community is an integral part of the development, planning, strategizing, and implementation of solutions that involve clients in planning and

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80 See Lopez, supra note 15.
81 See White, supra note 9, at 158 (stating that activist lawyering demands strategic innovation and critical reflection about forces conditioning poor people's subordination, as well as ways they might resist).
82 See Alfieri, supra note 79, at 665.
implementing multi-dimensional remedial strategies. 84 "Long-haul lawyering" is another term describing lawyering that provides "unbounded representation to the community," unlimited by individual cases or time constraints. 85 All agree that community lawyers must remain continually vigilant of the law's negative potential for disempowerment and must actively counter that tendency by working side by side with community members who are integrally invested in the strategy, process, and outcome. 86 The activities of the rebellious or community lawyer may include non-legal tasks, such as organizing, media work, public education, lobbying, transnational networking, and appeal to regional and global human rights bodies. 87 At the same time, community members may carry out tasks previously reserved for professionals. 88

For the community lawyer, the objective of the legal relationship within this new paradigm is threefold. First, she aims to facilitate the client's expanded examination of the problem, encouraging her to come together with others toward social change. Second, she intends to revisit her own beliefs and break down common stereotypes in order to expand her knowledge and understanding of the client or community she is serving. 89 Third, she strives to form a collaborative partnership to define the goals and to devise and implement the strategy including other potential allies to achieve a successful outcome.

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E. Collective Mobilization

The most recent trend in the progression of "rebellious," public interest lawyering is mobilization lawyering, which aims to redress the imbalance in political, economic, and social power between the haves and the have-nots. 90 While it could be argued that this model is included in the expansive classification of community lawyering, its distinct focus on already mobilized groups warrants separate discussion. Mobilization lawyering reserves legal support for social movements and organizing campaigns, rather than working with isolated individuals. As Sameer Ashar, a leading proponent of mobilization lawyering has framed it, this strategy urges lawyers to "support and stimulate radical democratic resistance to market forces by developing litigation, legislative, and community


86 See Anthony V. Alfieri, Practicing Community, 107 Harv. L. Rev. 1747 (1994) (discussing patronizing nature of some progressive lawyers who use tactics that deprive people of their dignity).


88 See Lopez, supra note 43, at 1609 (describing challenges for lawyer of emulating strategies and work habits of lawyers and non-lawyers).

89 See Piomelli, supra note 40, at 1400 (noting that community lawyers and their partners appreciate potential links and insights that flow from attention to commonalities of race, class, gender, culture, etc.) See also Freire, supra note 44, at 80 ("The teacher is no longer merely the-one-who-teaches, but one who is himself taught in dialogue with the students, who in turn while being taught also teach.").

education methods to advance collective mobilization." 91 Some mobilization models forge connections and build relationships in their target community to support lobbying efforts with advocacy campaigns and data research. 92 Other models provide legal advice regarding the legality of activist strategies and represent organization members experiencing retaliation for their actions. 93 The legal work occurs inside the organization's fuller campaign for social change, not as an end itself, and it is only one method within a diverse pool of strategies. 94

By working with already organized groups, the impact of lawyers' work can grow exponentially, allowing for substantial advancement of social justice causes. The difficulty with this model, however, is the loss of services for the average client who is unaligned with a mobilized group. The cost of a decision to practice community law exclusively through mobilized groups is the unaddressed, basic, individual needs of most low-income people. 95 This conflict underscores a chasm [*636] between critical theorists and community practitioners. Mobilization theorists fail to address the obvious question of what to do with the majority of legal services' clientele who are still unaligned with mobilization efforts. Implementation of mobilization priorities by legal services offices and clinics would mean turning away the majority of our clientele, practically speaking punishing some for not being further along in their social and political development, while rewarding those that have made alliances with others. While legal offices must regularly deny services to individuals whose needs fall outside the administrative guidelines, it would be a drastic change in practice priorities to replace current criteria of immediacy of need or our ability to meet that need with the prospective and speculative community impact of that case. 96

Perhaps in the future, the majority of individuals will be allied and actively engaged with organized community groups. But until our society moves into a new phase of community inclusion, there must be a place for the defense and empowerment of the unaffiliated individual. In the interim, progressive lawyers have a unique role to play in social movements by leveraging the massive demand for individual redress as a means to bring our individual clients into community.

III. Collaborative Individual Law

A. CIL Defined

Collaborative individual law (CIL) combines the principles of rebellious lawyering with individual representation. Rebellious lawyering scholars recognized that different classifications of lawyering models may overlap and that it is possible to practice rebellious lawyering in individual cases. 97 In the CIL model, the attorney partners with a social justice organization to increase its membership and to build leadership, while still serving the immediate


92 See David Dominguez, Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering, 12 Geo. J. on Poverty L. & Pol'y 55 (2005) (describing legal victory of definite benefit to community, but questioning who drove agenda and if community was left empowered).

93 See Ashar, supra note 6, at 391-92 (describing representation during course of organizing campaign to improve working conditions of workers who were fired or denied full wages).

94 See Imai, supra note 49, at 197; see also Gordon, supra note 91, at 2133 (describing role of lawyers in "multi-faceted" campaigns of assorted organizations pursuing social justice).


96 See id. at 2512-4. After acknowledging its attractiveness, even Tremblay, a sympathetic analyst of mobilization lawyering, ultimately rejects the choice of mobilization efforts completely replacing individual lawyering.

97 See Lopez, supra note 43, at 1608 (using individual lawsuit to illustrate rebellious collaboration); Tremblay, supra note 90, at 2504 (demonstrating rebellious lawyering via individual case with community impact).
needs of individuals. What distinguishes the CIL model is its working on individual claims of unaligned community members with a design to use the legal work as a bridge between the individual and the mobilized group.

As described above, methods such as mediation and transformative justice have addressed the inadequacy of the legal system to reach community concerns by using alternative structures that avoid litigation entirely. Using a different strategy, some rebellious law and organizing efforts strive to reach social change by directing their legal support to community economic development efforts or toward organizations engaged in movement struggles, in some cases exclusively. Both models sidestep individual litigation; one eluding the traditional legal system and the other avoiding representation of the unaffiliated individual, and thus both miss the unique opportunity to have the overwhelming demand for free legal services become a path for our clientele toward joining the social justice efforts already underway in their communities. Similarly, most of the community lawyering projects described in the literature to date have included collective disputes, in which oppressive employment, housing, or economic conditions are shared by many individuals and tackled together as a group. CIL, by contrast, can work with individuals who do not share the same antagonist.

CIL engages in community-building as an interim phase of mobilization. It targets individual community members who seek legal assistance from a community organization that is not focused solely on service delivery. The lawyer puts together a course in which these individuals not only learn the law and obtain assistance with their immediate legal cases, but get much more. The course facilitators assist the participants in examining a problem's historical, economic, social and political roots, thereby encouraging the natural human tendency to come together with others toward social change. Ultimately, this model draws new members into the social justice movement. The goals of CIL projects must be grounded in a long-term vision for mobilization and the project design must be non-hierarchical, participatory, and community-driven.

Several programs have crafted novel community lawyering models that similarly use legal work to draw individuals together as community, though none have used unrelated individual claims in quite this way. Susan Bennett uses a sociological analysis of the “development of social capital,” in which the lawyer serves as a critical point of contact among disconnected people. She creates a “Community Client Consortium” as a clearinghouse in which clients allocate their resources according to a common mission. Similarly, Juliet Brodie initiated a “neighborhood-based” community practice, characterized by a neighborhood location, a continually evolving caseload, and a docket that shifts in response to the community’s need. While legal work is conducted on

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99 See Wexler, supra note 59, at 1053-56 (arguing that poverty lawyers should only work to organize the poor, not to solve their legal problems). See also Ashar, supra note 6, at 390 (arguing that adoption of collective mobilization priorities in clinical legal education would be more relevant for social movements and more effective training ground for public interest lawyering).

100 See Barbara L. Bezdek, Alinsky’s Prescription: Democracy Alongside Law, 42 J. Marshall L. Rev. 723, 740 (contextualizing Alinsky’s view that people are “organized” when they are brought together, learn each other’s views, and discover commonalities of their individual problems). See also Freire, supra note 44, at 50 (introducing concept of “praxis” as reflection and action upon world to transform it and noting that oppressive reality acts to submerge human beings’ consciousness).


separate individual cases, the "accompanying intellectual framing injects social justice effects and community lawyering values into every component of the … practice." 103

In considering involvement in this type of hybrid project aimed at community-building, attorneys must ensure their goals originate from or are aligned with those of the community. Throughout history, the good ideas of outsiders have failed when well-meaning attorneys have fought to further what they believed to be in their clients' best interests, rather than actually facilitating collaboration with the affected community. 104 It is essential to work closely with community organizations already invested in the issues before defining a project's goal and prior to designing a plan.

After establishing the goal behind the CIL program, lawyers must evaluate whether they have the skills to act as catalysts, and if it is an appropriate role for them to play. Derrick Bell warned that "it is essential that lawyers 'lawyer' and not attempt to lead clients and class." 105 Unless the lawyer comes from the particular neighborhood she seeks to serve, it could be counterproductive to anti-subordination efforts for her to take on a leadership role. However, facilitation is distinct from leadership. A facilitator sets the stage for leadership to emerge, but does not insert herself in a position of power. 106

CIL improves access to legal services while also advancing long-term goals. An attorney can leverage her time by educating and preparing several cases simultaneously. The group process cultivates bonds among clients and attorneys alike, breaking down traditional power structures. Meaningful client participation and genuine partnership in the attorney-client process allows for a more authentic and higher quality legal product. The strength of CIL is the community-building focus, using the individual legal cases as a means to bring unaligned individuals together and into social movements.

B. CIL at Work: The SEPA Mujer/CUNY Self-Prep Course

The collaborative individual law model was created for a joint project between a community-based organization SEPA Mujer (Services for the Advancement of Women) and CUNY School of Law. The project involved a partnership of the staff of SEPA Mujer and two clinical programs at CUNY School of Law to address the specific needs of a group of battered immigrant women and the community goal of the organization. The project partners created a three-month course to assist fifteen women in preparing their claims under the Violence Against Women Act (VAWA) 107 to regularize their immigration status based on domestic abuse. The VAWA "self-petition" allows a battered immigrant spouse to take control of her immigration legalization out of the hands of her U.S. citizen or legal permanent resident abuser, if she can prove the factual and legal bases.

The SEPA Mujer/CUNY collaboration, or the "Self-Prep" project, as it became known, used the impetus of the individual legal case preparation to bring together women with similar individual claims so that in group the women could explore the shared characteristics and causes of their abuse, the power and limits of the law, and the best ways to work as effective advocates for themselves and for others. While meeting the women's individual needs, the CIL model cultivated volunteers and leaders for SEPA Mujer, fortifying its base.

103 Id. at 395 (specifying that every client, case, and project is viewed as existing within particular social, economic and political context).
104 See White, supra note 79.
105 Bell, supra note 79, at 512.
106 See Freire, supra note 44, at 127 ("Revolutionary leaders who do not act dialogically in their relations with the people have retained characteristics of the dominator and are not truly revolutionary.").
The course was a resounding success on many levels. All fifteen women completed the course and then were all assigned to pro bono counsel (either with outside volunteer lawyers or within the law school clinic) to complete their cases for submission. All participants received work authorization and had their petitions approved. Most obtained their legal permanent resident status, while others are still in process. Some have already obtained U.S. citizenship and many were reunited with estranged children left in their home country. Most importantly, six years later, all the women remain outside of the abusive relationships. Several have entered into new positive, loving relationships. One woman whose inability to conceive was a factor in her abuse, just gave birth to a beautiful baby girl with her new partner. Several course participants became strong volunteers for SEPA Mujer and two sit on its Board of Directors. The developed course materials remain useful to SEPA Mujer and the CIL model of group building has been expanded.

1. History

The collaborators did not design the Self-Prep course in advance. Rather it was born from necessity and creative problem solving. The initial collaboration anticipated that students in two clinical programs would provide community education regarding the immigration remedies for battered spouses to community members, potentially adding a few cases to the clinic docket. The law school partnered with two ethnic-based organizations that would fill workshops from their respective communities. The students would then work on client-centered litigation skills with the women identified as eligible for relief.

One of the community organizations, SEPA Mujer, was overwhelmingly successful in its outreach and inundated the clinic with cases far beyond its capacity. From past experience, we knew that each VAWA self-petition case generally demands 50 to 150 hours to prepare and that full review by the USCIS was backlogged from one to five years, making the cases unattractive for pro bono counsel. These cases are factually complex and emotionally trying for both the client and legal counsel. The histories of abuse are painful for clients to recall and difficult for attorneys to elicit, understand, and process. The law school faculty felt responsible for having encouraged the community agency to identify cases with the expectation of receiving legal assistance. We were committed to devising a plan to meet the need.

2. The Collaborators

In the best of rebellious lawyering traditions, the collaborators sought to establish a non-hierarchical collaboration, grounded in the community.

a. The Community

As the wars in Central America were escalating in the mid-eighties, the Latino community began to settle on Long Island, tripling its population over the next twenty years. By the end of the decade, the state-sponsored death squads in both El Salvador and Guatemala were in full operation and the migration flow of refugees to Long Island

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108 At the first class, two additional women arrived unscreened and were determined inappropriate for the course - one for legal reasons, the second for the level of participation and commitment required.

was firmly established. The first targets of repression were the men - union organizers, youth resistance, neutral parties unable to avoid the brutal civil war. Typically, it was not until this group had established themselves with jobs and shelter that they were able to send for their families. The women who followed were generally at a disadvantage, not having gained the same level of understanding of social and governmental systems, language capacity, or ability to navigate life in the United States. All of these conditions made the women more vulnerable to domestic and other abuses and less able to access assistance. The results of these disparities continue to have dramatic consequences for the more recently arrived immigrant women in New York. While just over one-third of New York's population is foreign born, 57% of the women murdered by an intimate partner were immigrants. Worse, the already tense climate for immigrants in New York grew even more hostile after the September 11, 2001, attacks, making immigrant women less inclined to report domestic violence crimes due to an increased fear of contacting the authorities.

b. The Community Organization

SEPA Mujer is a community-based organization providing basic rights education and advocacy, access for Latina immigrant women to resources in the United States, and a safe space for organizing around issues of discrimination and domestic abuse. It was located in Hempstead, New York, often called "Little Central America," in the Long Island suburbs. SEPA Mujer had been working with issues of domestic abuse in the county since 1994 and commanded a great deal of community trust. It could deliver culturally competent information and support for survivors of domestic abuse, but it lacked legal staff to provide counseling or representation.

c. CUNY Law School Clinics

The law school team consisted of three groups, the Battered Women's Rights Clinic (BWRC) generally managing family law cases, a social work supervisor with a social work graduate student placed within that clinic, and the Immigration and Refugee Rights Clinic (IRRC) working on general deportation defense and immigrant labor cases. Students from the two clinics had already begun to collaborate in cases seeking immigration relief for undocumented battered spouses under the self-petitioning provisions of VAWA. The BWRC developed expertise in identifying, documenting, and crafting theories of domestic abuse. The social work team provided support for the women during the legal process, assisted in counseling or referrals for their non-legal needs, and offered the law students a wider perspective on the dynamics of domestic violence. The IRRC could skillfully guide a case through the immigration system, ensuring satisfaction of all legal elements of the case and overcoming potential legal obstacles. The combined expertise of the law school clinics highly advantaged this clientele and proved an enriching interdisciplinary experience for both the law and social work students.

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110 See id. at 35 (describing efforts of Long Island Evangelicals to assist sister churches in El Salvador). When I began my work with this community in the late 1980s, I soon observed that refugees from specific areas in El Salvador would settle into discrete Long Island hamlets leading to the ad hoc creation of sister cities.


113 Author's conversations in 2004 with Concepcion Roqueiz, Director, SEPA Mujer, in Hempstead, N.Y., Faroque Khan, Volunteer, Domestic Harmony Committee of Islamic Center of Long Island, in Syosset, N.Y., Mona Syed, Case Manager, Pragati, in Kew Gardens, N.Y., and Rabina Naiz, Executive Director, Turning Point, in Flushing, N.Y.

114 From effective outreach, SEPA Mujer had identified 17 Latina immigrants who were in need of filing VAWA self-petition claims with USCIS.

115 CUNY Law School is one of the internship sites where Hunter School of Social Work places its graduate students along with a supervising social worker from its faculty.
3. Establishing Goals

a. Project Goals

Before designing the program, the collaborators grappled with the tensions between the short- and long-term goals. SEPA Mujer’s mission was to support the full integration of Latina immigrants on Long Island and to eradicate domestic violence in that community. While it was eager to help this group of survivors, its goal for the project was far broader than the legal work. First, SEPA Mujer sought to support the women after having just left their abusive homes to resettle in healthy, safe environments. In addition, it aimed to revitalize participation in the organization’s activities to end domestic abuse.

The participants’ initial interest in the course was to learn their legal rights and to prepare their individual petitions for immigration status. However, the course was designed for them to spend three months together, examining domestic violence, naming the patterns, pitfalls and options, while forming a network to support them in creating their lives anew. The course would forge their relationships with each other and with SEPA Mujer and, in turn, nurture a commitment to work for community change.

Each of the collaborators acknowledged that in the domain of domestic abuse, the legal work was merely a piece of a solution and that there was much more required to successfully escape domestic violence. All were in agreement that the context of the course would be strengthening SEPA Mujer in its mission to end domestic abuse in its community. The project would grow the consciousness of the group members by sharing their individual stories, learning their legal rights, critically examining the limits of the law and existing institutional protections, and by analyzing the role of women in various cultural settings, including the local and global systems that allow domestic abuse. By doing so, the course would train a group of informed, experienced advocates, thereby strengthening SEPA Mujer’s base for its community work with a new supply of volunteers and leaders. The aim of the program was that a new level of consciousness would naturally lead the participants toward a desire to work for change in the community after their individual cases were resolved.

b. Pedagogical Goals

As teachers, our goal was to challenge the law and social work students in three different areas. First, they needed to design for themselves a professional role appropriate to the task at hand and to effectively implement a collaborative model of lawyering. The very choice to have the students spend a substantial part of their clinic experience on the community course sent a strong message that this type of lawyering is a legitimate and serious endeavor. The students’ work would involve both studying the law and learning about the intricacies of this community. They would have to make the law accessible and meaningful to the participants from this particular

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117 Statistical evidence demonstrates the limitations of legal protections against domestic violence. See Jo Ann Merica, The Lawyer’s Basic Guide to Domestic Violence, 62 Tex. B.J. 915, 916 (1999) (quoting estimate by Barbara Hart of National Coalition Against Domestic Violence that “women who leave their batterers are at a [seventy-five] percent greater risk of being killed by the batterer than those who stay”). See also Neil Websdale, Understanding Domestic Homicide 97 (1999) (reporting study finding that 28% of sample of women murdered by their present or former intimate partners were killed while in possession of order of protection).

118 See Jane Harris Aiken, Strive to Teach “Justice, Fairness and Morality,” 4 Clin. L. Rev. 1 (1997) (discussing techniques in clinical teaching to promote justice as goal for students); Frances Ansley, Starting with the Students: Lessons from Popular Education, 4 S. Cal. Rev. L. & Women’s Stud. 7, 9 (1994) (asserting that we cannot escape politics of teaching values and that our choices about whom to represent are always political); David A. Binder & Paul Bergman, Taking Lawyering Skills Training Seriously, 10 Clin. L. Rev. 191 (2003) (urging frankness about clinicians’ goal to guide students to use their legal careers as agents of legal and social reform).
culture. The law students studied popular education techniques alongside their social work colleagues and engaged the group members as meaningful partners. The students strived to reconcile for themselves the parameters of their roles as lawyers within the course context, as agents of social change, and simply as human beings. 119

Second, the students would critically examine the law throughout the course. 120 Immersed in the perspectives of the participants, the students would receive a visceral education into the limitations of the law, dispelling any remnants of the myth that the law alone is sufficient to solve clients' problems. 121 Almost all course participants would report failed attempts to access the legal system to escape an abuser. The course would reveal, for both the student facilitators and the participants, the serious deficiencies in the legal system for battered immigrant women, exposing the reality that at times the very practices established to help a woman may create a new danger. For example, seeking public assistance for a child sets in motion a chain of events outside the woman's control - as the state sues the abuser for child support, an act often experienced by the father as a direct attack by the mother, creating the risk of retaliation. 122 Similarly, calling the police to stop the immediate abuse can lead to the deportation of the woman's partner, often the family's only means of economic support. 123

Third, the students would have to grapple with the subject of this article, confronting how to best leverage their limited resources when combining law and organizing. Nearly each week, the students observed the harsh consequences after a course participant's rights were violated by the family court, the police, or social services. Abused women were improperly forced to leave the family home, to forgo legitimate, greatly needed entitlements, and to lose the window within which to report a crime due to inappropriate police behavior. The students had to reconcile for themselves how to keep true to their newly crafted role as group facilitators (and not formal representatives or advocates), while resisting their natural reaction to use their professional skills to resolve these problems for the women. They would instead problem-solve with the course participants, generating multiple potential strategies and allowing the women to exercise their own advocacy skills with the support of the group.

4. Design, Preparation, and Methodology
a. Design

The Self-Prep course consisted of twelve two-hour, weekly sessions over a three-month period. The participants were all Latina immigrant survivors of domestic abuse. The educational levels in the group varied from those who

119 See Angela Olivia Burton, Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting, 11 Clin. L. Rev. 15, 18 (asserting that as public citizens, attorneys may have an obligation to consider ramifications of their judgments on others beyond clients and potentially affected third parties); Joshua D. Rosenberg, Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance of, Human Relationships in the Practice of Law, 58 U. Miami L. Rev. 1225 (2004); Marjorie A. Silver, Emotional Intelligence and Legal Education, 5 Psychol. Pub. Pol'y & L. 1173, 1174 (1999) (arguing that legal education should prepare students for "impact of their emotional lives, as well as those of their clients, on the practice of law").


had held semi-professional jobs to those who were illiterate in their native Spanish. The classes were conducted in Spanish with interpretation provided for the two students who were monolingual English speakers. All course materials were translated into Spanish.

The course took place at SEPAMujer, to give the participants a sense of familiarity and ownership and to facilitate the coordination of travel and childcare. By locating there, the students would meet the women in a community setting and would see them holistically as real, multi-dimensional human beings, rather than stereotypical "battered women." The sessions were scheduled in the evenings, so as not to interfere with the workday or child rearing. The sessions were dynamic, building on the knowledge generated from the previous week. The women shared freely about their community, their home countries, their marriages, their abuse, their hopes and fears. The law students provided general information on immigration law, specific VAWA exceptions for abused spouses, the legal definitions for domestic abuse, the structure of writing a story in affidavit format, and collecting supporting documents. To assist in training peer mentors, there were two women participating whose immigration cases had already been prepared, who were taking the course in a supportive capacity.

While the Self-Prep course was in process, two additional law students conducted pro bono trainings at local bar associations and law schools. Their goal was to create a pool of legal volunteers ready to work individually with the course participants to ensure that the finished product met all the necessary legal requirements and was professionally and properly submitted. The women prepared their cases to the best of their ability, some more capable in writing their stories, others in evidence collection. The pro bono lawyers' work was significantly lessened by the fact that their client had spent three months preparing. I mentored the pro bono attorneys through the final case preparation, deepening their knowledge of the law and ensuring the quality of the submissions.

b. Preparation

Both CUNY clinical programs involved in the collaboration, the Battered Women's Rights Clinic (BWRC) and the Immigrant and Refugee Rights Clinic (IRRC), were two-semester clinics. The Self-Prep course took place in the second semester of the program. During the first semester, the law students worked in an interdisciplinary environment, practiced basic lawyering skills, learned the law pertaining to the domestic violence provisions of immigration law, and utilized techniques to enhance their cross-cultural competency. The law interns in both clinics prepared individual claims using different immigration protections for survivors of domestic abuse, such as self-petitions, battered spouse waivers and U-visa applications, with support from the social work students. The social work supervisor and graduate students were an integrated part of the BWRC, diversifying the perspectives heard in the class. The director of SEPA Mujer, Concepcion Mendez, taught the clinic students about the unique patterns of domestic violence and particular barriers experienced by survivors in her community. Acknowledging her expertise to the students in the classroom setting helped create a productive and level relationship for the course.

At SEPA Mujer, Concepcion met individually with the participants prior to the course to ensure that each appreciated the difficulty of what she was about undertake. They reviewed together what the course would entail, professional jobs to those who were illiterate in their native Spanish. The classes were conducted in Spanish with interpretation provided for the two students who were monolingual English speakers. All course materials were translated into Spanish.

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b. Preparation

Both CUNY clinical programs involved in the collaboration, the Battered Women's Rights Clinic (BWRC) and the Immigrant and Refugee Rights Clinic (IRRC), were two-semester clinics. The Self-Prep course took place in the second semester of the program. During the first semester, the law students worked in an interdisciplinary environment, practiced basic lawyering skills, learned the law pertaining to the domestic violence provisions of immigration law, and utilized techniques to enhance their cross-cultural competency. The law interns in both clinics prepared individual claims using different immigration protections for survivors of domestic abuse, such as self-petitions, battered spouse waivers and U-visa applications, with support from the social work students. The social work supervisor and graduate students were an integrated part of the BWRC, diversifying the perspectives heard in the class. The director of SEPA Mujer, Concepcion Mendez, taught the clinic students about the unique patterns of domestic violence and particular barriers experienced by survivors in her community. Acknowledging her expertise to the students in the classroom setting helped create a productive and level relationship for the course.

At SEPA Mujer, Concepcion met individually with the participants prior to the course to ensure that each appreciated the difficulty of what she was about undertake. They reviewed together what the course would entail, professional jobs to those who were illiterate in their native Spanish. The classes were conducted in Spanish with interpretation provided for the two students who were monolingual English speakers. All course materials were translated into Spanish.

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including the classes, hours, group participation, memories, introspection, and the amount of work. After understanding the course model, each woman was given the choice to be placed on a waiting list for direct representation with pro bono counsel in a traditional manner. If a woman chose to participate in the project, Concepcion requested a verbal agreement that she finish the course, committing herself to overcome the inevitable obstacles that would arise.

c. Methodology

i. Interdisciplinary Teaching

The individual course sessions were led by legal and social work interns, combining techniques in group-building and popular education with legal rights content and case preparation activities. The social work students set the tone for the course in the first session with a group-building exercise designed to create a supportive, interdependent environment. The humor and good nature of the participants and the students created a safe space for sharing and self-reflection throughout the course. Martha Garcia, the social work supervisor, began and ended each session with a "check in," to track how the women were faring emotionally in the process and to normalize the inherent difficulty of their undertaking. Non-legal training often assists practitioners in making difficult choices on where to concentrate efforts.

Both Martha and I met with the students regularly to discuss the complex legal and ethical issues that arose throughout. Martha made sure the students had a chance to reflect on the experience as a whole, allowing them to acknowledge the discomfort they experienced with the intensity of the women’s stories and to discuss the conflicts they confronted in recognizing the limited available resources in contrast to the deep and immediate need for services. As the supervising attorney, I ensured that the legal information provided, while simplified into lay terms, remained accurate and that questions in the materials were non-leading. For example, during facilitated conversations about domestic violence, the course participants taught the law students how domestic violence manifested itself in their community generally and in their individual homes specifically. Only after the women shared their experience did the law students present the legal definitions and standards by which their cases would be evaluated, so as to avoid limiting or skewing the participants’ responses. The students probed the intersecting and contrasting values, approaches, and priorities regarding service, organizing, and social justice from within the frameworks of law and social work.

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131 Joan S. Meier, Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice, 21 Hofstra L. Rev. 1295, 1333-38 (discussing psychological strategies to increase empathetic listening for law students interviewing domestic violence clients).

132 For example, to assist participants in writing affidavits, the students prepared a self-interview that each women could use during the week. I steered students away from leading questions such as "Did your husband ever hit, kick, punch or slap you?" toward more open-ended probes like "Write about the first time your husband acted in a way that made you uncomfortable."

133 See Shalleck, supra note 124, at 1035 (noting that often women allow legal parameters to define their experience of abuse and their options, which interferes with own understanding of violence in their relationships and possible responses to that situation).

134 See Aiken & Wizner, supra note 130.
ii. Popular Education

The students incorporated many aspects of popular education into the Self-Prep course. Popular education is the process of nonhierarchical learning through dialogue in which people come to a critical understanding of their own conditions of power and oppression, which then forms the basis for collective action. It is the process of arriving at this understanding, rather than the action taken as a result, that constitutes the core of the popular education technique. 135 Whereas the goal of traditional community education is to share information on legal rights with lay people, popular educators focuses on facilitating dialogue that allows the community to critically analyze this information through their own experience. 136 Engaging with a community in this way requires the lawyer to relinquish the distance embedded in the traditional professional role. It provokes the "disorienting moments" that Jane Aiken calls upon educators to maximize in order to destabilize predominant norms and dichotomies of professionalism and to encourage students to craft their own legal identities in the pursuit of justice. 137

During the Self-Prep course, the students were remarkably willing to step outside of their legal roles and into the opportunity to present themselves authentically. For example, one of the law students was a white, burly, monolingual English-speaking, male, former police officer. Both faculty and students were concerned that his presence might impede the participants from speaking freely as women and from revealing the intimate details of the domestic abuse. The students addressed their apprehension first in supervision meetings in which they all agreed that if the course participants did not feel comfortable, the male student would participate behind the scenes without being present in the sessions. Before raising the issue directly with the participants, all students, faculty and community members in the room had a chance to introduce themselves and to share their interest in participating in the course. The male law student humbly presented the women a sense of who he was, expressing that he genuinely wanted to learn from them. The women unanimously voted to include him. Within weeks, that student became "one of the girls" and the women loved to jokingly tease him in Spanish, making his fair cheeks blush. They would also later comment at the positive example the [650] male students had provided for them, reminding them how sensitive and caring men could be. In Freirean terms, "true dialogue cannot exist without humility." 138

Popular education and community education are collaborative forms of critical pedagogy that necessarily involve universal participation. 139 In dialogue together, facilitators and participants create new possibilities for their lives. 140 In this lawyering model, the lawyers or law students participate in learning and sharing along with the participants. 141 In the Self-Prep course, the teacher-learner/learner-teacher model was fully in place. 142 The students taught the participants about the law, while the participants taught the students the realities of its practical

135 See Cummings & Eagly, supra note 6, at 482.
136 See Gordon, supra note 9, at 435-36 (contrast typical "know your rights" presentation that gives community members basic information about the law and how to use it with popular education model that provides group opportunities for reflection that leads to analysis and action).
137 See Aiken, supra note 118, at 25.
138 See Freire, supra note 44, at 90 ("Men and women who lack humility (or have lost it) cannot come to the people, cannot be their partners in naming the world … At the point of encounter there are neither utter ignoramuses nor perfect sages; there are only people.").
139 See Lopez, supra note 15, at 70; Piomelli, supra note 48, at 431-33.
140 See Freire, supra note 44, at 83 ("In problem-posing education, people develop their power to perceive critically the way they exist in the world with which and in which they find themselves: they come to see the world not as a static reality, but as a reality in process, in transformation.").
141 See Lucie White, Pro Bono or Partnership? Rethinking Lawyers’ Public Service Obligations for a New Millennium, 50 J. Legal Educ. 134, 138 (2000) (describing “human rights” workshops using popular education co-facilitated by law student and by low-income food pantry users in which participants analyzed welfare-related issues, elicited group understanding, and generated and implemented several strategies for protecting community benefits). See also Freire, supra note 44, at 75 ("The
limitations. No topic was taught by the top-down, banking method. 143 Even in the "legal" sessions about legal definitions or evidence, the women actively critiqued the limits of the law or brainstormed what documents they could identify and then supported each other in safely collecting the evidence.

In addition to having all parties participate, Freire discusses the need for popular education to be co-intentional, distinguishing that the participation of the "oppressed" in the struggle for their liberation must not be "pseudo-participation, but committed involvement." 144 While the student facilitators prepared a thoughtful syllabus, the course participants played an integral part in the design. Throughout the course, the facilitators requested feedback from the women on the effectiveness of each segment and input on the use of remainder of course sessions. The participants understood that this was the first course of this kind and that their input was vital in revising and improving the syllabus as we went along and for future groups. The women greatly influenced what happened week to week. For example after a session in which the law students gave feedback to participants on their written histories, both the women and the students realized that one session was not enough. In response, the team added a session and recruited a group of six local immigration attorneys to assist in giving more individualized feedback. 145

True to popular education, all involved learned a great deal about the law, the dynamics of domestic violence, and about themselves.

IV. Results and Reflection

Now six years after the initial SEPA/CUNY collaboration, we can evaluate the results of the Self-Prep course along the dimensions identified in Part I.

A. Access to Legal Assistance

In terms of pure numbers, the Self-Prep course assisted fifteen women to substantially complete their cases to receive legal immigration status. Each analyzed domestic abuse from within a broad framework and learned the law. They prepared their own cases and would continue to dispense information to others in their community.

To accomplish this, the law school committed six law students (four facilitating the course and two conducting pro bono trainings), a supervising attorney, a social work student, and a social work supervisor. In delegating the same resources, the law school would not have been able to complete fifteen separate self-petition cases in the time allotted, certainly not on top of the already full clinic docket. Without the course, the women in the group would have been placed on a waiting list for groups in New York City and would most likely have had their cases picked up within six to twelve months. 146

revolutionary educator's] efforts must coincide with those of the students to engage in critical thinking and the quest for mutual humanization.

142 See White, supra note 141, at 138 (contrasting street law with popular education that aims to have low-income "learners" take on roles of "teachers" and work with facilitators to plan and conduct educational workshops). See also Freire, supra note 44, at 80 ("Through dialogue, the teacher-of-the-students and the students-of-the-teacher cease to exist and a new term emerges: teacher-student with students-teacher.").

143 See id. at 78 (warning that in pursuit of liberation, educators cannot use "banking" educational methods of depositing knowledge through memorization, which would negate that very pursuit).

144 Id. at 69. Freire does not limit the use of co-intentional education to shared motivations or decisions to act together, but refers to dismantling and recreating a shared construction of reality. He clarifies that "in order for the oppressed to be able to wage the struggle for their liberation, they must perceive the reality of oppression not as a closed world from which there is no exit, but as a limiting situation which they can transform." Id. at 49.

145 An attorney would give such guidance as identifying parts of the affidavit that were irrelevant for the legal purpose or sections that lacked sufficient detail to meet the legal requirement. The women then could re-focus and revise their work.

146 Considerably fewer resources would be needed to implement the CIL model using more experienced attorneys.
The attention directed at cultural sensitivity increased the accessibility of the legal work for this community. Often in domestic violence cases, the pressure on the survivor to confront her abuser in court is too great and she does not complete the process. The substantial emotional and financial burdens imposed upon victims of domestic violence to pursue charges have been well documented. As of 2006, the refusal of victims to cooperate in the prosecution of their batterers resulted in the dismissal of as many as 70 percent of all domestic violence cases. The support found in the SEPA Mujer group setting assisted each participant to see her case through to completion, both in terms of the immigration process and in moving past the abusive relationship.

The course further increased access to legal services for this community by educating the staff of SEPA Mujer and by increasing local pro bono capacity. Two of the law students conducted continuing legal education courses on immigration relief for survivors of domestic abuse at a local bar association and a law school. These lawyers would now be available for future aid to the community. In addition, these pro bono resources were further leveraged by the efficiency of the group process. By the time a course participant’s case was assigned to counsel, much of the difficult, emotionally trying work of identifying, remembering details of, and ordering the abuse was complete. The attorney could focus her time efficiently, checking the legal elements, the accuracy of the information, and packaging the application, rather than having to assume for herself the additional roles of social worker, counselor, educator, and other supports. Lastly, but significantly, each attorney and law student was also exposed to alternative forms of social justice practice.

B. Quality of Legal Assistance

As in Part I, I will evaluate the quality of the SEPA/CUNY collaboration in terms of the quality of the professional relationships, as well as the effectiveness and accuracy of the legal product.

1. Professional Relationships

For the project to realize the short-term goals of the legal work and the long-term goals of community-building, the methodology of the course had to be congruous with collaboration. Both the law school and SEPA Mujer were aware that a space of trust and intimacy were essential to accomplish the course’s objectives.

Popular education methods required the students to evaluate how to insert themselves in this new relationship with the community - as professionals and simply as themselves. The environment for the intimacy of these newly created relationships was created by the careful and deliberate, interdisciplinary work of the social work graduate student and supervisor, who facilitated specific exercises that allowed all involved to see each other at a human level. A space of joy was generated in spite of the of the course’s painful and intense subject matter. It was through the willingness of students and course members that they were able to share themselves honestly. These interactions broke down traditional hierarchies and built the confidence of each of the participants, propelling them to re-orient themselves to the group, to the organization, and to the community.

147 See e.g., Eva S. Buzawa & Carl G. Buzawa, Domestic Violence: The Criminal Justice Response 183-84 (3d. ed. 2003) (describing obstacles to pursuing claims, such as financial dependency on batterers, treatment by prosecutors, and fear for physical safety).


149 This experience had profound implications for the students. One of the students who participated in the collaborative project said this of his experience: “I think it was one of the best experiences I had in school. It gave great insight into what it means to be a real people’s attorney.” Telephone Interview with Robert Muschacher (Oct. 15, 2010). Another former student, Suzanne Harrington-Steppen, has designed and developed over a dozen pro bono projects, including a VAWA and a U-Visa Project, connecting community organizations’ clients with Roger Williams Law School students in her current position as the Project Coordinator for the Pro Bono Collaborative.

150 See Freire supra note 44, at 67 (asserting that when people are already dehumanized, due to oppression they suffer, process of their liberation must not employ methods of dehumanization).
a. Unintentionally Undermining Professional Relationships

In retrospect there were two design flaws in the program that undermined the trust in the collaborative relationships we had so carefully sought to nurture and that compromised the group dynamic and safety.

Soon after the Self-Prep course, Concepcion observed that once the women were assigned individual counsel, their bond with the organization dissipated. As was predictable by the historic difficulties in merging law and organizing techniques, once the locus of attention was on the individual legal work, the women looked to their new attorney for support, rather than calling upon SEPA Mujer or each other. This pitfall could have been anticipated and avoided though more careful planning. While we were vigilant in mitigating this danger during the course, we relinquished attention afterward at a cost. To prevent fragmentation of subsequent Self-Prep groups, the attorneys or law students taking over participants’ cases should, as part of their training, be included in the overarching structure and philosophy of the course. Even if they are involved in a more classic relationship with the client, they can certainly support the collaboration if invited to do so in specific ways. The host organization would need to maintain the supportive network in order to continually reinforce the group’s strength. Additionally, the host organization should add follow-up sessions or implement some alternative system to maintain the group’s cohesion after the women are assigned to specific attorneys. While some of the friendships developed in the course endured, the women lost their sense of oneness with the group and largely severed their regular communication with SEPA Mujer and with each other.

The second area that could have been improved was safety planning. Because each woman was screened by SEPA Mujer beforehand, we knew that no one in the group was currently in an abusive relationship, nor did any course member have ongoing problems with her abuser. Experience should have warned us that these facts did not guarantee that all were out of danger. Statistically, leaving a violent home and the immediate aftermath is the most dangerous period in an abusive relationship. Just after the course, one participant, who had already been separated from her abuser for several months, was almost killed when her abuser tracked her down in a local store and brutally attacked her with a knife, cutting her jugular vein. She was lucky to survive and has made a full recovery. From the way events unfolded, safety planning could not have prevented this surprise attack, but it certainly alerted us that discussion about the possibility of retaliation from abusers would have been appropriate during the course.

2. Quality of Legal Product

The competence and fullness of the work products resulting from the Self-Prep course were impressive and were a direct result of the group process. Working in the group facilitated for each participant a deep understanding of the abusive dynamic in her own marriage, the tactics used by her abuser, and the patterns and cultural norms of her community. The group support allowed the participants to shed the shame and isolation that often obscure honest reflection. As a result, the affidavits were fact-rich, nuanced, highly individualized, and personal. They described credible, realistic relationships with a full range of mixed emotions and complexity. Once a participant understood what was legally relevant, she was able to gather the facts and the documents needed to prove the elements of her case in a way that no outsider could have done. An attorney working individually with a client would have taken months and multiple interviews and may still never have reached that depth of understanding of the client’s life.

C. Social Justice

Women who are victims of homicides by intimate partners are typically not killed during the abusive relationship, but when attempting to leave or having left. See Erica Goode, When Women Find Love is Fatal, N.Y.Times, Feb. 15, 2000, at F1 (stating that in study of 293 women killed by intimates in North Carolina from 1991-1993, 42% had been killed after they threatened separation, tried to separate, or had recently separated from their partners).
Freire asserted that popular education makes oppression and its causes objects of reflection by the oppressed and that from that reflection would come their necessary engagement in the struggle for their liberation. 152 This hypothesis was the basis for the Self-Prep pedagogy. The course was successful to a certain extent, but due to unforeseen circumstances, the community organization ultimately could not follow through to leverage the new participation generated in the course.

1. During the Course

The very process of bonding as a group through their shared challenges promoted the natural progression hypothesized by Freire from survival of self, to compassion for others, leading to formation of group, and finally to collective action. 153

a. Group Building

During the Self-Prep course, the women examined, through the context of social, economic, and political forces, the oppression they experienced from the domestic violence in their homes. They participated in profound discussion regarding the role of gender in their culture and in the U.S., as well as the plight of women around the globe.

Lawyering in the group setting allowed the project to bypass many of the typical obstacles encountered in working with survivors of domestic abuse. Hearing others speak about domestic violence made it easier for each woman to individually recognize and voice the abuses she had endured, to see that she was not alone in her experience, and to recognize cultural and societal patterns of abuse. 154 The compassion they developed for each other became a part of individual healing. Together, they learned about the conditions that had contributed to their abusive pasts and together they found courage to leave that part of their lives behind and to do so in a more positive context.

b. Shared Problem-solving

In sharing about the preparation of their individual legal cases, the women recounted the difficulties they confronted at public institutions when taking needed steps to protect themselves and to further their legal cases. For example, they shared tips about how to approach family court or the police to gather evidence and they accompanied each other for support.

This camaraderie continued beyond the legal case preparation and into their personal lives. The group process allowed the women to form a personal network to help navigate the practical obstacles they confronted after having left an abuser's home. They shared employment or housing opportunities. Several women coordinated schedules to provide each other childcare allowing for evening work or English classes.

c. Collective Action

When a woman encountered a barrier during the course, she confronted it with the strength of the group. For example, one of the required documents for the VAWA self-petition is a police letter of good conduct. However, mid-course, the county police headquarters implemented a policy change making this impossible; they would now only issue the good conduct letter for those with an unexpired passport containing a valid visa. Of course, none of

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152 See Freire, supra note 44, at 48.
153 See White, supra note 141, at 138 (expounding on popular education methods that seek to move learners from education, to group problem-solving, to direct action to challenge unjust power hierarchies and gain greater voice in the political process).
154 A few of the women were too embarrassed to speak in front of the others and requested individual help in writing their stories. They did, however, want to continue to attend the group sessions to learn from the others and experience the solidarity.
the women had currently valid visas—or they would not have had immigration problems to begin with. The police claimed the policy shift was a directive from Immigration and Customs Enforcement. The law students and the participants crafted a plan which eventually overturned this policy. The victory proved inspiring for the group as an example of what they could accomplish together.

2. Long-term Impact

While the individual participants and the organization benefitted in the short term, the long-term goal of the project to fortify SEPA Mujer's volunteer base and leadership capacity was thwarted by unforeseen events and by lack of contingency planning. Unfortunately, early in the course, Concepcion, the director of SEPA Mujer, was hurt in a car accident that incapacitated her through the remainder of the project. The organization did not have another leader prepared to step into the void created. Consequently, the plan to harness the new energy generated by the course was lost. At a basic level, we learned that many of the women went on to help in the community by giving informed advice to other survivors of abuse. In addition, several of the women continued to assist the organization as volunteers or members of its board of directors. But these results fell short of SEPA Mujer's goal to use the course to build strength and leadership in the organization.

During the writing of this article, a second collaborative course was planned and implemented between CUNY and SEPA Mujer. This time, instead of working directly with women on their own cases, SEPA Mujer used the mistakes of the past to inform its decision to first train a solid group of volunteers. The organization recognized that without reinforcing its infrastructure and leadership, it would not be prepared to provide direct assistance within the context of community empowerment. CUNY continues to experiment with SEPA Mujer and other organizations to configure new CIL projects that build on community efforts to achieve social justice.

D. Personal Reflection

Broadening the context and purpose of individual litigation to reach social justice goals is a rich endeavor for seasoned attorneys and law students alike. It is both personal and political. It challenges us to redefine the role of the lawyer inside of the social and political realities of the day and consistent with our individual mission as an agent of social change.

For this author, community lawyering begins and ends with the individual relationships formed through either the attorney-client relationship or the community model. I have practiced my own versions of community lawyering for the last twenty years. In both private practice and non-profit community work, I have attempted to guide new immigrants through the complex web of protecting their rights and securing legal status in a humanistic, non-hierarchical manner. At different times, I founded and turned over a non-profit organization and a private, solo community practice. For over a decade, I held open office hours one evening per week in the heart of the Long Island immigrant community. I watched my clients partner and start families, as they watched me do the same. Our children played and grew up together. Certainly, I have advocated for change together with the community organizations that initiate campaigns in the area. I cannot, however, imagine a satisfying practice without personal, individual interactions. I have learned much about the resilience of the human spirit from these relationships. The compelling stories of my clients and their remarkable courage to continue fighting after horrific personal losses feeds my stamina to practice law, particularly in this dark period of oppressive immigration policy. I am by no means defending the dominion of the one-on-one lawyering model, but I want to emphasize the

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155 The participants went to the police headquarters in pairs to request the letters, with a worksheet in Spanish that the law students designed to help the women track information that would assist in challenging this policy, i.e. the name of the attending officer, date and time of the request, and specifically what was asked of them. Simultaneously, the law students attempted to follow the chain of command within the police department and U.S. Immigrations and Customs Enforcement that led to this administrative change. Likely the mix of attention on both fronts convinced the police to rescind the policy.

156 The IIRC assigns each student to a non-litigation project with a community organization in addition to an individual case.
essential value of personal contact, of being present to and grounded in our common humanity, regardless of the
form in which we practice law. Even when lawyering in group, it is the individuals who must remain at its center. For
those of us who choose to work in community settings, there is a danger of losing the individual relationships, of
having them fuse into a "fetishized" version of community. 157 We must not lose sight of the fact that each
community is made up of its unique, individual members.

Participation in the CIL collaboration was time-consuming and challenging, but it was deeply satisfying to develop
such close partnerships while being strategically engaged on multiple levels.

V. Ethical Challenges

In spite of the benefits outlined in Parts III and IV of conducting legal work as part of a community-building process,
ethical challenges arise in restructuring the traditional lawyering format, most prominently: confidentiality, conflict
of interest, role definition, and unauthorized practice of law.

A. Confidentiality

The responsibility to protect client confidentiality has deep roots in the law. 158 In its current state, as found in Rule
1.6 of the Model Rules of Professional Conduct, an attorney is strictly prohibited from disclosing in any setting the
confidential information obtained while representing a client (unless the client consents) 159 and is mandated to secure a confidential environment. 160

Due to the public nature of its interactions, lawyering in group, by definition, breaches these long-held conceptions
of confidentiality. The lawyer does not maintain an environment conducive to confidentiality. Participants in the
group do learn each other's secrets in the group and there is no way to guarantee that they will not disclose the
information. In spite of the abundance of benefits to the individual clients, to attorneys preparing their cases, and
to the community, any project must reconcile the ethical obligations imposed by the legal profession. 161 I will
discuss two paths for doing so. Along the lines of Piaget's stages of moral development, 162 the first will look at
adherence to the rules and the second will examine the meaning underlying the rule and call for adaptations.

1. Conventional Justification (Square Peg-Round Hole)

According to common understanding of the attorney's responsibilities to protect confidentiality, the first step is to
assess whether an attorney-client relationship is formed. If so, the attorney needs to determine whether the client
consents to waive the disclosure. If there is no attorney-client relationship formed, the attorney must assess the
extent to which the community member fully understands and freely consents to the alternative form of interaction
in lieu of traditional representation.

157 See Muneer I. Ahmad, Interpreting Communities: Lawyering Across Language Difference, 54 UCLA L. Rev. 999, 1076-77
    (2007) (cautioning against fetishizing clients, turning individuals who seek legal services into prototypical clients re-defined only
    by their need).

    privilege as it was first incorporated into common law in 16th century, when it was meant to emphasize duty of lawyer to client
    and to specifically shield lawyer from having to testify against client).

159 Model Rules of Prof'l Conduct R. 1.6 (1983) (providing in part: "(a) A lawyer shall not reveal information relating to
    representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in
    order to carry out the representation, and except as stated in paragraph (b). ").

160 See Model Rules of Prof'l Conduct R. 1.6 cmt. 16 (1983) ("A lawyer must act competently to safeguard information
    relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are
    participating in the representation of the client or who are subject to the lawyer's supervision ... ").

161 See Marshall, supra note 84, at 181-87. See also Cummings & Eagly supra note 6, at 506-09.

The formation of an attorney-client relationship does not require an express agreement between the attorney and the client. Rather it may be implied where the client has the intention that the attorney represent her and where a reasonable person in the client's circumstances would believe that the attorney had consented to do so. Attorneys seeking to educate with no intention of providing legal representation must avoid giving specific advice. Even attorneys giving on-line advice must be careful not to create the perception of the formation of an attorney-client relationship.

It is essential that all parties in a collaborative venture are clear and in agreement about their roles and their expectations of each other. Given the vast level of unmet need in poor communities for legal assistance, clients have little choice but to take any legal assistance offered, even if it is less than ideally desired. Passive acquiescence cannot be a basis upon which to build a collaborative relationship. If representation is contingent on the potential client signing a limited agreement or a promise to volunteer, consent is not freely given and becomes coercive. To give true consent, a community member with a viable individual claim must be fully informed of the terms of the collaborative project, the legal implications, if any, of using this alternative model, and the fact that more traditional choices are available. If informed consent is given, the terms of the community relationship can be defined and redefined in the ways that most advantage the community members.

In the CUNY/SEPA Mujer collaboration, the community participants all understood that the Self-Prep course led afterward to assignment of counsel, but that the course itself did not constitute representation. The framework for the course and the limitations of the professional relationships were made explicit before the beginning of the course to avoid the potential for coercion. In an initial interview with Concepcion, each woman was given the option to be referred to pro bono counsel through a sister organization or a bar association. Those who chose to participate in the course each signed an agreement acknowledging the understanding.

Given the openness of the Self-Prep classroom, the nature of the interactions, and the informed consent, no attorney-client relationship was formed and therefore no specific duty to maintain a legally enforceable confidential environment attached. Having said that, it is important to acknowledge that a collective commitment to confidentiality was a fundamental building block upon which the group's cohesion was based. The women generated ground rules at the first session of the course, setting the tone for respect and confidentiality, but they understood that neither the legal team nor the other participants could ensure this agreement. They needed to rely on and respect each other.

2. The Cost of the Conventional Force-fit

As mentioned in the prior section, when the course ended and pro bono counsel was assigned to individual women, the dynamic of the relationship between CUNY and SEPA Mujer changed. Now, some of the women were being represented by a CUNY clinic and professional mandates had to be, and were, followed.

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164 See Restatement (Third) of Law Governing Lawyers § 14 (2000); see also Diversified Group, supra note 163, at 454.
166 See Gordon, supra note 9, at 444 (discussing tensions arising when representation of legal claims is conditioned on signed contract obligating client's active involvement in systemic reform work and mandatory participation in legal education).
167 I do not believe this type of informed consent is necessary for all community collaborations. It is essential, however, where a community member would have an individual claim and in some way can be seen as compromising her rights by participating in the group model.
168 After a discussion on this point with Paul Tremblay, I would add increased protections to confidentiality if facing the same circumstances. In retrospect, if repeating the course, I would now require limited retainer agreements of the volunteer attorneys who assisted the women mid-course in guidance on the affidavit process. More than the students, these attorneys were giving specific advice on the application of the facts of an individual's case to the law.
After the course concluded, tension arose regarding the sharing of information between SEPA Mujer and CUNY. The collaborative flow of information, so carefully created in the course, was disrupted by adherence to the legal professional code. Previously, as part of the collaboration, all the intake information SEPA Mujer gathered from the initial screening process to select women for the course was shared with the law school. During the Self-Prep course, the law school team shared concerns with SEPA Mujer staff if a woman seemed to be going through a particularly difficult time or was identified as needing extra support. Similarly, SEPA Mujer staff relayed (with consent) to the CUNY team information from course participants about concerns they were too timid to voice in the full group.

However after the course, a new legal relationship was formed when the law school accepted responsibility for submitting the legal cases prepared by pro bono counsel or by clinic students. At this point, a clear attorney-client relationship was created that had not existed before and appropriate confidentiality standards applied. SEPA Mujer, previously so central to all aspects of the work, suddenly became a third party. In preparation for a report, SEPA Mujer's staff requested from the law school excerpts of some of the affidavits that had been begun in the collaborative class, but perfected afterward. Given the new communication boundaries, I felt the need to require releases from the women before sharing the information. None of the women objected to signing a release. In fact, they experienced this phase of individual representation as an extension of the same collaborative process they had begun together and thus felt that the law school was adding unnecessary red tape. For SEPA Mujer, this requirement was offensive. It represented a fissure in the trust and collaboration constructed before and during the course, negating the organization's role as a full partner in the process and the primary source of the confidence and bonding with the women.

Had we anticipated the shift in ethical obligations at that point in the project, we could have clarified a structure in which the relationships were preserved. Model Rule 5.3 allows an employee of or consultant to a lawyer representing a client to act "for the lawyer in rendition of the lawyer's services." This rule is commonly used to provide justification for social workers to assist clients without violating obligations to confidentiality. Newer recognition of the useful roles of community interpreters assisting lawyers in the legal process as advocates or as cultural or linguistic experts provides a more accurate description of the consultant capacity. The key role that Concepcion played in advancing the relationships between the law students and the women could easily have justified inclusion in this rule. These adaptations would best be pre-defined in the initial crafting and articulation of collaborative roles.

3. Advocating for a Practical Modification of the Rules

This above encounter represents one conflict that can arise when the mandates of professional ethics rules and the goals of community building are at odds, even when the foundational principles are not. Scott Cummings and Ingrid Eagley have offered additional concrete suggestions for the community lawyer to protect herself from disciplinary actions, but the solutions they propose are at odds with collaborative goals. For example, their advice from the Model Rules that the lawyer must carefully supervise and remain responsible for the organizer's work product and conduct goes against the grain of a true collaborative endeavor. It makes the legal product

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169 Only the client has the power to waive the attorney-client privilege. See e.g., Parler & Wobber v. Miles & Stockbridge, 756 A.2d 526, 536 (Md., 2000). The waiver may be explicit or may occur unintentionally, if the client discloses the confidence to others or if a third party not under the employ of the attorney is present. See, e.g., Insurance Co. of North America v. Superior Court, 166 Cal.Rptr. 880, 884-85 (Cal.Ct. App., 1980). Once the privilege has been waived, it is waived for all purposes. See, e.g., U.S. v. Krasnov, 143 F.Supp. 184, 191 (E.D.,Pa., 1956).

170 See Model Code of Prof'l Conduct R. 5.3 (2009) (providing guidance regarding appropriate assistance from nonlawyer employed, retained by, or associated with lawyer).

171 See Ahmad supra note 157, at 1056-59.

172 See Cummings & Eagly, supra note 6, at 508.

173 See id.
central to the collaborative project, rather than supportive to the main organizing efforts. The reality is that the Rules have not yet factored the many [*663] models of community lawyering into their guidance.

I prefer to focus on Shauna Marshall's suggestion calling for ethical rules that actually reflect community practice. 174 As part of its stated intention to make access to justice universally available, 175 the ABA Model Rules should take into consideration that certain circumstances warrant exceptions to requiring confidentiality of each individual client's communications - particularly in group settings where clients wish to work together.

The rationale underlying the responsibility to maintain individual client confidentiality stems from the presumption that the traditional individual model of lawyering will necessarily lead to the highest quality representation. The ABA Model Code maintained in Canon 4 that "the observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance." 176 To do otherwise, it is feared would stifle the attorney-client relationship and seriously compromise the quality of the representation. 177 It regards the lawyer's promise of confidentiality as fundamental to the trust that is the hallmark of the client-lawyer relationship. 178 Because of this confidence, the client is "encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter." 179

This article, in Part I.B., has presented a contrary perspective, arguing that the standard conception of strict confidentiality within exclusively one-on-one representation is not universally optimal. It can, in fact, be impractical and counterproductive when working with victimized members of marginalized communities. 180 In contrast, the [*664] group setting can assist the attorney in quality preparation of the legal case.

Building of trust. In many neighborhoods, community members view lawyers as the elite, the connected, the powerful. Approaching a professional lawyer alone can be an intimidating experience, already enacting the standard hierarchy of power before the first word is spoken. A community lawyer would strive, of course, as part of the goal of the interaction, to intentionally shift the lawyer-client dynamic, replacing it with the formation of a partnership between lawyer and community. But forcing the client to manage this legal relationship alone can reinforce the power imbalance and often ignores cultural norms in which important decisions are made by a family or in community.

Maximizing clients' voice and participation. The group process can assist the client in recognizing the details of her case and the connections to others, placing them in social, political, and economic context. Through the

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174 See Marshall, supra note 84, at 223 (stating that rules to help guide strategies and relationships formed in self-help and lay advocacy projects would benefit lawyers and community members).

175 See Model OF PROF'L RESPONSIBILITY EC_1-1 OF PROF'L RESPONSIBILITY EC_1-1 Code of Prof'l Responsibility EC 1-1 (1983) ("A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence").

176 Model OF PROF'L RESPONSIBILITY EC_4-1 OF PROF'L RESPONSIBILITY EC_4-1 Code of Prof'l Responsibility EC 4-1 (1980); see also Model Rules of Prof'l Conduct R. 1.6 (1983) (stating that lawyer shall not reveal information relating to representation of client unless client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except when lawyer reasonably believes it necessary to prevent certain crimes or to aid in attorney's defense).


178 See Model Rules of Prof'l Conduct R. 1.6 cmt. 2 (1983).

179 Id.

180 See Bennett, supra note 101, at 81. Notions of strict confidentiality in exclusive client representation can be dysfunctional; it doesn't reflect what clients necessarily want, can lead to further isolation of individual clients, and is antithetical to group-building.
realizations and confidence she gains in the group, the client often discovers her own voice and speaks more freely.

The group setting fosters closer collaboration between community member and attorney. With a fuller understanding of the issue, the client’s recollection of the facts will be more relevant and more on point. She can actively cooperate to frame her story accurately and to craft the theory of the case that authentically represents her. She will be able to participate more fully with the attorney in identifying witnesses or collecting evidence. Other community members can assist the lawyer in understanding the cultural context of statements made or actions taken, promoting more accurate representation of the client in the legal case.  

Such an exception would not be out of the ordinary. The ABA has recently done precisely this in its 2009 changes to the Model Rules. The ABA accommodated pro bono attorneys providing limited services under the auspices of a nonprofit organization or court by recognizing that the standard practice of conflict of interest checks was not reasonable in all settings. To encourage participation in such programs, the Model Rules created a specific exemption so as not to impede delivery of services. Providing access to the law for those from marginalized communities justifies this type of exception.

The Model Rules themselves also leave room for a wider interpretation. The Preamble to the Rules explains the prevailing justification for the strict maintenance of confidentiality: "A lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private." The term ordinarily leaves room for the exception, or expansion, when preserving client confidences does not serve the public interest. As outlined above, the great need for quality legal assistance in disenfranchised communities fits within that exception.

The group setting is not necessarily ideal or recommended for all our clients, but neither should the isolation of the lawyer and client be universally imposed. The ABA should recognize that to meet the aspiration of equal access to justice, attorneys must be given more latitude to craft the parameters of the lawyering process to best meet the needs of a particular individual or community.

B. Conflict of Interest: To Whom is a Duty Owed - Organization or Individual

181 See Ahmad, supra note 157, at 1074 (explaining how community interpreters may assist lawyer’s communication with client by serving as cultural reference).

182 See Alfieri, supra note 51.

183 Model Rules of Prof'l Conduct R. 6.5 (2009) (Referring to nonprofit and Court-Annexed Limited Legal Services Programs: "(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.").


185 Interestingly, the language has been significantly softened in comparison to prior guidance. See Model Code of Prof'l Responsibility Canon 4 n. 1 (1980) ("To permit the attorney to reveal to others what is so disclosed, would be not only a gross violation of a sacred trust upon his part, but it would utterly destroy and prevent the usefulness and benefits to be derived from professional assistance."). See also Cannons of Prof'l Ethics Canon 37 (1908); ABA Comm. on Prof'l Ethics & Grievances, Formal Op. 287 (1953); ABA Comm. on Prof'l Ethics & Grievances, Formal Op. 250 (1943).
The Model Rules anticipate multiple representation, specifically allowing it if particular conditions are met. In most of the alternative lawyering models that employ a group dynamic, the question arises as to who is the real client, or to whom does the attorney owe a duty of loyalty and zealous advocacy. This dilemma has been addressed by attorneys providing legal support for a group in the midst of an organizing campaign. For example, the mobilization lawyer might agree to support an individual group member who was fired in the midst of an organizing campaign. In some cases, the interest of an individual member to settle a claim for the best possible offer may conflict with the organization's longer term goals in pressuring the employer toward the benefit of the group. As outlined above, it is of utmost importance to have these roles clearly defined and any conflicts made transparent to all parties.

In the SEPA Mujer/CUNY collaboration, there was no conflict between the goals of the organization and the participants’ pursuit of their individual claims. Nor was there any relationship from one claim to the next that caused conflicts directly or indirectly. To the contrary, the group process eliminated any competition for limited organizational resources, as all in the group would be served together. There was no cap on the number of applicants who would receive benefits. Nor was there any correlation between the likelihood of success for one woman based upon another's outcome. One could envision within a small community that one course participant might know or be a family member of another participant's abuser. Such a situation would have to be dealt with uniquely, following the protocol of proper disclosure to both women and referrals to other counsel where needed.

C. Role Definition and Unlawful Practice

While all participants understood that there was no attorney-client relationship formed between them and the student lawyers during the course, the law students needed to constantly question and recommit to their role. As traditionally practiced, community legal education has as its goal the transfer of knowledge of legal rights, definitions, and procedures. Popular education aims to manifest this realization of knowledge by way of a two-way participatory dialogue between community members and course facilitators. In contrast, legal representation occurs when an attorney is giving legal advice based on the individual's specific set of facts.

In candid discussions during the Self-Prep course, participants freely offered the facts of their lives as examples of the legal concepts. At that point, the parameters of the legal relationships became grey. Were the law students illustrating general concepts through these examples or were they giving specific advice based on the stories presented by the group? The Model Rules emphasize that perceptions and expectations of the person seeking advice are heavily factored into the ethical equation of whether and when a legal relationship is established. The students had to continuously recalibrate their actions to act as facilitators - true to the goals of community education - and to resist the impulse to specifically advise the women as to how to resolve their legal problem.

186 First, the lawyer must inform the clients of the potential advantages and risks and effects on attorney-client privilege and receive written consent. Model Rules of Prof'l Conduct R. 1.7 cmt. (2002). Next, the lawyer must reasonably believe that she will be able to provide competent and diligent representation to each affected clients. See Model Rules of Prof'l Conduct R. 1.7(b)(1) (2002). Lastly, representing multiple clients in the same manner is improper when it is unlikely that the lawyer’s impartiality can be maintained. See Model Rules of Prof'l Conduct R. 1.7 cmt. (2002).


188 See e.g., Gordon, supra note 9, at 441 (describing worker who accepted settlement conditioned on agreement with employer not to discuss case, in direct conflict with community organizing goals).

Some of the students were concerned that they might be assisting others in the unauthorized practice of law. One of the course’s goals was to generate peer mentors from among the participants, who could then help other women with information and assistance about domestic violence and immigration. Law students collaborating in a more recent iteration of a community course questioned whether they might be facilitating the unlawful practice of law by training volunteers who will further assist community members. The unauthorized practice of law has been distinguished in the Rules from a lawyer permissibly providing professional advice and instruction to non-lawyers whose employment requires knowledge of the law. In some instances, unauthorized practice has been defined so broadly that it restricts a non-lawyer from even suggesting which form a community member might use to accomplish a particular task. Rigid interpretation of these proscriptions on unauthorized practice has been identified as one of the principle barriers to the development of affordable legal services options for the poor. The students resolved that in addition to the substantive material they intended to cover, they would include as part of the course a discussion of what the law says is and is not permissible legal assistance in terms of community education. The students then felt comfortable that the women understood the law regarding responsible use of the information they were receiving.

In the final analysis, the CUNY/SEPA Mujer Self-Prep course's use of the collaborative individual law model fit within the permissible parameters of ethical obligations discussed above, principally because no attorney-client relationship was formed. One can envision actual representation in the community setting that remains in compliance with the requirements of the Model Rules through use of limited retainer agreements or specific waivers. It was clear that the course participants freely opted to engage in this group model rather than pursue the individualized insulation of traditional representation. Many of the models of community lawyering discussed above have been faithful to the principles set forth in the Rules without adhering to the classic attorney-client relationship. The keys to working within the ethical framework while conducting non-traditional lawyering are careful advance planning, full disclosure, transparency, and consent.

Conclusion

If the legal profession is to advance in serving the needs of marginalized communities, it must allow for and encourage changes in how attorneys practice. We must retrain ourselves and the new generation of lawyers to think expansively about how to use the law towards social justice ends. This article has affirmed that the relationship between individual legal representation and community organizing can not only be compatible, but symbiotic - if we expand the role of the lawyer. We must continue to grapple with the tensions that arise between law and organizing, between the individual and the mobilized group, and between the professional ethical rules and community lawyering. As progressive lawyers continue to experiment with different types of community initiatives, we must imagine and test a variety of hybrid models to address the difficulties of access to the law, quality of the representation, and capacity to impact social justice - while remaining mindful that the way in which we engage with marginalized communities has as great an impact as the results we achieve. Law school clinics and legal service programs must continue to model and incubate such projects, so that new attorneys can further develop the field. The legal academy must follow suit by altering its training and ethical parameters to stimulate the growth of the profession.

190 See Model Rules of Prof'l Conduct R. 5.5 (2002) (lawyer shall not “practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction or … assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.”).
191 See Model Rules of Prof'l Conduct R. 5.5 cmt. (2007) (permitting lawyer to provide professional advice and instruction to non-lawyers whose employment requires knowledge of law, such as claims adjusters, social workers, accountants, and persons employed in government agencies).
Freire concluded that transformational dialogue "cannot exist in [*669] the absence of a profound love of the world and for people." 194 It is my hope that a new generation of progressive, committed, well-trained, and creative thinkers will continue to challenge the old dichotomies and will recognize and act on opportunities for innovation as they present themselves. I am eager to see the area of community lawyering continue to flourish, confident that the progress we continue to make will allow the profession to engage more meaningfully in law for social justice.

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194 Freire, supra note 44, at 89 ("The naming of the world, which is an act of creation and re-creation, is not possible if it is not infused with love. Love is at the same time the foundation of dialogue and dialogue itself … Because love is an act of courage, not of fear, love is a commitment to others.").