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# Community Lawyering [Review Essay]

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# REVIEW ESSAY

## Community Lawyering

REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE. By Gerald P. López.† Boulder, Colorado: Westview Press, Inc., 1992. Pp. ix, 433. Paper.

*Reviewed by Angelo N. Ancheta*‡

"Give us something we can use." For those of us engaged in the practice of law for social change,[1] this is a familiar admonition directed at scholars who have developed theories on the transformation of law and the legal system. Critical legal studies,[2] feminist legal theory,[3] and

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1. Throughout this piece, the terms "lawyering for social change" and "progressive law practice" are used interchangeably to refer to work in which individuals with legal training address the problems of subordinated groups that historically have suffered disadvantage as a result of this country's social customs, economic systems, and laws. The definition encompasses a broad array of attorneys, including those employed in civil and criminal legal aid offices helping indigent clients; civil litigators using the courts to bring about systemic changes in the laws and in social and economic institutions; and lawyers who work specifically on behalf of disempowered communities, such as people of color, immigrants and refugees, women, gay men and lesbians, the physically and mentally disabled, and the elderly.

2. For an overview of critical legal studies (CLS), see CRITICAL LEGAL STUDIES (Allan C. Hutchinson ed., 1989) (anthology of CLS works); MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987) (presenting summary and self-critical assessment of recurring themes in CLS writings); Symposium, *Critical Legal Studies,* 36 STAN. L. REV. 1 (1984) (presenting perspectives of CLS scholars and "outside observers"); Mark Tushnet, *Critical Legal Studies: A Political History,* 100 YALE L.J. 1515 (1991); *see also* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., rev. ed. 1990) (containing essays by scholars in CLS, feminist legal theory, and critical race theory).

3. *See, e.g.,* CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987); Katharine T. Bartlett, *Feminist Legal Methods,* 103 HARV. L. REV. 829 (1990) (identifying and critically examining methods of feminist legal scholarship); Christine A. Littleton, *Reconstructing Sexual Equality,* 75 CALIF. L. REV. 1279 (1987) (proposing "equality as acceptance" as a theoretical model for gender equality); Frances Olsen, *The Sex of Law, in* THE POLITICS OF LAW, *supra* note 2, at 453 (analyzing the sexual and hierarchical dualism of law); Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay,* 95 YALE L.J. 1373 (1986) (noting the failure of abstraction as a tool for finding solutions to problems of inequality and discussing a feminist

critical race theory[4]—schools of thought that challenge the assumptions that traditional jurisprudence is neutral, determinate, apolitical, and fair—hold the promise of changing the law to accomplish economic and social justice. Narrative theory[5] and the recent "theoretics of practice" literature[6] test the presuppositions of both legal doctrine and the lawyering process, reexamining commonly held views of language, knowledge, and power within the legal system. Yet the new legal theories, while injecting fresh perspectives into legal scholarship, have not found a large audience outside the academic setting. To their credit, these legal theorists have focused on transforming law and lawyering to address the problems of the poor, people of color, immigrants, women, gays and lesbians, the disabled, the elderly, and other subordinated groups. But they have paid little attention to ways of actually implementing doctrinal changes through the courts and other legal decision-makers, which are inherently conservative and often hostile to change. And only recently have scholars discussed how transformative theories can influence the practice of law itself: the day-to-day activities of lawyers who interact with clients, their communities, and the legal and political systems that affect everyone's lives.[7] This area of thought has benefited significantly from Professor Gerald P. López's book, *Rebellious Lawyering: One Chi-*

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alternative); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988) (contrasting feminist jurisprudence with mainstream "masculine" jurisprudence).

4. *See, e.g.*, DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992) (discussing how racism is a permanent, pervasive, and indestructible component of American society); PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991); Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) (challenging the sensitivity of CLS scholarship to the continuing power of racial discrimination); Richard Delgado, *When a Story is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95 (1990) (analyzing hostile reactions to critical race theory); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 2 (1991) (arguing that the "Supreme Court's use of color-blind constitutionalism . . . fosters white racial domination"); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (analyzing how unconscious racism affects governmental decision-making); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991) (utilizing critical theories of law to examine the deeper meaning of accent discrimination).

5. *See, e.g.*, Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989) (examining the role of narrative in contemporary legal scholarship); Symposium, *Speeches from The Emperor's Old Prose: Reexamining the Language of Law*, 77 CORNELL L. REV. 1233 (1992) (examining approaches to lawyering and the translation of stories into legal discourses).

6. *See, e.g.*, Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 717 (1992) (presenting articles on the integration of progressive legal theory into the teaching and practice of law).

7. *See, e.g.*, Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narratives*, 100 YALE L.J. 2107 (1991) (analyzing reinterpretations of client stories by a poverty lawyer in the context of his personal experience); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (presenting a model of "change-oriented lawyering"). The *Hastings Law Journal* recently devoted over 500 pages to articles discussing the integration of legal theory, legal education, and the progressive practice of law. Symposium, *Theoretics of Practice*, *supra* note 6.

*cano's Vision of Progressive Law Practice* [hereinafter *Rebellious Lawyering*].

In *Rebellious Lawyering*, Professor López presents a lucid analysis of progressive law practice. Interweaving fictional accounts of lawyers and their clients with theories of legal practice and community organizing, López presents a richly textured portrayal of lawyering based upon the collaboration of lawyers, clients, and the communities in which they live. López argues that progressive practice must be a partnership in which individuals minimize their traditional roles as lawyers and clients; lawyers and clients must share power and combine their overlapping practical knowledge of the world in order to solve problems of subordination. As López suggests throughout *Rebellious Lawyering*, all of us are lawyers: whether we are helping ourselves, helping others informally by being "lay lawyers," or helping others formally as professional lawyers, we constantly draw upon our personal experiences to interpret and transform the world through problem solving.[8]

In this Review Essay, I evaluate López's theory of rebellious lawyering in the context of the developing body of scholarship that uses narrative and "outsider"[9] perspectives to analyze laws and the legal system. Focusing upon the stories of one outsider community—Asian Pacific Americans[10]—I draw upon the concept of the rebellious lawyer in discussing the process of empowering client communities through advocacy and education. In addition to the stories of clients, both real and fictional, I will draw upon my personal experiences as a practitioner and as a member of a subordinated racial group to test the limits of rebellious lawyering as a means of effecting social change.

Part I of this Review Essay analyzes López's theory of rebellious lawyering as an alternative to conventional theories of progressive law

8. López makes this point most succinctly at pp. 38-44.

9. The term "outsider" avoids the awkwardness of the term " 'minority'—a term that belies the numerical significance of the constituencies typically excluded from jurisprudential discourse." Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 n.15 (1989).

10. I use "Asian Pacific Americans" in an attempt to represent in a single phrase those communities living in the United States that trace their ancestral origins to Asia and the islands of the Pacific. Asian and Pacific Islander communities include Chinese, Japanese, Filipinos, Koreans, Indians, Vietnamese, Cambodians, Laotians (including Lao, Lao-Mien, and Hmong), Thais, Malaysians, Indonesians, Samoans, Tongans, Chamorros (Guamanians), and Native Hawaiians. The languages, cultures, and histories of these communities are immensely diverse, ranging from the ninth-generation Filipino Americans living in the bayous of Louisiana, descendants of sailors who settled in this country over 200 years ago, to the recently arrived political refugees from the People's Republic of China, Vietnam, Cambodia, and Laos. *See generally* RONALD T. TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS (1989).

As a group, however, Asian Pacific Americans have suffered the common effects of racial discrimination, whether by goverument, as in the case of exclusionary immigration and naturalization laws, or by private actors, as in the case of anti-Asian violence. *See infra* Parts II.A-II.B.

practice, what López calls "regnant lawyering." I examine López's model alongside traditional legal advocacy models, and I discuss how López's theories fit within the recent scholarship that uses narrative and alternative theories of jurisprudence to transform legal institutions. In Part II, I discuss some of the legal problems facing Asian Pacific Americans, the community that has been the focus of my own work as a lawyer. I discuss how community-based nonprofit legal organizations have applied a collaborative problem-solving strategy through direct legal services, community education, and community organizing. In Part III, I develop the idea of "community lawyering," expanding the rebellious lawyering model to embrace the empowerment of the Asian Pacific American community through problem solving, in which lawyers act as translators between client communities and the legal system. Finally, in Part IV, I address the limitations of rebellious lawyering in realizing the goals of individual client empowerment and social justice for subordinated groups. Ultimately, I conclude that the progressive practice of law must measure its achievements not in terms of its transformative effect on society but with reference to specific victories, however small.

## I
## THE IDEA OF REBELLIOUS LAWYERING

Scholars have paid scant attention to the work of progressive lawyers.[11] While there have been extensive empirical analyses of civil legal aid lawyers[12] and accounts of attorneys working for (and against) social change,[13] legal scholars have not spent a great deal of time examining the actual *work* that lawyers perform when they use the legal system to assist members of subordinated groups such as the poor, people of color, immigrants, women, gays and lesbians, and the disabled. The simple fact that *Rebellious Lawyering* develops theories of progressive legal work at all is remarkable. More remarkable still, Professor López manages to combine

11. *See* Gerald P. López, *The Work We Know So Little About,* 42 STAN. L. REV. 1, 10 (1989) (discussing the paucity of research on the progressive practice of law and the interaction of clients and lawyers).

12. *See, e.g.,* BRYANT GARTH, NEIGHBORHOOD LAW FIRMS FOR THE POOR (1980) (presenting a comparative study of developments in legal aid in several countries); JACK KATZ, POOR PEOPLE'S LAWYERS IN TRANSITION (1982) (presenting a history of civil legal aid programs and organizations); Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism,* 32 UCLA L. REV. 474 (1985) (assessing the contemporary status of legal aid programs in several different industrialized nations).

13. *See, e.g.,* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 3 (1976) (exploring "the response of elite lawyers to social change"); MARLISE JAMES, THE PEOPLE'S LAWYERS (1973) (giving an account of "left lawyers" practicing throughout the country in the early 1970s); RADICAL LAWYERS: THEIR ROLE IN THE MOVEMENT AND IN THE COURTS (Jonathan Black ed., 1971) (containing essays by progressive lawyers, legal scholars, and activists).

theory with an accessible[14] and detailed picture of what progressive lawyers, legal workers, and organizers do on a day-to-day basis. This alone makes the book required reading for anyone employed in a nonprofit legal office or in a progressive law firm.

But *Rebellious Lawyering* is not a significant work simply because it piques the self-interest of progressive lawyers. The book's importance lies in its ability to convey, through the use of detailed narratives, the experiences and problem-solving abilities that reside in and affect everyone. By challenging existing notions of progressive legal practice and community organizing, López demonstrates how all of us accommodate—and resist—change in our daily lives, and how, through working together and sharing power, we can bring about positive changes that improve our collective existence.

### *A. Rebellious Versus Regnant Lawyering*

What exactly is rebellious lawyering? And how is it so different from conventional—regnant—lawyering that it has to be called "rebellious"? At first glance, one might think that the term implies a law practice with a politically progressive or radical bent. This is partly true, and anyone reading *Rebellious Lawyering* will quickly realize that the book is written primarily, though not exclusively, for a politically progressive audience. As López makes clear early in his book, however, even the most left-leaning lawyers fall into the trap of regnant lawyering: they become too attached to their roles as experts and professionals, too detached from the lives of their clients, too concerned with advocating for "the cause" rather than the client's best interests.

For professional lawyers, regnant lawyering is a dominating and powerful occupation. Consider some of the attributes that López ascribes to regnant lawyers:

- Lawyers "formally represent" others.

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- Lawyers litigate more than they do anything else.
- Lawyers understand "community education" as a label for diffuse, marginal, and uncritical work (variations on the canned "after-dinner talk about law"), and "organizing" as a catchword for sporadic, supplemental mobilization (variations on sit-ins, sit-downs, and protests).
- Lawyers consider themselves the preeminent problem-solvers in most situations they find themselves trying to alter.

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14. For a commentary on the *in*accessibility of legal literature to progressive practitioners, see Robert D. Dinerstein, *A Meditation on the Theoretics of Practice,* 43 HASTINGS L.J. 971, 982-89 (1992).

- Lawyers believe that subordination can be successfully fought if professionals, particularly lawyers, assume leadership in pro-active campaigns that sometimes "involve" the subordinated.

. . . .

- Lawyers understand their profession as an honorable calling and see themselves as aesthetic if not political heroes, working largely alone to make statements through *their* (more than their clients') cases about society's injustices (p. 24).

Although López's characterization glosses over many of the complexities and nuances of professional lawyering, he does capture some of the basic conceptions that progressive lawyers hold about themselves. Of course, most of these self-conceptions are rooted in the culture of all lawyers, not just progressive ones. Before, during, and after law school, lawyers are socialized to believe that they are special people—professionals, social engineers, oracles of knowledge, and high priests and priestesses.[15]

Because progressive lawyers usually see themselves as members of a subculture within the larger world of attorneys, they use similar legal strategies to achieve desired goals. Formal advocacy, including litigation and administrative law advocacy, frames the work of most progressive lawyers.[16] This should be no surprise, for lawyers, regardless of political perspective, are trained to use the judicial system to resolve clients' problems. Certainly, much work arises out of necessity: lawyers cannot escape the government's monopoly over fields such as criminal law, immigration law, or public benefits law. The trap of regnant lawyering is failing to understand that nontraditional alternatives such as self-help and community organizing do exist and that the customary roles of attorney and client are not etched into stone.

The rebelliousness of rebellious lawyering lies in transcending a practice limited to acting on behalf of clients to achieve particular, usually lawyer-defined, objectives:

> In this idea—what I call the rebellious idea of lawyering against subordination—lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled, and the elderly. They must know how to collaborate with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation. They must understand how to educate those with whom they work, particularly about law and professional lawyering, and, at the same time, they must open themselves up

15. *See, e.g.*, RICHARD L. ABEL, AMERICAN LAWYERS 212-25 (1989).

16. *Cf.* Abel, *supra* note 12, at 570-79 (noting that, because of large case loads, legal aid lawyers render advice and negotiation services more often than they perform actual litigation, but still do not engage in extensive organizing or lobbying).

> to being educated by all those with whom they come in contact, particularly about the traditions and experiences of life on the bottom and at the margins (p. 37).

Seems simple enough. Be more democratic. Be open to new ideas. Look for help from others in the community, especially clients themselves. Teach the law, don't just talk it. And at first glance, the model seems easy enough to implement: progressive lawyers ought to be the most open to adopting cooperative problem solving in their own work, since lawyers working for social change are supposed to have a democratic vision, utopian or otherwise, of how society should be constructed and how people should work together to construct that society. As López demonstrates, however, institutional and personal inertia often prevent lawyers from shedding their traditional roles as the sole players in advocating for social change through the legal system.

*Rebellious Lawyering* is organized around the basic dichotomy between rebellious lawyering and regnant lawyering. In the initial chapter, which is the shortest, López lays the theoretical groundwork for his model of rebellious lawyering. Through the voice of Catharine, a third-year law student interested in a career as a public interest lawyer, López introduces five "typical" progressive lawyers—three of whom are identified as regnant lawyers and two as rebellious lawyers. The regnant lawyers are: a public interest litigator, namely a lawyer seeking system change through the courts; a union-side labor lawyer; and a civil legal aid lawyer specializing in tenant eviction defense. The rebellious lawyers are an immigration lawyer with extensive community organizing experience and a family law specialist who coordinates a nonprofit, multi-service center for children and families. López probes the regnant-rebellious dichotomy not in terms of the type of work (e.g., direct services vs. impact litigation) or the area of specialization, but by examining each lawyer's role—both actual and perceived—in relation to the lawyer's clients, co-workers, and local communities.

The boundaries each lawyer establishes between herself and her clients determine the regnancy or rebelliousness of her work. López's public interest litigator is highly detached from her clients, focusing more on the issues she is litigating through class actions than on the individuals who are affected by the litigation. The labor lawyer limits his practice to advising unions, negotiating collective bargaining agreements, and representing unions before the government. He spends little time working with unions on organizing, or exploring supposedly tangential issues such as child care or worker health and safety. The legal aid lawyer, despite working with individual clients every day, defines very clearly his role as an attorney and asks clients *not* to participate in the development of a case so that he may attain the particular goals that he, the lawyer, has defined.

López's rebellious lawyers, by contrast, are deeply rooted in the communities in which they live and work. They collaborate with other service agencies and with the clients themselves; they try to educate members of the community about their rights; they explore the possibilities of change and continually reexamine their own work in order to help their clients best. Rebellious lawyering thus redefines the lawyer-client relationship as a cooperative partnership in which knowledge and power are shared, rejecting a relationship limited to an active professional working on behalf of the passive, relatively powerless layperson.

The remaining chapters of the book portray fictional individuals in a variety of settings: a nonprofit legal services office, a small private law firm, a series of tenant rights activists' meetings, and a community organizing drive. In each of the chapters, López attempts to highlight the tension between rebellious and regnant lawyering through the experiences and writings of the chapter's protagonists. López is often guilty of creating characters who are archetypal and oversimplified; there are few shades of gray in López's imagined worlds of "good" and "bad" workers, "community-centered" and "cause-centered" organizers, and "rebellious" and "regnant" lawyers. Nevertheless, he captures many of the basic attributes of practice and illuminates some of the potential improvements under his rebellious lawyering model.

Chapter 2 tells the story of Lucie Fung, the new executive director of the Community Law Office, a fictional but typical nonprofit legal services agency. We learn of Lucie's personal history as a legal aid lawyer and community activist, and of her attempts to gain an early understanding of the office during a three-week observation period in which she meets with staff and learns about the inner workings of the office. Through Lucie's writings, we observe how she hopes to reorient the lawyers and other workers to a more community-based practice. In particular, we see the tension between regnant lawyering and rebellious lawyering in the structure of the office and in the different mindsets of the staff attorneys. Although the staff is universally committed to assisting clients with legal problems, we see that simple details—a worker's job description, the receptionists' varying helpfulness during client visits, even the layout of the office's reception area—reveal a practice that limits client participation in problem solving. In particular, the staff attorneys at the office, with one exception, are generally unwilling to incorporate elements of community education or community organizing into their work. The challenge for Lucie Fung is to overcome the lack of creativity at the Community Law Office without undermining her own credibility as the new boss.

Later chapters tell similar stories. In Chapter 3, we read about Martha Fisher, an idealistic young lawyer in a small private firm, and Jesse Cruz, a business owner trying to sue the local government for dis-

crimination against him and other Latinos. Through Martha's interactions with Jesse and the detailed memos she keeps in Jesse's file, we learn of their successes and failures, of Martha's frustration with the limits of civil rights doctrine and litigation, and of her need to become involved with Jesse and others in grassroots community mobilization. In Chapter 4, López tells the story of Etta Johnson, a tenant rights activist, and Dan Abrams, a public interest lawyer who, through his work with Etta and others, gains an understanding of how a dedicated "lay lawyer" can empower people in the local community. Finally, in Chapter 5, we read the suggestions of Carlos Leonard, a professional organizer who highlights the key differences between traditional community organizing strategies and rebellious organizing strategies that allow lawyers and nonlawyers to collaborate more effectively.

The narratives that López employs in *Rebellious Lawyering* provocatively capture many of the dilemmas that exist in progressive law offices (though I do not know of *any* lawyer or community activist who keeps the detailed records that López's lawyers and activists keep). And López goes even further by stimulating the reader to consider how solutions could be different if lawyers' perceptions were changed to accommodate collaborative problem solving. For example, one of the major conflicts that arises in nonprofit legal services offices revolves around the tension between "direct service" work and "impact" work.[17] In direct service work, lawyers focus on individual client representation, spending much of their time preparing particular cases for trial or hearing in order to assist the individual client. In impact work, on the other hand, lawyers focus more on institutional reform, using legal means (typically litigation) to bring about systemic changes that affect a larger number of people. Offices constantly struggle with this tension as they strive for maximum effectiveness with very limited resources.

Under López's theory, the direct service-impact dichotomy definitely exists, but it masks a more fundamental tension: client control versus lawyer control. If clients and others in the community are allowed to participate more in the problem-solving process, the tension shifts away from a lawyer-based litigation strategy to a client-based empowerment strategy. The task of lawyer and client is to determine what the client needs and wants, and to see if the client or others can help make the change. Certainly, the tension between service and impact work would not disappear, but a more client-centered practice could lead to more innovative strategies, such as client organizing and lobbying, that could achieve the desired ends without having to rely exclusively on

17. *See, e.g.*, Marie A. Failinger & Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45 OHIO ST. L.J. 1, 5 (1984) (discussing the debate between "law reform advocates and equal access proponents").

the work of lawyers.[18]

### B. Narrative, the Attorney-Client Relationship, and Social Change

In both style and substance, *Rebellious Lawyering* is part of the growing legal literature that uses stories of everyday life to provide insights into the construction of social reality and the power relations between dominant and subordinate groups.[19] The book is the latest in a series of works by Professor López dealing with the application of narrative theory to legal problem solving. Beginning with a 1984 article entitled *Lay Lawyering*,[20] and continuing with recent writings on civil rights practice,[21] progressive legal education,[22] and the study of lawyering for social change,[23] López has developed a paradigm that defines lawyering as one form of human problem-solving behavior:

> When problem-solving requires persuading others to act in a compelling way, we can call it lawyering, whether the problem-solver is representing herself (self-help), a friend (lay lawyering), or a client (professional lawyering). . . . *Everyone* knows how to solve some common problems that involve persuading others to do things—*everyone* owns a set of lawyering skills (p. 39).

Narrative—or storytelling, as López prefers to call it—is the primary vehicle for persuading others to act (pp. 39-41). All people see the world through "stock stories,"[24] those combinations of existing knowl-

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18. For an exploration of the tension between individual client empowerment and group empowerment in rebellious lawyering, see Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992).

19. *See, e.g.*, SALLY ENGLE MERRY, GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS (1990) (analyzing the problems that working-class people bring to the courts); Alfieri, *supra* note 7; William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992) (illustrating the subtle and complicated power structure in lawyer-client relationships through the study of divorce cases); Matsuda, *supra* note 9.

Many of the legal scholars writing in this area have drawn inspiration from the works of post-structuralist social philosophers. As Professor White observes, post-structuralist theory, which de-emphasizes the possession of power within formal structures (e.g., governmental institutions) and emphasizes the flow of power between individuals (e.g., lawyer-client relationships), "opens up space for a self-directed, democratic politics among subordinated groups, a politics that is neither vanguard-driven nor co-opted. . . . At the same time, and of more immediate relevance to lawyers, this new picture of power makes possible a self-reflective politics of alliance and collaboration between professionals and subordinated groups." Lucie E. White, *Seeking ". . . the Faces of Otherness . . .": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499, 1504 (1992) [hereinafter *Seeking*].

20. Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).

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

22. Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989).

23. López, *supra* note 11.

24. In an earlier work, López explains:

> We see and understand the world through "stock stories." These stories help us interpret

edge and methods of perceiving and processing information that give order to the world. Narrative allows one to convey to others, an audience, a story designed to inform the audience's understanding of a problem. If the story is persuasive, it can compel the audience to change the world in some way so that the problem might be solved. Professional lawyers employ narrative all the time, taking a client's initial story, filtering and framing it as they develop a theory of the case, and then telling a recomposed story that incorporates key facts from the client's story and relevant legal precedents (stock stories) that fit into the judge's view of the world.[25] If the lawyer is persuasive, the judge will act as desired.

Progressive legal theorists have embraced narrative as an important medium for transforming legal doctrine: "Stories, parables, chronicles, and narratives are powerful means for destroying mindset—the bundle of presuppositions, received wisdom, and shared understandings against a background of which legal and political discourse takes place."[26] Critical race theorists, for example, argue that existing jurisprudence perpetuates racial subordination by failing to acknowledge racism and by failing to incorporate the insights and experiences of people of color into legal doctrine.[27] By looking at the lives of people of color, at their real

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> the everyday world with limited information and help us make choices about asserting our own needs and responding to other people. These stock stories embody our deepest human, social and political values. At the same time, they help us carry out the routine activities of life without constantly having to analyze or question what we are doing. . . . To solve a problem through persuasion of another, we therefore must understand and manipulate the stock stories the other person uses in order to tell a plausible and compelling story—one that moves that person to grant the remedy we want.

López, *supra* note 20, at 3.

25. As a number of theorists have noted, the filtering and translation process is highly volatile, and one in which lawyers themselves can dominate their clients. *See* Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers,* 43 HASTINGS L.J. 769, 811-28 (1992) (noting problematic aspects of the discourse of disability for those seeking to protect the disabled); Alfieri, *supra* note 7, at 2125-31; White, *supra* note 7, at 739-43.

26. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative,* 87 MICH. L. REV. 2411, 2413 (1989); *see also* DERRICK BELL, AND WE ARE NOT SAVED (1987) (devising metaphorical tales and chronicles to uncover the enduring truth of racial injustice); BELL, *supra* note 4 (enlisting use of literary models in quest for new directions in struggle for racial justice); WILLIAMS, *supra* note 4 (utilizing autobiographical storytelling as a literary technique); Derrick Bell, *The Supreme Court, 1984 Term—Foreword: The Civil Rights Chronicles,* 99 HARV. L. REV. 4 (1985) (recounting stories that depict the experiences of people denied their civil rights); Delgado, *supra* note 4 (defending the role of storytelling in legal discourse); Matsuda, *supra* note 9 (utilizing stories to analyze the impact of racist speech on the victims).

27. *See* John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World,* 65 S. CAL. L. REV. 2129 (1992) (challenging the belief that incorporation of blacks into "white culture" will eliminate Black America's "sorry state"); Mari J. Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground,* 11 HARV. WOMEN'S L.J. 1 (1988) (arguing that the perspectives of outside groups should be included in, rather than conformed to, legal knowledge). Richard Delgado has characterized critical race scholarship as the following:

> (1) an insistence on "naming our own reality"; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical

life stories, one gains a better understanding of how racism pervades the law, how law affects people's lives, and how it might be transformed to counter racism.[28]

*Rebellious Lawyering* is itself a collection of outsider narratives. From its introduction through its epilogue, the book is replete with stories about lawyers, clients, and subordinated communities. However, unlike many alternative legal theorists who use narrative to suggest doctrinal change, López derives narrative from specific roots—the lawyer-client relationship—and focuses on those roots rather than extrapolates to doctrine.

López's stories warn of the danger that progressive lawyering might become a form of domination, owing to the lawyer's professional stature, her greater knowledge of the laws and legal institutions, and the benefits of formal state licensure. The progressive lawyer, albeit well-intentioned, exercises inordinate power over a client, controlling the exchange of narratives and so limiting client empowerment.[29] By sharing information and shifting the balance of power between lawyer and client, rebellious lawyering becomes an emancipatory activity. Power can flow between two individuals, just as it can flow between subordinated groups and social institutions.[30]

Thus reconceptualized, the lawyer-client relationship can be a springboard for social change. Once clients are empowered within the lawyer-client relationship, greater empowerment within other relationships, including relationships with government and social institutions, becomes possible. Empowered clients can begin to speak in their own voice—and to solve their own problems—without relying exclusively on the advocacy of lawyers.

To realize social change, however, there must be transformations in both legal practice and doctrine. Persuasive storytelling can play a role

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examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; (7) criticism of liberal legalisms; and (8) an interest in structural determinism—the ways in which legal tools and thought-structures can impede law reform.

Delgado, *supra* note 4, at 95 n.1.

28. Mari Matsuda, for example, notes that critical race theory relies on

> a methodology grounded in the particulars of . . . social reality and experience. This method is consciously both historical and revisionist, attempting to know history from the bottom. From the fear and namelessness of the slave, from the broken treaties of the indigenous Americans, the desire to know history from the bottom has forced scholars to sources often ignored: journals, poems, oral histories, and stories from their own experiences of life in a hierarchically arranged world.

Matsuda, *supra* note 9, at 2324.

29. *See* Alfieri, *supra* note 7, at 2127-30; Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 540-44 (1987-88) (noting factors that make litigation an unlikely vehicle for client mobilization).

30. *See generally* White, *supra* note 7 (using the resistance of one Black community in South Africa to relocation as a starting point for discussing empowerment through change-oriented lawyering).

in bringing about both types of changes. If they are willing to listen, legal decision makers—among the most powerful members of society—do respond to stories. If they are sufficiently compelling, stories do change even deeply rooted mindsets. The goal of the progressive practice of law is to ensure that the voices and stories of subordinated people are heard, even if initially in the language of professional lawyers. The law will not be radically deconstructed and reconstructed as quickly as many legal theorists may hope, but laws will change, just as the practice of law will change.

A basic question remains: how much more effective is rebellious lawyering than regnant lawyering in achieving social change? As López portrays them, clients appear to be better off—more knowledgeable, more empowered. Lawyers, too, seem to find their work more rewarding in that they learn more and get more help from the clients themselves. But will rebellious lawyering really alter the social arrangements that matter, the institutional impediments that people fight to change as progressive lawyers? In the remainder of this Review Essay, I test the notion of rebellious lawyering by examining some of the problems facing one racially subordinated group, Asian Pacific Americans, and the work of lawyers attempting to address those problems through rebellious lawyering.

## II
## REBELLIOUS LAWYERING AND THE ASIAN PACIFIC AMERICAN COMMUNITY

### *A. Client Narratives: Stories from the Asian Pacific American Community*[31]

*Anselmo del Mar has just been transferred to a new job. An army officer during World War II and a high school history teacher in the Philippines for nearly thirty years, he came to the United States four years ago to live with his daughter and her family in Chicago. With a stocky build and jet-black hair that belie his age, the 69-year-old widower has been earning money to help with household expenses by working part-time as a security guard for Midwest Protective Services, a small company that contracts with commercial buildings in downtown Chicago.*

*He and three other Filipino security guards who work at the Press*

31. All of the stories in this Section are based on actual cases, although I do employ fictional dialogues and letters to provide a voice for the clients themselves. In most of the stories I have changed names and locations in order to preserve the confidentiality of the clients.

By invoking stories to illustrate certain problems facing the Asian Pacific American community, I do not mean to suggest that these are the only types of legal problems that they confront. Nor do I imply that lawyers, however noble their intentions, can address all of these problems through the legal system. Rather, I want to illustrate that popular media portrayals of Asians as a "model minority" are false and that Asian and Pacific Islander communities face poverty, racism, sexism, and criminal violence.

*Towers, a 50-story downtown office complex, have just received notices from Midwest that they are being reassigned to a new location. Although he had been working at the Towers for nearly two years without any problems, del Mar has been informed by his supervisor at Midwest that the transfer was necessary because of complaints the company has received from the building manager about "communication problems." The letter explaining the transfer reads:*

Dear Anselmo,

As you know, we have received complaints from the Press Towers building manager about the Filipino security guards who work there. Many tenants in the building and many visitors have said that they have trouble understanding some of the Filipino guards because of their heavy accents. Even though I've never had any trouble understanding you, I think it would be best if we reassign you to another building. We do a lot of business with Press Towers, so I want to stay on their good side. I hope you understand our decision.

* * *

*Mary Saechao and her husband came to this country six years ago from the southeast Asian nation of Laos. Mary, like her husband George, is Lao-Mien, and the two have been married for nearly nine years, ever since Mary's family gave her to him in a traditional Mien marriage ceremony. Life has been hard for the couple lately. Mary earns a living as a nurse's aide at a health clinic; George, once an auto mechanic, has been unemployed for the past four months. Together, they live in a small one-bedroom apartment. Mary is writing a letter to her older sister, who now lives in St. Paul, Minnesota:*

Dearest Sister-

How are you? I am ok. How are the children? They must be so big now. I wish I can go to Minnisota to see them. Will you come here to California to visit me soon? We can go to Disneyland like we did when we first arrive in America. The weather is so nice here. The snow only falls on the mountain tops during the winter. Sometime it rains too much but I like it here. Is my English getting better? I still go to school at night so my writing will get better. The doctor at the clinic told me I can get a better job and make more money. I hope she is right.

I like my job but I get so tired sometimes. The doctor is telling me to get more rest. The new nurse is so hard on us. She just yells at everybody. Remember Judy? She was the nurse who worked with me last year. She is having a baby! Judy looks so big! I think she's having twin babies. I want to stay at the clinic because we need the money so much.

You know how George can be. Life is so hard for him after he lost his job at the garage. He wants to work but all the time he is outside and then he comes home so late. I don't know where is sometimes. My friends say he is gambling the money. He doesn't drink too much anymore, but on the weekends he gets drunk and spends all the money. I try to make him stop but he just yells at me and hits me. Just like he hit me when we first come to America. My arm still hurts because he hit me last week. I hope he can get a job soon. We need the money to pay the food and rent. Maybe George will not get so mad at me if he get a job.

I know I am George's wife but sometimes I get exhausted. The elders tell me that Mien people supposed to stay together. Sometime I just want to leave and live with you in Minnisota! I know what you will say. Just wait and it will get better. I hope you are right. I will try harder so he will not get mad at me.

Please write back to me soon! Send pictures of the children too!

Mary

* * *

"How long have you lived in the United States?"

"About five years. Came here in June '88. You know how it is. Me and my sister got student visas and ended up staying here."

"You're from Samoa?"

"Yeah. Western Samoa. American Samoa's a U.S. colony. Western Samoa's a whole other country. Bet you can't tell us apart, huh."

"Not really. You're going to stay here?"

"Of course. Been living here since I was 16. My mom and dad are here too. They've been here since '80. Gotta help take care of them, bein' the oldest son—and the only one here in the States."

"Got a job?"

"Yeah. Been drivin' a truck since I finished high school. Deliveries mainly. Got lucky too. The boss never checked me for papers. Didn't ask for a green card or nothin'. Probably thought I was American Samoan."

"Really."

"Job don't pay much either. And the guy owes me overtime. Can't complain to anybody, though. He might turn me into INS if I try to sue him."

"Are you getting a green card?"

"Hoping to. But it's not easy. My mom and dad got green cards through that amnesty program. They filed some papers for me last year. They're trying to get me and my sister green cards. Plus my four kid brothers and sisters back in Samoa."

"When are you getting your green card?"

"It's gonna be a while. A guy at the Community Center told my mom that it takes at least two years. Even longer for me 'cause I'm over 21. And, I can't stay here and get the card. First I go back to Samoa. Then I think I'm supposed to go to New Zealand and get processed. Then I can come back here."

"Not too good."

"Nope. But I'll be OK. Still got my job. So long as I don't get fired and some new guy asks me for papers."

* * *

PROFESSIONAL OPPORTUNITIES

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* * *

*Luyen Phan Nguyen had dreams of becoming a doctor. Like his father, who had resumed his medical practice in the United States after escaping from Vietnam in the late 1970s, the nineteen-year-old premedical student at the University of Miami planned on using his knowledge of medicine to make a better life for himself and his family. So when Lu and a few of his college friends went to a party one August night in Coral Springs, Florida, they expected just to have a good time—to have a few drinks, meet some new people, maybe get in a little dancing. What happened at that party and soon afterward shattered Lu Nguyen's dreams of following in his father's footsteps, tragically ending a career that never had a chance to begin.*

*When Lu and his friends arrived at the party, an argument about the Vietnam War started and Lu was taunted by several white men who began ridiculing him because of his Vietnamese ancestry. After an exchange of words, Lu and his friends left the party, knowing that fighting might soon erupt if they stayed much longer. The men followed Lu, and after a chase, what one account called being pursued like a "wounded deer,"*[32] *a gang of about fifteen men caught Lu Nguyen and savagely beat and kicked him to death.*

*Dat Nguyen, Lu's father, had survived the family's arduous escape from Vietnam, the hardships of refugee camps, and the trials of being a newcomer in the United States. His words capture the pain of a bereft father whose hopes for a young son had been snuffed out in a single night's*

32. Naftali Bendavid & Marilyn Garateix, *5 Charged in Fatal Beating of UM Student*, MIAMI HERALD, Aug. 18, 1992, at 1B.

*violent melee: "We left Vietnam because they wouldn't accept us. We come here, and our son is killed. Now where is the safe place for us?"*[33]

### *B. Identifying Community Legal Needs*

The problems and stories of the Asian Pacific American community are highly diverse. Using the word "community" in its singular form is often a misnomer, because Asian Pacific Americans comprise many communities, each with its own history, culture and language: Filipino, Chinese, Japanese, Korean, Vietnamese, Thai, Cambodian, Lao, Lao-Mien, Hmong, Indian, Indonesian, Malaysian, Samoan, Tongan, Guamanian, Native Hawaiian, and more. The legal problems facing individuals from different communities defies simple categorization. The problems of a fourth-generation Japanese American victim of job discrimination, a monolingual refugee from Laos seeking shelter from domestic violence, an elderly immigrant from the Philippines trying to keep a job, and a newcomer from Western Samoa trying to reunite with relatives living abroad all present unique challenges. Add in factors such as gender, sexual orientation, age, and disability, and the problems become even more complex.

Despite the diversity of the Asian Pacific American community, the failure of many members of the larger society to differentiate among discrete groups has led to serious, even tragic, consequences. For example, immigration-related employment discrimination has recently become a problem because of the employer sanctions provisions of the Immigration Reform and Control Act of 1986.[34] Because employers are required to verify their new employees' eligibility to work in the United States, widespread discrimination against Asians and Pacific Islanders based on citizenship and national origin—including appearance and accent—has occurred.[35] Even second- and third-generation American-born citizens can be denied employment solely because of their name or their appearance.[36]

All Asian Pacific Americans are potential targets of hate crimes; perpetrators of anti-Asian violence see all Asian Pacific Americans as representatives of their generalized hatred towards Asians. Sometimes, assailants even misidentify their victims.[37] The best-known example of

33. Mike Clary, *Dream Turns to Tragedy,* L.A. TIMES, Feb. 2, 1993, at E1.

34. 8 U.S.C.A. § 1324a (West Supp. 1993).

35. U.S. GEN. ACCT. OFFICE, REPORT TO THE CONGRESS, IMMIGRATION REFORM: EMPLOYER SANCTIONS AND THE QUESTION OF DISCRIMINATION 38 (1990) (reporting results of nationwide survey in which 19% of employers responded that they have begun discriminatory practices on the basis of national origin or citizenship because of the new immigration law).

36. U.S. COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990s 148-51 (1992) [hereinafter CIVIL RIGHTS ISSUES].

37. *See id.* at 22-49. *See generally* U.S. COMM'N ON CIVIL RIGHTS, RECENT ACTIVITIES AGAINST CITIZENS AND RESIDENTS OF ASIAN DESCENT (1986) [hereinafter RECENT ACTIVITIES].

anti-Asian violence, the 1982 killing of Vincent Chin, a Chinese American, in Detroit, Michigan, was committed by white auto workers who were frustrated by economic competition from Japan.[38] The more recent killing of Luyen Nguyen, a Vietnamese American student, in Coral Springs, Florida,[39] shows how hatred can lead to violence against individuals with little connection to wartime conflicts. The growing violence against Asian Pacific Americans engendered in part by xenophobia, by fear of economic competition from Asian countries, and by hostility arising from the United States' past military involvement in Asia demonstrate that racism and anti-immigrant sentiment are alive and well in the 1990s.[40]

Indeed, there is a large body of legal and social problems that, while not entirely unique to Asians and Pacific Islanders, limit the development of the Asian Pacific American community as a whole and prevent members of the community from fully participating in American society.[41] Discrimination based on race or national origin—less obvious than in the past, but no less prevalent—remains a significant problem in employment, education, criminal justice, political access, and other areas.[42] The infamous "glass ceiling," which prevents some of the most talented Asian Pacific Americans from gaining positions in the upper levels of business, government, and higher education,[43] inhibits community development by limiting access to true power. Discriminatory electoral systems, including at-large elections and redistricting plans that divide Asian and Pacific Islander communities, weaken the power of voters to elect political candidates of their choice and prevent fair representation in legislative bodies and the judiciary.[44]

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38. CIVIL RIGHTS ISSUES, *supra* note 36, at 25-26. In United States v. Ebens, 800 F.2d 1422 (6th Cir. 1986), the civil rights conviction of Ronald Ebens, one of Vincent Chin's killers, was overturned on procedural grounds. Upon retrial, Ebens was acquitted. CIVIL RIGHTS ISSUES, *supra* note 36, at 26.

39. *See supra* notes 32-33 and accompanying text.

40. *See* RECENT ACTIVITIES, *supra* note 37, at 29-39.

41. The United States Commission on Civil Rights has identified several factors that contribute to discrimination against Asian Pacific Americans and create barriers to equal opportunity: (1) society's view of Asian Americans as a model minority; (2) the perception that all Asians in the United States are foreigners; (3) the stereotyping of Asian Americans as unaggressive and lacking in communication skills; (4) the limited English proficiency of many recent immigrants; (5) cultural differences; (6) religious traditions unfamiliar to most Americans; and (7) pre-immigration trauma, particularly among refugees from war-torn countries. CIVIL RIGHTS ISSUES, *supra* note 36, at 18-21.

42. *See generally id.* at 68-189 (describing these problems in detail).

43. *See id.* at 131-36.

44. *See* Su Sun Bai, Comment, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act,* 139 U. PA. L. REV. 731 (1991) (discussing the causes and effects of vote dilution). *See generally* Angelo N. Ancheta & Kathryn K. Imahara, *Multi-Ethnic Voting Rights: Redefining Vote Dilution in Communities of Color,* 27 U.S.F. L. REV. 815 (1993) (discussing the difficulties both in defining and protecting voting rights in multiethnic communities). The underrepresentation of Asian Pacific Americans in government remains an acute problem. For example, California, with nearly 3,000,000 Asian and Pacific Islanders, has the largest population of

Recent demographic changes have ushered in a host of new problems. The population of the Asian Pacific American community in the United States more than doubled between 1980 and 1990, primarily through immigration.[45] Because so many of the Asian and Pacific Islander communities are now composed primarily of recent immigrants and refugees, many of whom have limited English-speaking skills, legal problems related to immigration, naturalization, and language dominate the legal agenda. Restrictive immigration laws prevent family members from reuniting for years,[46] and burdensome naturalization practices can prevent residents from obtaining citizenship and access to political power through the right to vote.[47] Undocumented aliens, unable to take advantage of recent legalization programs[48] and penalized by employer sanctions, live in the shadows of society, often working for less than the minimum wage and enduring unsafe working conditions and harassment because of the fear of deportation.[49]

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Asian Pacific Americans in the country. Although Asian Pacific Americans are 10% of the state's population, only one of California's 120 state legislators is Asian or Pacific Islander, and he was only elected in 1992. *California Assembly Races,* S.F. CHRON., Nov. 5, 1992, at A26 (state assembly election results). Prior to 1992, for over 10 years no Asian or Pacific Islander served in the state assembly or senate; California currently has only two Asian Americans in its congressional delegation. *See* CIVIL RIGHTS ISSUES, *supra* note 36, at 157; *see also* L.A. Chung & Michael McCabe, *State's Asian Americans Push for Unity,* S.F. CHRON., May 7, 1992, at A1, A14 (noting the low number of Asian Pacific American legislators but suggesting that lack of political power may be partly attributable to "ever-changing demographics," which hinder efforts to shape a common agenda).

45. According to the 1990 Census, the Asian and Pacific Islander communities in the United States increased by 108% between 1980 and 1990, from 3.5 million in 1980 to 7.3 million in 1990, making the community one of the fastest growing groups in the country. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS PROFILE: RACE AND HISPANIC ORIGIN 1 (1991) [hereinafter CENSUS PROFILE]. Projections indicate that population growth for Asians and Pacific Islanders will increase at high rates well into the next century. *See* Paul Ong & Suzanne J. Hee, *The Growth of the Asian Pacific American Population: Twenty Million in 2020, in* THE STATE OF ASIAN PACIFIC AMERICA: POLICY ISSUES TO THE YEAR 2020, at 11, 16-17 (1993).

46. *See* BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, VISA BULLETIN 1-4 (March 1993) (reporting that the quota system currently has backlogs of up to 16 years for various categories of family-sponsored immigrants to be admitted to the United States).

47. Naturalization laws require a minimum residency of five years in the United States as a lawful permanent resident (three years, if the person is married to a United States citizen) and the passage of tests in English literacy and knowledge of American history and government. 8 U.S.C. §§ 1427, 1430, 1443 (1988).

48. The Immigration Reform and Control Act of 1986 allowed certain individuals who had resided illegally in the United States prior to January 1, 1982, to obtain legal residency status. 8 U.S.C. § 1255a (1988). Undocumented aliens who were unable to qualify for legalization because their applications were rejected or because they entered the country after January 1, 1982, must remain undocumented unless they obtain status through other provisions of the immigration law, which are extraordinarily restrictive. *See* William R. Tamayo, *Asian Americans and Present U.S. Immigration Policies: A Legacy of Asian Exclusion, in* ASIAN AMERICANS AND THE SUPREME COURT 1105 (Hyung-Chan Kim ed., 1992).

49. *See, e.g.,* CHRIS HOGELAND & KAREN ROSEN, COALITION FOR IMMIGRANT & REFUGEE RIGHTS & SERVICES, DREAMS LOST, DREAMS FOUND: UNDOCUMENTED WOMEN IN THE LAND OF OPPORTUNITY 10-11 (1990) (survey research report of Chinese, Filipina, and Latina undocumented women).

Language-based limitations on access to key government services such as emergency response (including police and fire), health care, and education, as well as to the criminal and civil justice systems, deprive limited-English-speaking Asians and Pacific Islanders of basic human rights.[50] English-only workplace rules designed to stifle the use of "foreign" languages discriminate against Asians and other immigrant groups.[51] Even the basic right to vote can be denied because of the failure of municipalities to provide adequate bilingual ballots required under federal law.[52]

Legal problems specifically affecting Asian Pacific American women pose significant barriers to community development. In addition to racial discrimination, women must endure gender discrimination, including sexual harassment, that limits their ability to advance in the workplace.[53] Domestic violence, which cuts across all lines of race and economic class, falls more heavily on limited-English-speaking immigrant women who may be reliant on spouses not only for economic support but also for legal immigration status.[54]

Notwithstanding the popularly held "model minority" image of Asian Pacific Americans,[55] large sectors of the Asian and Pacific Islander communities continue to live in poverty.[56] Access to adequate housing, education, employment, health care, and government entitlements

50. *See* American Civil Liberties Union of N. Cal., *Bilingual Public Services in California, in* LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 303 (James Crawford ed., 1992).

51. *See* Edward M. Chen, *Language Rights in the Private Sector, in* LANGUAGE LOYALTIES, *supra* note 50, at 269, 270-74; Linda M. Mealey, Note, *English-Only Rules and "Innocent" Employers: Clarifying National Origin Discrimination and Disparate Impact Theory Under Title VII,* 74 MINN. L. REV. 387, 389-94 (1989).

52. The Voting Rights Language Assistance Act of 1992, 42 U.S.C. § 1973aa-1a (West Supp. 1993), requires counties with at least 10,000 individuals from a language minority group whose illiteracy rate is higher than the national average to provide bilingual ballots. *Id.* § 1973aa-1a(b)(2)(A). Cities in Los Angeles County, for example, must provide ballots in Spanish, Chinese, Japanese, Tagalog, and Vietnamese. *See Counties Await Bilingual Ballot,* L.A. DAILY J., Sept. 9, 1992, at 22.

53. *See* CIVIL RIGHTS ISSUES, *supra* note 36, at 153-56.

54. *See id.* at 179 ("Being dependent upon her citizen spouse to petition [for lawful immigration status], a battered woman or a victim of a destructive marriage is forced to stay in an abusive or life-threatening situation, since to do otherwise is to risk the danger of deportation and separation from her children.").

55. *See, e.g.,* Won Moo Hurh & Kwang Chung Kim, *The 'Success' Image of Asian Americans: Its Validity, and Its Practical and Theoretical Implications,* 12 ETHNIC & RACIAL STUD. 512 (1989) (arguing that the success image of Asian Americans is largely a myth and discussing the practical and theoretical ramifications of this myth).

56. Data from the 1980 Census indicated that the poverty rate for all Asian Pacific American families (10.7%) was higher than the national average (9.6%). BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, WE, THE ASIAN AND PACIFIC ISLANDER AMERICANS 13 tbl. 7 (1988). Figures for many subgroups were considerably higher than the national average: Korean - 13.1%; Thai - 13.4%; Indonesian - 15.2%; Vietnamese - 35.1%; Cambodian - 46.9%; Hmong - 65.5%; Laotian - 67.2%. *Id.; see also* Dean S. Toji & James H. Johnson, *Asian and Pacific Islander American Poverty: The Working Poor and the Jobless Poor,* 18 AMERASIA J. 83, 85 (1992) (offering

remains elusive, compounded by linguistic and cultural barriers that may prevent many recent immigrants and refugees from even seeking human services in the first place.

### C. *Rebellious Lawyering and Community Law Offices*

How have progressive lawyers attempted to address the multiplicity of legal problems in the Asian Pacific American community? Since the early 1970s, with the founding of offices such as the Asian Law Caucus in San Francisco and the Asian American Legal Defense and Educational Fund in New York, and continuing into the 1980s and 1990s with the growth of offices such as the Asian Pacific American Legal Center of Southern California, community activists have channeled community-based legal assistance through nonprofit organizations that focus their work on low-income Asians and Pacific Islanders.[57]

The Asian Law Alliance, located in San Jose, California, is a typical nonprofit law office that serves the Asian Pacific American community.[58] Founded in 1977 by volunteer attorneys and law students at Santa Clara University, the Asian Law Alliance has a staff of four lawyers, an executive director, and three administrative and development personnel. Santa Clara County has a large Southeast Asian refugee population (mostly Vietnamese), a well-established Japanese American community, and growing populations of Filipinos, Chinese, Koreans, and Pacific Islanders.[59] Most of the Alliance's clients are low-income refugees and recent immigrants. The office relies on bilingual staff and volunteers to

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an explanation for poverty rates in Asian and Pacific Islander communities and presenting research suggesting that Asian Pacific American poverty rates increased significantly from 1980 to 1990).

57. Nonprofit agencies providing legal services to Asians and Pacific Islanders in communities throughout the United States include the following: the Asian American Center for Justice (Detroit); the Asian American Legal Defense and Education Fund (New York); the Asian Law Alliance (San Jose); the Asian Law Caucus, Inc. (San Francisco); the Asian Pacific American Legal Center of Southern California (Los Angeles); Nihonmachi Legal Outreach (San Francisco); and Na Loio No Na Kanaka (Lawyers for the People of Hawaii) (Honolulu). The National Asian Pacific American Legal Consortium—founded in 1990 by the Asian American Legal Defense and Education Fund, the Asian Law Caucus, and the Asian Pacific American Legal Center—is a national organization based in Washington, D.C., that focuses on legal and civil rights issues affecting the Asian Pacific American community.

By highlighting the work of nonprofit law offices, I do not wish to minimize the important role of private attorneys in advocating for community empowerment. Pro bono attorneys, as well as attorneys with progressive firms, can and often do play the same role of community activists that nonprofit community lawyers play. Private attorneys who collaborate with community lawyers also bring with them sorely needed resources that are lacking in nonprofit offices.

58. I draw here on my personal experience working at the Asian Law Alliance, where I was a staff attorney between 1987 and 1990, and a telephone interview with D.S. Rubiano, Staff Attorney, Asian Law Alliance (Feb. 22, 1993) [hereinafter Rubiano Interview].

59. According to the 1990 Census, Santa Clara County, which has an overall population of nearly 1.5 million, is home to over 260,000 Asians and Pacific Islanders. Asian Pacific Americans constitute 17.5% of the population. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING, SUMMARY POPULATION CHARACTERISTICS: CALIFORNIA 54 tbl. 3 (1991).

provide free legal assistance to its clients. At any given moment, one can hear Vietnamese, Khmer (Cambodian), Lao, Tagalog, Ilocano, Cantonese, Mandarin, Japanese, Korean, or Samoan being spoken in the office. At other times in its history the office has worked on criminal defense, personal injury, business, and employment cases. The office now specializes in five areas of law: immigration, housing, public benefits, family law (focusing on domestic violence), and civil rights. Each lawyer practices in at least one of these areas.

The staff attorneys are the core service providers at the Asian Law Alliance. There are no paralegals at the office and only one administrative assistant, who also works as a receptionist and as a translator and organizer for the office's Vietnamese clients. Although the staff attorneys work on cases and represent clients in court or at administrative proceedings, at least half of their time is spent on a variety of other activities. They perform initial client intake and counseling, conduct community education workshops at English-as-a-Second-Language (ESL) and vocational classes, write and produce educational brochures on legal topics, work with other nonprofit organizations and government social service providers, help organize tenants and immigrant workers, counsel community groups trying to foster collective action on issues such as community economic development and voting rights, and advocate for legislation and public policy at all levels of government through coalitions and organizational networks. Although the idea of having staff attorneys perform all these functions may seem outdated and inefficient, the Asian Law Alliance's model of lawyering is deeply rooted in its mission to serve low-income Asian and Pacific Islander communities through a multiplicity of services.

The model of advocacy adopted by the Asian Law Alliance, as well as by similar offices in California and in other states, is based on the premise that progressive lawyers are community activists who have legal training. As activists, they do much more than represent clients in legal proceedings. Lawyers educate members of the community about their rights. Lawyers organize community members when their rights are jeopardized. Lawyers train others, including law students, for legal and community service work. Lawyers use the media, the policy-making process, and the legal system to advocate for their clients. Lawyers *empower* their clients through advocacy, education, and collaboration.

The particular model of lawyering employed by the Asian Law Alliance is based on three formal categories of work for the staff attorneys: legal representations, community education, and community organizing. By having the lawyers perform educational and organizational work in addition to their assistance of individual clients, the office attempts to provide clients with the means to gain greater control over their lives not only through legal channels but through self-help and non-

legal means such as group organizing and legislative advocacy. Empowerment—the basic goal of rebellious lawyering—is thus concretely defined through the interaction of these three components.[60]

*Lawyer as Legal Representative.* The basic work of any lawyer is representing clients. Whether the client is an individual, a group, or even an entire class of people, the progressive lawyer, like other lawyers, is a zealous advocate for her client's interests.[61] Whatever the setting—court, administrative hearing, or alternative dispute resolution session[62]—the client's interests are primary.

Client empowerment comes in many forms. Lawyers can shift the balance of power between battered woman and batterer, between tenant and landlord, between employee and employer, between welfare recipient and government. Collaboration between lawyer and client also empowers clients, not only because the client is empowered within the lawyer-client relationship itself, but because the client can speak in his own voice, add his voice to the lawyer's, and strengthen the problem-solving abilities of both lawyer and client.

Finally, lawyers empower the client through education. Lawyers educate clients when they counsel them about their rights, about how the legal system functions, and about how a particular client's case fits into the complicated matrix of laws and institutions.[63] Even when the lawyer does not formally represent the client, she can counsel and educate the client about available options and on the limitations of the law. Simply counseling a client about legal—and extralegal—options broadens the client's knowledge of the legal system and allows the client to make informed choices, including *not* working with the lawyer and choosing self-help, or doing nothing at all.

*Lawyer as Community Educator.* Education can come in many

60. The notion of client empowerment is not new to those who have been working as lawyers in subordinated communities: lawyers in the Asian Pacific American community have been using a community empowerment model for nearly twenty years. *See* Richard J.P. Cavosora, *From Storefront to Institution: A Retrospective on the Asian Law Caucus,* THE REPORTER (Asian Law Caucus, San Francisco, CA), July 1992, at 7-11 (describing the development of community empowerment theory beginning in 1975).

61. *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-101, EC 7-1 (1990).

62. Client advocacy need not be limited to formal settings. Alternative methods of dispute resolution, including negotiation, mediation, and arbitration, can offer faster and more responsive remedies to solve client problems. *See generally* Carrie Menkel-Meadow, *Toward Another View of Negotiation: The Structure of Problem Solving,* 31 UCLA L. REV. 754 (1984) (proposing the replacement of the adversarial model of negotiation with a problem-solving model based on clients' needs); Leonard L. Riskin, *Mediation and Lawyers,* 43 OHIO ST. L.J. 29 (1982) (examining ways of maximizing the benefits of mediation while avoiding its pitfalls). *But cf.* Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution,* 1985 WIS. L. REV. 1359 (arguing that ADR may pose a threat to minority disputants because the absence of judicial formality allows more room for prejudice).

63. *See generally* DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (1991).

forms. "Know-your-rights" presentations, as well as multilingual educational brochures, manuals, and videotapes, can be an effective means of providing information about specific legal topics, both as preventative measures (keeping out of trouble) and as empowering measures (knowing when and how to raise legal claims).[64] Self-help workshops can demystify some of the legal procedures that are normally monopolized by lawyers and provide the nonlawyer with the means to improve his own life. Press releases and public service announcements can empower broad sectors of the community by increasing people's knowledge of the law. And leadership development, a direct transfer of knowledge and power to client communities, shares the tools of problem solving so that clients can empower themselves.

*Lawyer as Community Organizer.* Client empowerment often requires grassroots mobilization, either to supplement or to replace appeals through legal channels. Worker and tenant organizing are key components of client empowerment, particularly when clients are recent immigrants or refugees lacking both the personal and political power to successfully challenge employers or landlords. Group protest, letter writing, and use of the media are also important methods of collaborating with clients and can often be significantly more effective and less time-consuming than traditional litigation.

The diversity within the Asian Pacific American community makes organizing and building coalitions among specific ethnic groups critical. Developing coalitions with other subordinated groups around specific issues such as race relations, immigrant rights, domestic violence, and access to government services is equally important. Institutional changes, such as revisions in statutes and administrative regulations, resulting from broader community organizing efforts, can prevent client problems from ripening into problems for which the court system provides the only recourse.

The three roles of the lawyer are inextricably linked within the Asian Law Alliance's rebellious lawyering model. The lawyer-educator will empower clients through an increased knowledge of legal rights. Clients who understand their rights will know when to employ self-help or seek the help of the lawyer-representative in order to try to solve a problem. The lawyer-organizer can further educate the client and develop a strategy that may include advocacy through the courts or organizing the local community to address the problem collectively, or both. Additionally, the lawyer can educate the public and government as part of the strategy to help the individual client. The roles of the rebellious lawyer, therefore, are as intertwined as they are diverse.

64. For a discussion of how a layperson's sense of injury is translated into a legal claim, see William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980).

### D. Applying the Model: Empowering Battered Women

How has the Asian Law Alliance's model been applied to solving the problems of subordinated clients? One example is the Women's Empowerment Project, which focuses on domestic violence in the Asian Pacific community.[65] Although domestic violence is a problem that cuts across racial, ethnic and economic class lines, many battered women in the Asian Pacific American community suffer particularly severe hardships because they are new to this country and lack the English-language and work skills necessary to become independent of their husbands or partners. Moreover, undocumented women will often remain in violent relationships because they need their husbands to file petitions for them to obtain legal immigration status.[66] Empowering battered women requires being sensitive to the isolation that recent immigrants and refugees often experience, as well as responding to the lack of information within newcomer communities about domestic violence and available remedies.

The basic work of the Women's Empowerment Project is to provide counseling and legal representation to battered women by helping them obtain temporary restraining orders and dissolutions of marriages. However, obtaining a restraining order and a divorce are only the culmination of a lengthier process of empowerment in which a battered women decides to break the pattern of violence and seek legal assistance. Because the challenge in empowering battered women lies in helping them realize that domestic violence should not be tolerated and that ending a relationship is an option, the office's educational and organizing efforts are as important as its representation of individual clients.

As part of its community education work, the project has developed an information and resource booklet on domestic violence that has been translated into different Southeast Asian languages, including Vietnamese and Cambodian, to accommodate the large refugee population in the area. The project has also produced a video tape that is used for small group discussions in which a woman can recognize patterns of domestic violence that may exist in her own relationship or in the relationships of friends or relatives. By encouraging open discussions of domestic violence, battered women can overcome obstacles such as dependency on their husbands, and can begin to explore options such as moving into a shelter or seeking a restraining order.

Through the project's community organizing component, the staff works with other service agencies, including local shelters and ethnic-specific community agencies, as part of a broader referral and service network that empowers larger numbers of battered women than might be

65. Rubiano Interview, *supra* note 58.

66. *Id.; see also* CIVIL RIGHTS ISSUES, *supra* note 36, at 179.

reached by a single agency. As a member of Immigrant Women's Task Force of the Coalition for Immigrant and Refugee Rights and Services, the office advocates for policies affecting battered women and undocumented immigrants. For example, the office has advocated for the passage of federal legislation to allow battered women who are undocumented but have been married to United States citizens or lawful permanent residents to file their own petitions for lawful status without having to rely on their spouse or former spouse.[67] As part of a local coalition called Asian Pacific Women Advocating for Rights and Empowerment (AWARE), the office works with service providers and concerned individuals—including previously battered women—on educating the community about domestic violence, reproductive rights, and worker health and safety.

In an area such as domestic violence—where a shift in power between wife and husband, between battered and batterer, can become a question of life and death—client empowerment is critical. By combining educational and organizing work with the direct representation of battered women, the Asian Law Alliance's Women's Empowerment Project seeks to help women help themselves in ending domestic violence.

## III
## COMMUNITY NARRATIVES AND COMMUNITY EMPOWERMENT: TOWARD A THEORY OF COMMUNITY LAWYERING

The central tenet of rebellious lawyering is the empowerment of clients. Progressive lawyers who engage clients in problem solving can shift power from themselves to clients, enabling clients to collaborate in the process of social change. In this way, the lawyer-client relationship can provide a seed for the shifting of social arrangements that can empower subordinated groups. As López states, "if people subordinated by political and social life can learn to recognize and value and extend their own problem-solving know-how, they . . . may gain confidence in their ability to handle situations that they would otherwise experience as utterly foreign and unmanageable, with or without a lawyer as representative" (p. 70).

Can rebellious lawyering help bring about the shifts in *institutional* power that are also necessary to construct a social reality that alleviates subordination?

Unfortunately, López is not entirely clear about how to expand the rebellious lawyering model to address political and social domination.

67. Representative of such legislation is the Violence Against Women Act, H.R. 1133, 103d Cong., 1st Sess. (1993).

Like other theorists who have used the post-structuralist lens to focus on lawyer domination and client subordination,[68] López dwells on the microdynamics of lawyering without providing a normative course for correcting institutional constraints caused by racial, sexual, and other forms of class-based discrimination.

I offer here a theory of lawyering—what I call "community lawyering"—that attempts to expand upon the notion of rebellious lawyering by broadly defining "client" to include the racially subordinated group to which the individual client belongs. Community lawyering is a model for challenging racial ideologies and empowering both a subordinated community and specific individuals within that community.[69]

A broader approach to rebellious lawyering is necessary to address better the problems of Asian Pacific Americans. Like other people of color, Asian Pacific Americans suffer the effects of a racism so deeply rooted and pervasive that it infects the mindsets of all members of society. Advocacy, education, and organizing, no matter how collaborative, must work not only to empower clients within the lawyer-client relationship, but to dispel the myths of racial superiority and inferiority that can exist in the lawyer-client relationship and in all other relationships where power flows between individuals, groups, and institutions.

### *A. Racial Subordination and the Distortion of Narratives*

Lawyers working with Asians, Pacific Islanders, and other people of color know that racial minorities are still subordinated in American society. A metaphor such as storytelling is meaningless unless it helps to neutralize the distortive effects of prejudice. What good are narratives when the legal audience is unwilling to listen or when its views of the world are perverted by racism, sexism, and homophobia?

The Asian Pacific American community has come far since the days when anti-Asian violence was countenanced by the courts;[70] when

68. *See, e.g.*, White, *supra* note 19, at 1501-09 (examining the conception of power based on the post-structuralist paradigm).

69. For convenience, I use the term "community lawyer" throughout the remainder of this Review Essay. In using this term, I include not only individuals who have earned law degrees and are licensed to practice law, but also paralegals, legal assistants, legal secretaries, and other legal workers who use their knowledge of the law and the legal system to advocate community interests and to educate others about community problems.

70. In holding that Chinese and other nonwhite people were prohibited from testifying against whites in criminal trials, the California Supreme Court's decision in People v. Hall, 4 Cal. 399, 403-05 (1854), in effect enabled whites to assault or kill Asians with impunity.

racially restrictive immigration[71] and naturalization[72] laws locked Asians out of the country or out of American citizenship; when antimiscegenation statutes[73] mandated racial purity; and when overt educational, housing, and public accommodations discrimination cheated immigrants and citizens alike out of full membership in society.[74] But, despite this advancement, the Asian Pacific American community still remains an outsider group. Racial discrimination continues to exist; communities are now composed largely of newcomers who have limited-English-speaking skills and are disenfranchised because of their immigration status; and Asians and Pacific Islanders are underrepresented in the halls of power, whether in the corporate sector or in government.[75] For many Asian Pacific Americans the simple goal of "belonging to America"[76] is as elusive as ever.

Racism is no less prevalent in the legal system.[77] Lawyers who are themselves members of the Asian Pacific American community are often disempowered because of the effects of subordination they have suffered personally. The status of Asian Pacific American lawyers as accepted members of the legal profession is a recent phenomenon:[78] twenty-five

71. *See, e.g.*, Tydings-McDuffie Act, ch. 84, 48 Stat. 456 (1934) (limiting Filipino immigration to the United States to an annual quota of 50) (amended 1946); Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (suspending the immigration of Chinese laborers to the U.S. for 10 years) (repealed 1943); Immigration Act of 1917, ch. 29, 39 stat. 874 (creating "Asiatic barred zone") (repealed 1952). *See generally* BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION, 1850-1990, at 17-42 (1993) (tracing history of anti-Asian exclusionary immigration and naturalization laws).

72. Chinese were not allowed to become naturalized American citizens until 1943. *See* Act of Dec. 17, 1943, ch. 344, 57 Stat. 600. In 1946, Congress enacted legislation granting eligibility for naturalization to Filipinos and to Asian Indians. *See* Act of July 2, 1946, ch. 534, 60 Stat. 416. Japanese, who earlier had been declared ineligible for naturalization by the Supreme Court in Ozawa v. United States, 260 U.S. 178, 198 (1922), were finally allowed to naturalize in 1953. *See* Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163.

73. For example, California's antimiscegenation law, passed in 1880, prohibited the marriage of a white person to a "negro, mulatto, or Mongolian." *See* TAKAKI, *supra* note 10, at 101-02. In 1933, the law was amended to include the "Malay race," which restricted intermarriage between whites and Filipinos. CIVIL RIGHTS ISSUES, *supra* note 36, at 7. Although many laws were eventually repealed, it was not until the late 1960s that the United States Supreme Court declared state antimiscegenation laws to be unconstitutional. Loving v. Virginia, 388 U.S. 1, 12 (1967).

74. *See* CIVIL RIGHTS ISSUES, *supra* note 36, at 6-9.

75. *See supra* notes 41-44 and accompanying text.

76. *See generally* KENNETH L. KARST, BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION (1989) (expounding on the theme of equal citizenship as a principle of American constitutional law).

77. For a discussion of how racism pervades popular culture including the legal system, see BELL, *supra* note 4.

78. According to the 1980 Census, although Asian Pacific Americans constituted 2.9% of the population, they were only 0.7% of the lawyers nationwide. *See* CIVIL RIGHTS ISSUES, *supra* note 36, at 173-74. In California, where Asians and Pacific Islanders constitute nearly 10% of the population, CENSUS PROFILE, *supra* note 45, at 7 (1990 data), only 3% of the state's licensed attorneys are Asian or Pacific Islander according to a survey done in 1991. *Our Profession, Ourselves,* CAL. LAW., Apr. 1992, at 31, 37.

years ago, when most new law school graduates were born, Asian Pacific Americans were almost unheard of in the legal community.[79] The number of Asian Pacific American lawyers is increasing, but stratification exists within the profession and partnerships at prestigious law firms are few and far between, reflecting in part the "glass ceiling" that plagues other members of the Asian Pacific American community.[80]

Despite pervasive racial subordination, Asian Pacific Americans are still portrayed in the stock stories of the public as the "model minority," the Ivy League whiz kids and the small business owners whose purported achievements are contrasted with the problems of other communities of color in order to perpetuate racist convictions of the innate inferiority of those communities' members.[81] Progressive lawyers and others who attempt to overcome problems of racial subordination must thus grapple with two problems: (1) real, deeply entrenched racial discrimination, and (2) the myth that discrimination is no longer a problem for the Asian Pacific American community. Lawyers trying to institute change must therefore adopt strategies that confront racism directly and challenge the ideological underpinnings of the "color-blind" society.[82]

### *B. Lawyering to Empower Communities*

The stories of clients and communities have a critical role to play in confronting the institutional and ideological obstacles to the empowerment of Asian Pacific Americans. Community narratives—the stories that express the voices of Asians and Pacific Islanders and rebut preexisting misconceptions that lead to subordination—must be expounded so that new social realities can be constructed to empower Asian Pacific Americans.

Of course, defining "community narratives" can be just as problematic as defining "community." Which community does the lawyer represent? All Asian Pacific Americans? Low-income Asian Pacific Americans? Specific ethnic groups, such as Chinese Americans or Filipino Americans? Asian Pacific American women? Gays and lesbians? The elderly? A seemingly facile answer would be "all of the above." But that answer captures the reality of what community lawyers must do when representing communities on specific issues.

Anti-Asian violence, for example, cuts across all lines of national origin and economic class. Employment discrimination based on race

79. *See* ABEL, *supra* note 15, at 104.

80. *See id.* at 106. Among 247 of the 250 largest New York City law firms in 1987, 88 had no Asian American lawyers and 76% had no Asian American partners. *Id.* This low number of partners at large firms is partly a reflection of the low number of Asians and Pacific Islanders who have entered the profession.

81. *See* Hurh & Kim, *supra* note 55, at 530.

82. *See generally* Gotanda, *supra* note 4 (discussing the ideological nature of color-blind constitutionalism).

can affect any Asian Pacific American and can be compounded by prejudices against the person's age, gender, or sexual orientation. Further, failure to confront issues affecting the civil and human rights of one group can mean compromising the rights of other groups. For instance, the defense of immigrants from discriminatory treatment and apprehension by the Immigration and Naturalization Service has direct effects on immigrants—legal and undocumented. But when the Border Patrol targets specific ethnic groups for apprehension, primarily on the basis of physical appearance, then the civil liberties of all people—immigrant and citizen alike—are compromised.

Conflicts of interest can and do arise within the community. Defining a community as a client leads inevitably to dilemmas because of the diversity of views within any community. Not all Asian Pacific Americans are opposed to English-only legislation; not all Asian Pacific Americans desire less restrictive immigration laws; not all Asian Pacific Americans favor affirmative action programs in the workplace or in education; not all Asian Pacific Americans want stronger civil rights laws for gays and lesbians; not all Asian Pacific Americans support entitlements legislation to help poor people.

Nevertheless, with community empowerment as the goal of community lawyering, it is possible to focus on issues, even controversial and divisive ones, that will result in greater self-determination and power for the whole community. Advocating for stronger hate crimes legislation, for greater enforcement of civil rights laws, for increased access and representation in the political process, for greater governmental and corporate commitment to community economic development, and for increased availability of human and social services for immigrants and refugees translates community narratives and empowers the Asian Pacific American community as a whole.

Community lawyering implies a dual role for the lawyer as advocate. First, community lawyers must translate community narratives in the different facets of their day-to-day work, whether it is individual client representation or broader community organizing efforts.[83] Second, the community lawyer must collaborate with client communities on spe-

83. By suggesting that the community lawyer is an advocate for an entire subordinated community, I do not mean to imply that tensions do not arise between the representation of individual client interests and the representation of group interests. Lawyers face this dilemma whenever they argue for doctrinal change through the courts: a short-term victory, such as a settlement or an adherence to existing legal rules that benefits the client, may conflict with a long-term strategy, such as the overturning of a longstanding precedent that adversely affects the community as a whole. *See, e.g.*, Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976) (exploring the conflict between the educational interests of clients and the integration ideals of civil rights lawyers); *cf.* Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101, 1110-29 (1990) (discussing the ethical tension experienced by legal services lawyers advocating for the needs of an individual client in the context of the needs of a community of clients).

cific issues that address racial subordination. Basic civil rights issues involving racial discrimination are but one example. In other words, community lawyers must challenge racial ideology wherever and whenever they find it.

Once translated, community narratives are useful tools in a variety of fora. Class actions and impact litigation, the traditional forms of legal representation of group interests, are avenues for advocating on behalf of Asian Pacific American interests. Grassroots organizing and group protests are important tools. Advocating for community empowerment also means translating community stories in places where the voices of Asian Pacific Americans are rarely heard: in the mass media; in the halls of legislatures; and in the board rooms of foundations and corporations. Effective community lawyering even means developing and using the same types of transactional skills that in-house counsel and corporate lawyers use when advocating for the interests of large businesses: negotiating agreements, making deals, being a player where political and economic power is greatest.

Community lawyering must also be a collaborative effort. It is all too easy to lose touch with a community when working in the halls of power, even if one's goal is to transfer power back to the community. Community members have to play a central role in community empowerment; their lives are the most affected and they have the greatest understanding of their own communities. Moreover, lawyers and clients cannot work in isolation. Effective community advocacy means building (and re-building) bridges with other subordinated communities, including other people of color, religious minorities, gays and lesbians, and the disabled. Confronted with the complex problems of interracial and interethnic conflict, community lawyers must provide leadership in improving relations between people of color themselves and between people of color and whites. The stories of subordinated groups are very similar, and collaboration between groups, like the collaboration between lawyers and clients, can be both emancipatory and empowering.

Community narratives can also play a central role in educating the general public. Like other people of color, Asian Pacific Americans are often misportrayed in the mass media, either reduced to stereotype or ignored altogether. Images that work their way into the stock stories of society, including the stock stories of legal decision-makers, can become so deeply embedded[84] that no amount of legal argument or client testimony seems to be able to expose the inherent racism, sexism, or homophobia within those images.[85] Community lawyers can play an

84. *See, e.g.*, Lawrence, *supra* note 4 (discussing unconscious racism).

85. *See* Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992) (arguing that free speech does little to alleviate systemic social ills such as racism and sexism).

important part in countering negative images by educating the public about the community and its legal problems. Telling a real story—putting a human face on a member of the community—challenges stereotypes and unmasks the subordination caused by misconceptions within the larger society.

### C. *Applying the Community Lawyering Model: The Voting Rights of Asian Pacific Americans*

How might the community lawyering model work in practice? I rely here on personal experience to illustrate how the translation of community interests and narratives can be used to challenge racial subordination and empower the Asian Pacific American community as a whole. My example, drawn from recent voting rights advocacy, illustrates the dual role of the community lawyer in challenging both the systemic causes of discrimination and the popular stereotypes attached to Asian Pacific Americans.

#### *1. Asian Pacific American Political Empowerment: Reality and Myth*

Political empowerment remains an elusive goal for Asian Pacific Americans. Despite the large population growth in the Asian Pacific American community in the past decade, concomitant growth in political power has not occurred. If political success is measured by the number of Asians or Pacific Islanders in state or national political office, then the community has not fared well. Outside of the Hawaii and California delegations, there are no Asian Pacific Americans in Congress. And even in California, where Asians and Pacific Islanders comprise ten percent of the population, there were no Asian Pacific Americans in the state legislature for over ten years until the election of a state assembly member in 1992.[86]

But popular images of Asian Pacific Americans as a politically invisible constituency[87] are more myth than fact. Asian Pacific Americans do play important political roles. Campaign contributions remain a significant form of political participation, more and more Asian Pacific Americans are running for political office, and voter registration and turnout are increasing as local groups become active in political education and recruitment.[88] The community narrative of political activism runs counter, therefore, to the popular myth of political noninvolvement.

86. *See* CIVIL RIGHTS ISSUES, *supra* note 36, at 157; *California Assembly Races, supra* note 44, at A26; Chung & McCabe, *supra* note 44, at A1.

87. *See, e.g.*, William McGurn, *The Silent Minority*, NAT'L REV., June 24, 1991, at 19 (portraying Asian Americans as the silent minority that is often ignored by the press and political parties, Democrats and Republicans alike).

88. *See, e.g.*, Stewart Kwoh & Mindy Hui, *Empowering Our Communities: Political Policy*, *in* THE STATE OF ASIAN PACIFIC AMERICA, *supra* note 45, at 189 (proposing a comprehensive approach to political empowerment for the Asian Pacific American community); Chung & McCabe,

Asian Pacific Americans have failed to attain greater political representation because of internal impediments—including diverse ethnic groups, large noncitizen populations, and low voter registration—and external impediments—including racism and anti-immigrant sentiment.

### 2. *Racial Subordination and the Voting Rights Act*[89]

Although it does not guarantee proportional representation for racial minorities, the federal Voting Rights Act provides the statutory basis for empowering minority voters through the elimination of election systems and procedures that result in discrimination. A common legal challenge involves at-large election, in which the voting strength of minority voters is diluted because they must vote in citywide or countywide elections in which they are consistently outvoted by the larger population and cannot elect candidates of their choice.[90] One remedy is to create districts within the jurisdiction that contain a majority-minority population so that racial minorities have the potential to elect a candidate of choice.[91]

Similarly, the Voting Rights Act has been invoked to correct legislative redistricting plans that may result in the dilution of minority voting strength. Here, the remedy is to redraw district lines so that a minority group can have a population concentration large enough to elect a candidate of choice, or at least to have siguificant influence over an election. Minority groups can use the Voting Rights Act proactively as well, arguing that minority populations should be maintained when redistricting plans are first drawn.[92]

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*supra* note 44, at A1 (describing the surge in political participation by Asian Pacific Americans and increasing cooperation among Asian groups to form a united political front).

89. 42 U.S.C. §§ 1971-1973bb-1 (1988).

90. Thornburg v. Gingles, 478 U.S. 30, 47-48 (1986) (recognizing that multi-member districts and at-large voting schemes may dilute the voting strength of racial minorities).

91. *See id.* at 50-51.

92. In Shaw v. Reno, 113 S. Ct. 2816 (1993), involving a challenge by white voters to North Carolina's congressional redistricting plan, the Supreme Court held that plaintiffs may state a claim for a violation of the equal protection clause where districting legislation (1) is so irregular on its face and so disregards traditional districting principles that it can only be seen as an attempt to segregate on the basis of race, and (2) lacks a sufficiently compelling justification. *Id.* at 2828. In *Shaw,* the Court found that the creation of a narrow and oddly shaped majority-African American district might violate equal protection principles, and remanded the case for additional findings of fact.

The Court's ruling in *Shaw* casts some doubt on the future of majority-minority districts in cases where there has been no prior finding of minority vote dilution. However, because the Court's reasoning in *Shaw* is heavily predicated on the facts of the case, it is unlikely that future attempts by redistricting bodies to create majority-minority districts will be struck down if those bodies consider other districting criteria such as population equality, geographic compactness, maintaining communities of interest, and preserving municipal boundaries, in addition to racially polarized voting patterns.

### 3. *Redistricting and the Asian Pacific American Community*

Following the 1990 census, activists in the Asian Pacific American community turned their attention to redistricting in order to safeguard the voting rights of community members. In California, a statewide nonpartisan coalition known as the Coalition of Asian Pacific Americans for Fair Reapportionment (CAPAFR) was formed in 1990 to influence the redistricting process.[93] The coalition identified several areas in Northern and Southern California with large Asian or Pacific Islander population concentrations and attempted to keep those concentrations within individual districts.

Working with other minority organizations such as the Mexican American Legal Defense and Educational Fund (MALDEF), members of CAPAFR proposed several state legislative districts with large Asian and Pacific Islander concentrations, including a district in the San Gabriel Valley in Southern California, one in San Francisco, and one in Santa Clara County. CAPAFR representatives testified at legislative hearings, met with individual legislators, and developed a media strategy to disseminate information about the redistricting process.

The legislature did produce redistricting plans that incorporated, in part, the Asian and Pacific Islander population concentrations in the state. However, following Governor Pete Wilson's veto of the legislation that created the plans, the redistricting process left the legislative arena and entered the state court system. The California Supreme Court was charged with ultimately producing the state's redistricting plan.[94]

Along with other attorneys at the Asian Law Caucus and the Asian Pacific American Legal Center, I represented CAPAFR before the California Supreme Court. After several meetings with CAPAFR to finalize the proposed plans, we prepared papers and briefs and presented oral testimony before a panel of special masters who had been appointed by the court to develop the redistricting plans. Arguing for the maintenance of populations in legislative districts to prevent violations of the Voting Rights Act, we stressed the severe underrepresentation of Asian Pacific Americans in state government. The special masters eventually developed a plan that incorporated some of CAPAFR's recommendations, but the plan nevertheless divided several concentrations of Asian Pacific Americans in Northern California.[95]

In written[96] and oral arguments before the California Supreme Court, we argued that populations had to be maintained to accommodate

93. Brief of the Coalition of Asian Pacific Americans for Fair Reapportionment (CAPAFR) as Amicus Curiae at 1, Wilson v. Eu, 823 P.2d 545 (Cal. 1992) (No. S022835) [hereinafter CAPAFR Brief].

94. That plan was ultimately approved in Wilson v. Eu, 823 P.2d 545 (Cal. 1992).

95. *See* CAPAFR Brief, *supra* note 93, at 11-15.

96. *Id.*

the political interests of the Asian and Pacific Islander population. We returned to the theme of disparities—between population and political representation and between political stereotypes and political realities. The Asian Pacific American population, we argued, had finally arrived on the political scene. Both law and sound public policy required the creation of districts that accommodated the community's potential to elect candidates of choice. Although the court eventually adopted almost all of the special masters' plan as the final state plan, we did secure a partial victory: the court altered the special masters' plan to maintain the integrity of a population concentration in the Southern California area, the only alteration made by the court.[97]

Defending the voting rights of Asian Pacific Americans requires the translation of community narratives. Although the political process is rife with multiple interests and multiple narratives, the protection of fundamental voting rights is a powerful story with few counter-stories. The story of Asian Pacific American political participation is one that is only now becoming widely heard, as legal and political audiences realize that the voices in the community are both numerous and more powerful.

## IV

## THE LIMITS OF LAWYERING AGAINST SUBORDINATION

One of the first things my supervisor instructed me to do when I started work as a legal services lawyer was to learn how to say "no." For lawyers and others committed to progressive practice, work is often the practice of saying "no": telling clients that there just isn't much we (or you) can do because the laws don't help, legal institutions are inaccessible unless you have the money to pay, and lawyers either don't have the resources or can't do the work because the government says that it's too political for nonprofit agencies and legal aid offices.

The inherent contradiction of progressive law practice is perceiving the world in a certain way, trying to change the world through problem solving, and then realizing that you cannot do very much because the problems are too large and the people you are trying to persuade do not perceive that there is any problem at all. In other words, advocating for change under a system of laws and legal institutions that disfavors change and limit possibilities for change is the dilemma with which progressive lawyers and legal workers struggle every day.

I return to the basic question: can rebellious lawyering really make a difference? I think it can, but perhaps not to the degree that López and other legal scholars expect. First, a lack of time and resources can dic-

97. *Wilson*, 823 P.2d at 555. Because the court relied on several nonracial districting criteria—including compactness and preserving communities of interest—to reach its decision, the plan would most likely be immune from an equal protection challenge under the United States Supreme Court's recent decision in Shaw v. Reno, 113 S. Ct. 2816 (1993).

tate a practice in which lawyers have to struggle simply to meet deadlines and to avoid malpractice. Getting lawyers to take the time to think self-critically about their work, let alone to actually implement the rebellious lawyering model, is problematic given the massive number of clients that many progressive lawyers, particularly legal aid lawyers, must see every day.

Second, rebellious lawyering assumes a high level of client activism. Clients have to play a central role in changing their own lives for the better. From their perspective, mere survival may be more important than change. Subordinated people know all too well the risks of change: it can mean losing a job, becoming homeless, or even being deported from the country.

Finally, even if progressive lawyers adopt rebellious lawyering in their day-to-day practices, it is not at all clear that rebellious lawyering can usher in the transformations needed to address systemic subordination. Rebellious lawyering does shift the balance of power between lawyer and client. Clients can be freed from the domination of lawyers that so inhibits client empowerment within the lawyer-client relationship. But will this increased knowledge and power in clients really help alleviate poverty or minimize discrimination based on race, gender, disability, or sexual orientation? Even employing the community lawyering model that I suggest, institutional mindsets may be so deeply entrenched that even the combined efforts of lawyer and client will often be insufficient.

Transforming the world through problem solving happens all the time, often unnoticed, and usually without the help of professional lawyers. Clients who collectively understand that they are problem solvers thus have a greater potential to solve many of the problems of subordination than do the very small number of lawyers who work for social change. Sheer numbers would seem to suggest this. But achieving social change requires more than just numbers, particularly when so many people are either not willing to change or are trying very hard to change the world back to the way things were before.

The lessons I have learned from my own work as a progressive lawyer point in two directions: toward clients, as López explicitly suggests, and away from law, as López implicitly suggests. Community lawyers, particularly those who work with racially-subordinated groups such as Asians and Pacific Islanders, must remind themselves that they are part of the community for which they work. The lives of their clients are not that different from their own. Personal empowerment can go hand-in-hand with the client empowerment that results from rebellious lawyering. Sharing power and responsibility can make the work easier for everyone.

Consistent with the idea of client empowerment is the notion that rebellious lawyers have to transcend the conventional definition of lawyer

when they want to be community activists. We are often told that law is not the same as politics. This is wrong. Law is all about politics, and progressive lawyers have to understand and use political means to achieve the lofty goals they often set for themselves. Lawyering that attempts to overcome the basic contradictions of progressive practice must expand the lawyer's work to include a broad range of legal and political activities.

Despite the formal limitations on legal aid and other nonprofit offices on lobbying and on the representation of controversial clients and issues,[98] progressive lawyering is inherently political. To achieve the institutional change that can address systemic subordination, lawyering must include lobbying, power-brokering, organizing, educating and representing clients. If López is correct in saying that lawyering is just one form of problem solving, then problem solving to empower subordinated communities must challenge the ways in which power is held within society, not just the way power is allocated between lawyers and clients.

No one expects all of this to happen overnight, or even in one lawyer's lifetime. The progressive practice of law is a long-range endeavor. The world changes as people construct new social realities; lawyering to improve the lives of subordinated people has to adapt to these new realities—and strive to create new realities. Initiating social change means maintaining a vision of what should be right about the world, while constantly reevaluating one's own work in light of this goal. Ultimately, the success of rebellious lawyering will be measured in the same way that all forms of activism are measured: by how close we have come to realizing those elusive, but not unattainable, ideals of economic and social justice.

## CONCLUSION

I began this essay with an admonition: "Give us something we can use." Professor López's *Rebellious Lawyering* is something all of us—professional and lay lawyers—can definitely use. For those who work in community service, the book offers that rare opportunity to read about one's self, to stop and think and wonder about possibilities, to realize that "lawyering, no less than other activist vocations, must itself reflect and occasionally even usher in the world we hope to create" (p. 382). For those unfamiliar with, or even hostile to, the labor of progressive lawyers and law offices, the book offers a glimpse into the personal side of work—the everyday experiences, the joys and frustrations of trying to change people's lives and make things better. If nothing else, *Rebellious Lawyering* is a cogent reminder that because people share common experiences, by working together they can make a difference.

98. *See* Abel, *supra* note 12, at 576-621 (documenting contradictions within depoliticized legal aid lawyering).