2007

Faith in Community: Representing "Colored Town"

Anthony V. Alfieri
University of Miami School of Law, aalfieri@law.miami.edu

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"'What about this isn't a community?'"[1]

INTRODUCTION

Community lawyering is all about faith, faith in others and faith outside the law. For progressive lawyers working in the fields of civil rights and poverty law, faith is expressed in the professional norms of legal-political activism. Ours is the positivist faith of the lawyer-engineer laboring inside the law.[2] Positivism imbues legal-political activists with a deeply held belief in the inexorable progress of law and social reform. Even when our labor falters or the agents and institutions of the law thwart our progress, we hold fast to a reformist conviction accrued from a half century of engagement in political and

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† Professor of Law and Director, Center for Ethics and Public Service, University of Miami School of Law. I am grateful to Wendi Adelson, Sameer Ashar, Adrian Barker Grant, Scott Cummings, Chuck Elsesser, Sheila Foster, Brian Glick, Jennifer Gordon, Ellen Grant, Angela Harris, Amelia Hope Grant, Margaretta Lin, Cindy McKenzie, JoNel Newman, Bernie Perlmutter, Ascanio Piomelli, Jeff Selbin, Purvi Shah, Bill Simon, Maryanne Stanganelli, Jessi Tamayo, Karen Throckmorton, and Kele Williams for their comments and support.

I also wish to thank Leslie Armendariz, Megan Connor, Laura Dominguez, Freddy Funes, Michelle Holmes, Christopher Lomax, Karen Shafrir, and Robin Schard and the University of Miami School of Law library staff for their research assistance, as well as Anand Das, Jason Lee, Lorna Peterson, and the editorial staff of the *California Law Review* for their commitment to the theory and practice of community.

This Article is dedicated to the students, faculty, and partners of the Community Economic Development and Design Clinic at the University of Miami School of Law's Center for Ethics & Public Service.

1. *See* Michael Vasquez & Evan S. Benn, *City Backs Off Closing Camp*, MIAMI HERALD, Jan. 12, 2007, at 5B (quoting Ronnie Holmes, a resident of Umoja Village).

2. On the lawyer as technocratic social engineer and the ideal of scientific law reform, see ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 17-23 (1993) (defining the ideal of scientific law reform as a commitment to the public good through structural, not case-by-case, reforms applying scientific discipline to legal doctrine); WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS 75-76 (1998) (suggesting that some contemporary lawyers have less faith in their judgment about justice than in the social behavioral effects of legal rules); David B. Wilkins, *Social Engineers or Corporate Tools? Brown v. Board of Education and the Conscience of the Black Corporate Bar, in* RACE, LAW & CULTURE: REFLECTIONS ON *Brown v. Board of Education* 137-69 (Austin Sarat ed., 1997).

legal struggle. This belief leads to an almost empirical confidence in lawyer-fashioned solutions crafted from a mix of accumulated judgment and technocratic expertise. Although tempered by the two decades-long retrenchment of the Rehnquist Court and the retreat of the Roberts Court from the civil rights horizons of the late twentieth century,[3] that confidence, albeit diminished, remains unbroken.

For indigent clients and communities of color, by contrast, faith is embedded outside the law in the social norms of everyday life, in the history of a people and the culture of a place.[4] Theirs is the common faith of neighborhoods, churches, and schools. We hear that faith in tenant and homeowner meetings. We see it in restored houses and renovated storefronts. It sounds in the oral histories of fading civil rights memories and in the dissonant voices of community protest. Battered by poverty and violence, this faith not only persists but inspires. Displayed in daily, commonplace acts—parents walking children to school or congregants leaving church services—it survives to a surprising degree outside of law and legal intervention. This Article calls progressive lawyers to step outside law and put their faith, however partial and reticent, in community. Unsteadily secular, it explores how we come by that faith, how we struggle to sustain it, and, most importantly, how we teach others to embrace it.

Like my prior work, the Article stems from two decades of teaching, writing, and institution-building in the fields of clinical legal education,[5] criminal justice,[6] ethics,[7] and poverty law.[8] Each of these fields shapes the lawyering process and influences the content of the lawyer-client relationship in community counseling, negotiation, and advocacy. Taken together, they

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3. *Compare* Brown v. Bd. of Educ., 347 U.S. 483 (1954)(Brown I) *and* Brown v. Bd. of Educ., 349 U.S. 294 (1955)(Brown II) *with* Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1, 127 S.Ct. 2738 (2007).

4. By politics, I mean the local culture, sociology, and political economy of a place. *See generally* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961). On the normative foundations of place, see Susan Bennett, *"The Possibility of a Beloved Place": Residents and Placemaking in Public Housing Communities*, 19 ST. LOUIS U. PUB. L. REV. 259, 259-63 (2000).

5. For accounts of racial identity in civil rights and criminal defense lawyering, see Anthony V. Alfieri, *Gideon in White/Gideon in Black: Race and Identity in Lawyering*, 114 YALE L.J. 1459 (2005); Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. (forthcoming 2008).

6. On the uses of race in prosecuting and defending cases of racially-motivated violence, see Anthony V. Alfieri, *Race Prosecutors, Race Defenders*, 89 GEO. L.J. 2227 (2001); Anthony V. Alfieri, *Race Trials*, 76 TEX. L. REV. 1293 (1998).

7. For treatments of race under conventional ethics rules, see Anthony V. Alfieri, *(Er)Racing an Ethic of Justice*, 51 STAN. L. REV. 935 (1999); Anthony V. Alfieri, *Ethics, Race, and Reform*, 54 STAN. L. REV. 1389 (2002) (reviewing DEBORAH RHODE, IN THE INTEREST OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000)).

8. On the debilitating practices of poverty law advocacy, see Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992); Anthony V. Alfieri, *Impoverished Practices*, 81 GEO. L.J. 2567 (1993).

construct a central part of the legal experience of poor people in communities of color.

Race and class likewise construct part of that experience. The task of taking the measure of that socio-legal experience—its language, psychology, and physicality—has driven much of my work. Animated by race and class,[9] and by extension, the literature of Critical Race Theory[10] and its progeny LatCrit Theory,[11] the work departs from formalist treatments of the lawyer's role and the lawyer-client relationship in communities of color. Instead, the work explores more instrumental and admittedly unresolved accounts of the lawyer's role in, and relationship to, client communities embroiled by law, race, and politics. Critical Race Theory encourages this turn outward by applying multidisciplinary methods to decipher the meaning of race consciousness and racial discourse in law, culture, and society. Moreover, it maps the interconnections between racial identity and power within the constitutional, statutory, and common law traditions that frame the lawyer-client relationship. Informed by race consciousness and racial discourse, racial identity and power mold the role of law, lawyers, and clients in communities of color.

Guardians of such communities, Critical Race theorists seek to ascertain the role of law in the construction of racial hierarchy and racist ideology and, further, to locate the role of legal agents (judges, lawyers, administrators, and law enforcement officers) in the creation and maintenance of dominant/subordinate race relations. Dominant/subordinate relations are everywhere in poor communities, for example in the situated roles of landlord/tenant, creditor/debtor, and caseworker/recipient. In the same way, LatCrit Theory applies cross-disciplinary methods of cultural and socio-legal investigation to understand the place of race in diverse communities of color. Alternately concealed and disclosed, that diversity complicates the relationships of lawyers to clients and communities of color. To clarify and

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9. On the dichotomies of race and class in racial critiques of liberal jurisprudence, see Anthony V. Alfieri, *Black and White*, 85 CALIF. L. REV. 1647 (1997) (reviewing CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995) and CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995)); Anthony V. Alfieri, *Teaching the Law of Race*, 89 CALIF. L. REV. 1605 (2001) (reviewing RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (Juan F. Perea et al. eds., 2000)).

10. Critical Race Theory signals a turn away from colorblind, one-dimensional accounts of race toward more complex race-conscious, multidisciplinary accounts of law, culture, and society. *See generally* CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stenfancic eds., 2d ed. 2000); CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002); *see also* CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed., 2003).

11. LatCrit Theory extends critical accounts of race into multicultural realms of ethnicity and nationality. *See generally* Anthony V. Alfieri, *Color/Identity/Justice: Chicano Trials*, 53 DUKE L.J. 1569 (2004) (reviewing IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE (2003)); Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997).

facilitate those relationships, LatCrit theorists encourage multicultural coalition-building, opening up race and racial identity to a wider inquiry across gender, ethnicity, nationality, and sexual orientation.[12]

Out of weariness and habit, progressive lawyers often overlook these kinds of theoretical teachings in studying the significance of race and class for low-income clients and communities of color. To be sure, progressive lawyers relentlessly confronted by the injuries of race and class well appreciate their cultural, economic, and social significance to clients and communities. Translating that race- and class-conscious appreciation into race- and class-conscious advocacy, however, presents a different challenge.

In previous work investigating the role of race, lawyers, and ethics in the American criminal justice system, I analyzed the use of racial identity, racialized narrative, and race-conscious representation by prosecutors[13] and defenders[14] in cases of racially-motivated violence.[15] Both prosecutorial and defender use of racial identity and racialized narrative in criminal justice advocacy, I discovered, offered profound opportunities and risks for lawyers, criminal offenders, and the victims of racially-motivated crimes. Race-conscious representation illustrates the individual benefits of exploiting those opportunities as well as the collective costs of undertaking those risks. This Article extends that project by examining the race-conscious practices and dilemmas of lawyers representing communities of color in combating the public and private forces of urban impoverishment.

To explore contemporary practices of race-conscious community lawyering both in courthouses and on inner-city streets, the Article presents three case studies culled from the docket of the Community Economic Development and Design ("CEDAD") Clinic at the University of Miami School of Law. Founded in 2000 by a handful of students at the Law School's Center for Ethics & Public Service, the CEDAD Clinic is a community-based education, technical assistance, and law reform program which collaborates with Florida Legal Services and the University's School of Architecture to furnish economic development aid, self-help advocacy training, and group representation to low-income tenants and homeowners, small business entrepreneurs, and nonprofit organizations.[16] Since 2000, CEDAD Clinic

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12. For a comparison of Critical Race Theory and LatCrit Theory, see Alfieri, *Black and White*, *supra* note 9, at 1650-58.

13. For accounts of race prosecutions, see Anthony V. Alfieri, *Prosecuting Race*, 48 DUKE L.J. 1157 (1999); Anthony V. Alfieri, *Retrying Race*, 101 MICH. L. REV. 1141 (2003).

14. For studies of racialized defenses, see Anthony V. Alfieri, *Defending Racial Violence*, 95 COLUM. L. REV. 1301 (1995); Anthony V. Alfieri, *Lynching Ethics: Toward a Theory of Racialized Defenses*, 95 MICH. L. REV. 1063 (1997).

15. On the interconnections of violence and reconstruction in race cases, see Anthony V. Alfieri, *Prosecuting Violence/Reconstructing Community*, 52 STAN. L. REV. 809 (2000).

16. *See* Anthony V. Alfieri, *Teaching Ethics/Doing Justice*, 73 FORDHAM L. REV. 851, 861-62 (2004).

students have worked with tenants, homeowners, and small businesses in the impoverished Coconut Grove Village West neighborhood of Miami, a historically segregated enclave of Bahamian and African-American laborers called the Black Grove. In 2006, CEDAD students expanded their work to help the residents of the likewise blighted Miami neighborhood of Overtown assemble opposition to a proposed interstate highway ramp expansion project traversing its residential school and park districts. Also in 2006, CEDAD students reached out to the displaced public housing residents of Liberty City, a similarly devastated Miami neighborhood now the razed site of the Umoja Village shantytown, a former encampment of homeless squatters. Assisting low-income clients in these historic neighborhoods recasts the form and substance of race-conscious advocacy practices for civil rights and poverty lawyers, especially the meaning of lawyer-client collaboration and the scope of lawyer intervention in offering advocacy or transactional assistance, resolving intramural group conflict, and supplying external, interdisciplinary resources.

The Article is divided into four parts. Part I surveys CEDAD's practices of community lawyering in Coconut Grove Village West, Overtown, and Liberty City. Part II assesses theories of community lawyering, drawing on the record of community economic development, the rise of the theoretics of practice movement, the history of community organizing, and the still evolving rebellious lawyering tradition. Part III considers critiques of community lawyering distilled from contemporary clinical legal scholarship. Part IV appraises the normative and practical dilemmas of race-conscious community lawyering practices.

I
COMMUNITY LAWYERING: COCONUT GROVE VILLAGE WEST, OVERTOWN, AND LIBERTY CITY

"The history of race relations in Miami is a history of displacement and subjugation."[17]

Community lawyering comes slowly. Breaking from the conventions of direct service and law reform representation, it teaches lessons of grassroots democratic process and protest. Neither democratic process nor protest is altogether coherent or manageable. Without dispute resolution guidelines and participatory traditions, experiments in grassroots democracy often degenerate into conflict and turmoil. In the same way, without collective decision-making procedures and strategic planning goals, experiments in grassroots protest frequently collapse into unchecked confrontation and violence.

17. *See* Elizabeth Aranda, *Poor and Homeless in Miami*, MIAMI HERALD, Feb. 7, 2007, at 17A.

Despite the failure of local experiments in community democracy and the breakdown of protest actions into chaos, grassroots democratic norms of process and protest deserve endorsement. That endorsement recognizes both their independent and joint utility. When properly integrated, process informs protest. When pursued independently, process complements protest. Faith in the democratic process and in the act of protest links the communities of Coconut Grove Village West, Overtown, and Liberty City. That faith connects their churches, neighborhoods, and nonprofit organizations. Equally important, it inspires their protest against the inequalities of race and class in the City of Miami. Recent U.S. Census surveys estimated Miami's poverty rate at 28.3 percent, the third highest among places with 250,000 or more people in the nation in 2005.[18] The same census surveys estimated Miami's median household income at $25,211, the second lowest among places with 250,000 or more people in the nation in 2005.[19]

Race-conscious community lawyering confronts the inequalities of race and class head on. Eschewing colorblind claims of neutrality, it stakes out the position that race matters both intrinsically and instrumentally. Intrinsically, race matters because of normative commitments to the dignity, equality, and liberty interests of clients of color. Instrumentally, race matters because courts, legislatures, administrative agencies, and private entities implement color-conscious policies and practices injurious to communities of color. When race matters, racial difference and identity become central to the lawyering process, permeating counseling, negotiation, and litigation. For race-conscious lawyers, difference and identity are things that you can see in clients' faces and hear in their voices. They are things that you can feel in crowded meeting rooms and storefronts. They are things that you can even touch leaning against out-of-line fences or wandering through open-air street markets. The reality of race is spoken, symbolic, and spatial.

CEDAD is about the architecture of race. It is about the physical environment and geography of race amid deteriorating urban centers and sprawling neglected suburbs. CEDAD's institutional goals are straightforward. Chiefly, it seeks to develop a curricular and clinical practice model for teaching the litigation and transactional skills of economic development and nonprofit assistance appropriate to low-income communities. At the same time, it strives to provide economic development education, self-help advocacy training, and group representation to those communities. To that end, it compiles research assessing the adverse economic development impact of government policies, banking and insurance practices, and private housing markets.[20]

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18. *See* BRUCE A. WEBSTER JR. & ALEMAYEHU BISHAW, U.S. CENSUS BUREAU, INCOME, EARNINGS, AND POVERTY DATA FROM THE 2005 AMERICAN COMMUNITY SURVEY 18 (2006).

19. *Id.* at 6.

20. *See* Alfieri, *Teaching Ethics/Doing Justice*, *supra* note 16, at 861-62.

To achieve these curricular and clinical goals, CEDAD students assist low-income tenants and homeowners, small businesses, faith-based entities, and nonprofit groups in fostering grassroots forms of economic development through outreach education, self-help training, and direct service and law reform advocacy. CEDAD students also draft community land trust instruments and zoning regulations, conduct studies of fair housing, gentrification, and vacant lot renewal, and back Florida Legal Services in representing individuals and groups opposing displacement.[21] Faithful to progressive reform, these efforts occur largely *inside* law through rights education, litigation, and business transactions, rather than *outside* law through community organization, mobilization, and protest.

Race and community lawyering intersect both inside and outside law. This intersection is illustrated by CEDAD's work in Coconut Grove Village West, Overtown, and Liberty City. In each neighborhood, CEDAD clinical outreach projects encounter racial identity and racialized narrative. Identity and narrative cut across legal and non-legal contexts, entangling law and politics in a contest over race and geography in the inner-city. The contest gives meaning to acts of lawyer-client collaboration and experiences of community empowerment. That meaning arises outside of law in the anti-poverty strategies of community organization and mobilization. Turn first to the meaning of lawyer-client collaboration in Coconut Grove Village West.

A. Coconut Grove Village West

Initially a joint venture of the Law School and the School of Architecture's Initiative for Urban and Social Ecology at the University's Center for Urban and Community Design,[22] the CEDAD Clinic set out in August 2000 to provide small business counseling, housing rehabilitation assistance, community economic development training, and legal rights education to residents of low-income neighborhoods in the City of Miami and Miami-Dade County. Because of its proximity to the University and the groundwork laid by the Center for Urban and Community Design, CEDAD targeted Coconut Grove Village West as its civic starting point. In search of a suitable clinical model, CEDAD students surveyed extant clinical programs

21. On the history of CEDAD, see CENTER FOR ETHICS & PUBLIC SERVICE, U. MIAMI SCH. L., CEDAD: COMMUNITY ECONOMIC DEVELOPMENT AND DESIGN PROJECT REPORT 2004–05 (2005); CENTER FOR ETHICS & PUBLIC SERVICE, U. MIAMI SCH. L., CEDAD: COMMUNITY ECONOMIC DEVELOPMENT AND DESIGN PROJECT REPORT 2003–2004 (2004); CENTER FOR ETHICS & PUBLIC SERVICE, U. MIAMI SCH. L., CEDAD: COMMUNITY ECONOMIC DEVELOPMENT AND DESIGN PROJECT REPORT 2002–2003 (2003); CEDAD: COMMUNITY ECONOMIC DEVELOPMENT AND DESIGN PROJECT REPORT 2000–2002 (2002).

22. On the history of the Initiative for Urban and Social Ecology at the Center for Urban and Community Design, see REIMAGINING WEST COCONUT GROVE 12-18 (Samina Quraeshi ed., 2005); THE LIVING TRADITIONS OF COCONUT GROVE 14-24 (Samina Quraeshi ed., 2002); Robert C. Jones, Jr., *West Side Story*, 9 MIAMI MAG. 16 (2002).

specializing in community economic development and reviewed the academic literature documenting community economic development projects in equivalent localities. The students also collected anecdotal information from Village West residents and community leaders, including the directors and officers of local economic development corporations, homeowners, landlords, tenants, family and youth counselors, for-profit commercial and residential builders, and clergy. In addition, they conducted an economic justice-based needs assessment investigating discrimination and inequality in banking and insurance practices, housing and community development, and health and social services. The assessment entailed participation in community-based education and technical assistance workshops, partnerships with nonprofit organizations, and the presentation of small business seminars.[23] These outreach efforts involved self-help advice, training, and referral services to individuals and groups in collaboration with Legal Services of Greater Miami and Miami-Dade County volunteer lawyers and law firms. In making such efforts, CEDAD students attended meetings with concerned parent groups, ecumenical councils, municipal and county officials, homeowners and tenants associations, and nonprofit boards. Many students joined in block parties and walking tours as well.

Both the small business educational workshops and the economic justice assessments proved valuable to CEDAD's outreach to the Village West community. In preparation for the workshops, students distributed invitations and promotional materials to every business and church congregation in the neighborhood. At the workshops, housed by government agencies or local nonprofits, students offered instruction in small business planning, disseminated start-up kits, and later conducted tours of area businesses. Furthermore, in mounting assessments of banking and insurance practices, housing and economic development patterns, and health and social service systems, students enlisted the support of the University's School of Business Administration's Center for Nonprofit Management and the City of Miami's Neighborhood Enhancement Team ("NET"). At the local NET office, students staffed a rights education and legal referral table several days a week during the academic year. They also scrutinized community reinvestment, fair housing, and anti-displacement strategies encompassing rent control, low-income housing tax credits, the designation of eviction-free zones, and neighborhood-specific forms of resident-controlled redevelopment.[24] This review spanned community land trusts, smart growth experiments, and vacant lot clean-up

23. For guidance in community-based legal needs assessments, see Francisca D. Fajana, *Race-Based Lawyering: Engaging Minority Communities in Legal Need Assessments*, 36 CLEARINGHOUSE REV. 213, 215-24 (2002).

24. On urban strategies of resident control, see Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REF. 689, 752-71 (1994).

initiatives.[25]

Gradually CEDAD's street-level outreach programs provided a springboard for students to forge increased collaborations with Village West community-based nonprofit groups on campaigns for affordable housing, economic revitalization, fair lending, and housing rehabilitation. The collaborations went beyond the drafting of legal needs questionnaires, tenants' rights guides, and inclusionary zoning proposals to address the disparate impact of gentrification on low-income homeowners and tenants, the competition between rival nonprofit economic development corporations for mixed-use commercial and residential projects, and the rising incidence of black-on-black crime and resulting tensions between black victims and black offenders. Tainted by race and class, these issues defy colorblind resolution inside the law through the familiar conventions of direct service and impact litigation. Instead, they demand race-conscious intervention outside the law through group collaboration and reconciliation. To be effective, intervention must come from within the community, drawing upon its own leadership and group membership resources. The task for race-conscious community lawyers is to learn how to facilitate legal and non-legal intervention without dominating the collaborative process or dictating the result. To better learn that lesson, CEDAD students expanded their reach from Village West to Overtown, confronting intervention in the choice to supply external interdisciplinary resources, rather than in the choice to mediate intramural group conflict over crime, economic development, and housing gentrification.

B. Overtown

In Overtown, CEDAD partners with Florida Legal Services to combat private, government-subsidized forces of gentrification and displacement through legislative lobbying, litigation, and nonprofit assistance. The partnership includes the support of nonprofit groups seeking to build affordable housing. In February 2006, CEDAD students learned of a government-sponsored construction plan to enlarge highway access to the new Miami Performing Arts Center located south of Overtown in downtown Miami. The plan called for the installation of on- and off-ramps furnishing access to the I-95 interstate expressway through Overtown and immediately adjacent to Frederick Douglass Elementary School, Booker T. Washington High School, Overtown Youth Center, and Gibson Park. At the urging of physicians from the Department of Family Medicine and Community Health at the University's

25. For a discussion of community land trust and smart growth strategies of revitalization, see David M. Abromowitz, *Community Land Trusts and Ground Leases*, 1 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 5, 6 (1992); John T. Marshall, *Florida's Downtowns: The Key to Smart Growth, Urban Revitalization, and Green Space Preservation*, 29 FORDHAM URB. L.J. 1509, 1519-27 (2002); Stacey Janeda Pastel, *Community Land Trusts: A Promising Alternative for Affordable Housing*, 6 J. LAND USE & ENVTL. L. 293, 295-301 (1991).

School of Medicine, CEDAD students joined Florida Legal Services lawyers and Overtown community activists to protest the highway ramp extension project.

Historically segregated by Florida's Black Codes and Jim Crow laws in the late 1880s and physically severed and socio-economically blighted by the construction of the I-95 expressway in the late 1950s and mid-1960s, Overtown originally carried the moniker of "Colored Town." Like Miami, the urban history of Overtown combines elements of race, violence, and immigration.[26] It is the history of a community founded by segregation, marred by poverty, and degraded by urban renewal[27] and interstate highway construction.[28] Indeed, the historical decline of Overtown tracks the historical rise of local interstate highways and the growth of the South Florida metropolitan region.[29]

Although part of the South Florida metropolitan area, an area marked by rampant housing market speculation[30] and unbridled commercial development,[31] Overtown stands isolated. Like Village West and Liberty City, Overtown continues to suffer the consequences of historical discrimination and segregation.[32] Weakened by urban flight and suburban retreat, exclusionary

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26. For chronicles of black degradation and displacement in Miami, see MARVIN DUNN, BLACK MIAMI IN THE TWENTIETH CENTURY 151-64 (1997); BRUCE PORTER & MARVIN DUNN, THE MIAMI RIOT OF 1980: CROSSING THE BOUNDS 1-25 (1984); Raymond A. Mohl, *Trouble in Paradise: Race and Housing in Miami during the New Deal Era*, 19 PROLOGUE 6, 7-21 (Spring 1987); *In the Shadow of New Towers*, MIAMI NEW TIMES, Mar. 10, 2005, *available at* 2005 WLRN 4822593.

27. *See* Andrea Eaton, *Impact of Urban Renewal or Land Development Initiatives on African-American Neighborhoods in Dade County Florida*, 3 HOWARD SCROLL: SOC. JUST. L. REV. 49, 50-60 (1995).

28. *See* Raymond A. Mohl, *Race and Space in the Modern City: Interstate-95 and the Black Community in Miami*, *in* URBAN POLICY IN TWENTIETH-CENTURY AMERICA 100 (Arnold R. Hirsch & Raymond A. Mohl eds., 1993); Milan Dluhy et al., *Creating a Positive Future for a Minority Community: Transportation and Urban Renewal Politics in Miami*, 24 J. URB. AFF. 75, 77-84 (2002); Raymond A. Mohl, *Planned Destruction: The Interstates and Central City Housing*, *in* FROM TENEMENTS TO THE TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA 226-45 (John F. Bauman et al. eds., 2000).

29. *See* Michael Turnbell, *Plan To Rebuild I-395 Worries Poor Miami Neighborhood*, ORLANDO SENTINEL, Aug. 3, 2003, at B5.

30. *See* Kirk Nielsen, *Fables of the Reconstruction; Residents of the Blaek Grove are Being Displaced by the Value of the Land They've Lived on for a Century*, MIAMI NEW TIMES, July 14, 2005 (discussing the "Black Grove" in Miami); Robin Pogrebin, *Downtown Miami in Midst of a Building Explosion*, N.Y. TIMES, May 19, 2006, at A16 (describing the development of downtown Miami and the "historic black area" of Overtown). *See generally* Ngai Pindell, *Fear and Loathing: Combating Speculation in Local Communities*, 39 U. MICH. J.L. REFORM 543, 548-57 (2006).

31. *See* John Little, *Legal Advocacy for Community Building in South Florida*, 37 CLEARINGHOUSE REV. 132, 133-35 (2003); Michelle S. Viegas, *Community Development and the South Beach Success Story*, 12 GEO. J. POVERTY L. & POL'Y 389, 392-408 (2005).

32. On segregation in residential housing markets, see Alex M. Johnson, Jr., *How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1605-16 (1995); *see also* Judith E. Koons, *Fair Housing and Community Empowerment: Where the Roof Meets Redemption*, 4 GEO. J. FIGHTING

zoning regulation,[33] and a lack of affordable housing,[34] Overtown relies substantially on community development corporations[35] and the federal government for housing and economic development assistance,[36] particularly neighborhood revitalization grants.[37] Reliance on external assistance for neighborhood revitalization in the form of tax credits or empowerment zones[38] does not preclude community participation in economic development.[39] Community participation, however, fails to halt the past segregation[40] and present resegregation[41] of inner-city public housing and public schools. It also fails to prevent blight[42] and gentrification,[43] in spite of eminent domain and urban renewal initiatives.[44]

POVERTY 75 (1996) (connecting fair housing campaigns to community empowerment).

33. For a discussion of exclusionary zoning techniques, see Henry A. Span, *How the Courts Should Fight Exclusionary Zoning*, 32 SETON HALL L. REV. 1, 8-37 (2001).

34. *See* Jesse M. Keenan, *Affordable Housing Policy in Miami: Inclusionary Zoning and the Median-Income Demographic*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 110, 114-17 (2005).

35. *See* NEAL R. PEIRCE & CAROL F. STEINBACH, CORRECTIVE CAPITALISM: THE RISE OF AMERICA'S COMMUNITY DEVELOPMENT CORPORATIONS 11-35 (1987); Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 766-80 (1997).

36. On the impact of federal housing and community development assistance, see Jenifer J. Curhan, *The HUD Reinvention: A Critical Analysis*, 5 B.U. PUB. INT. L.J. 239, 243-64 (1996); Peter W. Salsich, Jr., *Saving Our Cities: What Role Should the Federal Government Play?*, 36 URB. LAW. 475, 483-92 (2004).

37. *See* Patrick E. Clancy & Leo Quigley, *HOPE VI: A Vital Tool for Comprehensive Neighborhood Revitalization*, 8 GEO. J. ON POVERTY L. & POL'Y 527, 528-39 (2001); Michael S. FitzPatrick, *A Disaster in Every Generation: An Analysis of Hope VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. ON POVERTY L. & POL'Y 421, 435-39 (2000); Ngai Pindell, *Is There Hope for HOPE VI? Community Economic Development and Localism*, 35 CONN. L. REV. 385, 389-95 (2003).

38. *See* Megan J. Ballard, *Profiting From Poverty: The Competition Between For-Profit and Nonprofit Developers for Low-Income Housing Tax Credits*, 55 HASTINGS L.J. 211, 216-28 (2003); Wilton Hyman, *Empowerment Zones, Enterprise Communities, Black Business, and Unemployment*, 53 WASH. U. J. URB. & CONTEMP. L. 143, 146-53 (1998).

39. *See* Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Unchartered Terrain of Community Participation in Economic Development*, 66 BROOK. L. REV. 861, 866-92 (2001).

40. *See* Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. ON POVERTY L. & POL'Y 35, 36-56 (2002); Deborah Kenn, *Institutionalized, Legal Racism: Housing Segregation and Beyond*, 11 B.U. PUB. INT. L.J. 35, 39-43 (2001).

41. *See* Meredith Lee Bryant, *Combating School Resegregation Through Housing: A Need for a Reconceptualization of American Democracy and the Rights It Protects*, 13 HARV. BLACKLETTER L.J. 127, 130-41 (1997); Danielle R. Holley, *Is* Brown *Dying? Exploring the Resegregation Trend in Our Public Schools*, 49 N.Y.L. SCH. L. REV. 1085, 1090-1104 (2005).

42. *See* Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 308-27 (2004).

43. *See* John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433, 435-54 (2003).

44. *See* Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 7-26 (2003).

Building on the premise of community participation, CEDAD students working in Overtown quickly conferred with Department of Family Medicine and Community Health physicians appalled by the adverse public health consequences of constructing highway ramps abutting two schools, a youth center, and a widely utilized park. CEDAD students also reached out to Florida Legal Services lawyers, local nonprofit organizations, and community activists in order to learn about the history of the community and the socio-economic status of its residents. Later this amalgam of groups steered the emergence of the Miami-Dade Countywide Coalition for Emergency Housing Relief.[45]

Moreover, CEDAD students mustered constitutional, statutory, and common law sources in preparation of a legal challenge against the proposed ramp project in federal and state court. And yet, when a Miami-Dade County transportation planning group rejected the ramp project in the face of widespread community opposition,[46] CEDAD abandoned its public health-related outreach efforts and its focus on the racially disparate impact of government-sanctioned programs that physically devastate inner-city neighborhoods, returning to more urgent day-to-day projects. This abandonment of promising new collaborative opportunities to combine race, class, and public health issues in community-based education and mobilization efforts overlooked the importance of continuing to help build grassroots leadership and group membership outside of law and the settled conventions of litigation and legislative lobbying primarily at work in CEDAD's Overtown advocacy efforts.

Here again, race-conscious lawyer intervention may have a place. In this instance, the task for race-conscious community lawyers is to learn how to use legal and non-legal intervention to expand the collaborative process among community leaders, groups, and public health professionals in ameliorating the physical environment and well-being of poor, inner-city residents. Learning to assist low-income neighborhood clients in this way redefines the meaning of lawyer-client collaboration and the scope of lawyer intervention in race-conscious advocacy. In turning to Liberty City's Umoja Village, CEDAD students enlarged this process of redefinition to address the basic offer of advocacy assistance itself.

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45. In September 2006, the Miami-Dade Countywide Coalition for Housing Emergency Relief, including Power U, Haitian Women of Miami, and People Acting for Community Together, demanded that County Commissioners earmark $200 million for low-income housing rental assistance and new construction. *See* Dani McClain, *Protesters Stage Vigil for Housing*, MIAMI HERALD, Sept. 20, 2006. Coalition protesters constructed a "tent city" on the lawn at County Hall and erected two-dimensional cardboard houses resembling tombstones with painted colorful messages declaring, "We won't be pushed out!" and "Four people in a room. Thanks!" Protesters also "held candles and sang We Shall Overcome." Reportedly, "75 people stayed overnight." *Id.*

46. *See* Trenton Daniel & Larry Lebowitz, *Plan for Overtown I-95 Ramps Is Killed*, MIAMI HERALD, May 26, 2006, at B5.

C. Umoja Village, Liberty City

CEDAD's work in Liberty City also comes out of its partnership with Florida Legal Services in assisting displaced public housing residents to relocate and to receive interim housing aid. Like other gentrifying poor neighborhoods with limited rental housing stock, Liberty City is suffering rapidly rising rents and declining vacancy rates.[47] In October 2005, the Miami-Dade County planning department predicted that the Liberty City area needed 294,200 new housing units by 2025, 42 percent applicable to very low- or low-income households.[48] In 2006, a Florida International University study estimated that half of the families in West Liberty City could not afford even a studio apartment in the area.

To tackle these needs, CEDAD works cooperatively with Florida Legal Services to support nonprofit groups in developing vacant lots for commercial enterprises and residential housing under state land use and zoning laws. For the lawyers and law students in this cooperative joint venture, any demonstration of institutional support includes acts of legal and non-legal intervention. Legal intervention may involve litigation, lobbying, and transactional negotiation. Non-legal intervention may entail business planning, capacity building, and group conflict mediation. Both forms of intervention rest on a threshold decision to offer assistance. That decision carries the attendant risk of disrupting or undermining the process of community organization and mohilization outside law. The tension spawned by this risk lessened CEDAD's eagerness to offer aid to the organizers and residents of a recently destroyed six-month-old shantytown located in Liberty City called Umoja Village.[49]

Erected in October 2006 by low-income housing advocates led by Take Back the Land activist Max Rameau and forty homeless men and women, including a family with an eight-week-old baby, the now bulldozed remains of Umoja Village sit on county-owned land at the corner of northwest 17th Avenue and 62nd Street on the vacant site of a 62-unit low-income apartment building razed by the county in 2001.[50] The Village consisted of 16 huts "cobbled together" from plywood, discarded closet doors, and cardboard.[51] Covered by blue tarps and ringed by a row of earthen plots where residents grew cabbage, collard greens, kale, and papaya,[52] the walls of the huts or shacks were "dotted" with old political campaign posters.[53] The shacks

47. *See* Laura Rivera, *In Shantytown for Homeless, an Experiment and a Protest*, N.Y. TIMES, Jan. 16, 2007, at A14.

48. *Id.*

49. The term "umoja" means unity in Swahili. *Id.*

50. *See* Kathie Klarreich, *Homeless Shantytown Vivid Reminder of Leaders' Failures*, MIAMI HERALD, Jan. 3, 2007, at 15A.

51. *See* Rivera, *supra* note 47, at A14.

52. *Id.*

53. *See* Daniel A. Ricker, *Miami Presses for End to Housing Protest*, MIAMI HERALD, Jan. 1, 2007.

measured about 12 feet high, 10 feet wide and eight feet long, some lacked door locks, others lacked doors.[54] Exterior decorations spoke of "hope and anger" and announced demands for "HOUSING NOW."[55] Adjacent to the shacks stood a portable toilet, stacks of firewood, and a kitchen with a pantry, and behind them an improvised cistern shower.[56]

Described as "part social protest and part social experiment," Umoja Village residents governed the encampment through "nightly meetings where decisions on whether to evict people or how to split up chores [were] determined by consensus."[57] Residents maintained their own rooms and took turns doing chores, congregating "in an open-air living room" comprised of "three couches, plastic chairs, seven love seats and an unplugged television set."[58] They collectively abided by "four rules posted outside the makeshift kitchen: respect for one another, no drugs or alcohol, no violence and no sexual harassment."[59] They also received lectures about gentrification, homelessness, and democracy twice a week.[60] Prior to joining the Village, most of the residents fled the city's dangerous and overcrowded homeless shelters in favor of sleeping on the streets or living under city bridges.[61] Some admitted to being former convicts, others to drug addictions.[62] Among the 40 residents, the majority were black, and three out of four residents were men.[63]

Despite the sagging, stained couches, wood-burning barrel grill, and complaints about trash and noise, Liberty City neighbors generally welcomed the Umoja Village residents, providing them with electricity and other living necessities. One neighbor, Sharina Toombs, remarked: "'I like what they're fighting for. I think we all feel we're a part of something.'"[64] Rameau added: "There's a protest element to it, but this is fundamentally not a protest."[65] At a protest, he explained, "'you go to a place, you make your demands heard and then you go home. Here, this is home.'"[66]

Rameau invoked this greater public notion of home when Miami police

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54. *See* Rivera, *supra* note 47, at A14.

55. *See* Robert Samuels, *Shantytown Tour Makes a Point -- and Misses It*, MIAMI HERALD, Feb. 1, 2007, at 1B.

56. *See* Rivera, *supra* note 47, at A14.

57. *Id.*

58. *See* Aranda, *supra* note 17, at 17A; Samuels, *Shantytown*, *supra* note 55, at 1B.

59. *See* Klarreich, *supra* note 50, at 15A.

60. *See* Robert Samuels, *A Lesson on the Housing Crisis*, MIAMI HERALD, Feb. 15, 2007, at 2NC.

61. *See* Francisco Alvarado, et al., *Shanty Talk*, MIAMI NEW TIMES, Dec. 7, 2006; Klarreich, *supra* note 50, at 15A; Tamara Lush, *Protest Mixes Shacks, Shame*, ST. PETERSBURG TIMES, Dec. 5, 2006, at 1A.

62. *See* Samuels, *Lesson*, *supra* note 60, at 2NC.

63. *See* Samuels, *supra* note 55, at 1B.

64. *See* Peter Bailey, *Impromptu Community Gives Thanks in Liberty City Shantytown*, MIAMI HERALD, Nov. 24, 2006, at 1B.

65. *See* Rivera, *supra* note 47, at A14.

66. *Id.*

attempted to evict the Umoja Village squatters, citing the protections afforded the homeless under the landmark federal court settlement in *Pottinger v. City of Miami*, a class-action lawsuit filed in 1988 by the American Civil Liberties Union against the city challenging the police practice of harassing and arresting homeless individuals for the purpose of driving them from public areas.[67] Rebuking this practice of criminalizing homelessness, the court settlement prohibited Miami police officers from arresting homeless individuals for performing essential, life-sustaining acts in public, such as sleeping or eating, when no alternative shelter was available.[68]

Having withstood police eviction, Umoja Village spawned wider protests. At Florida International University ("FIU"), college students erected a mock shantytown on the main campus to highlight the affordable housing crisis in Miami and to show support for the Village residents. Additionally, both FIU and University of Miami students participated in book, clothing, and food drives to benefit residents.[69] Activists elsewhere in Miami pitched temporary tent encampments[70] and erected an eight-foot-tall plywood wall in Liberty City with the names of 1,178 families evicted from the now demolished Scott-Carver low-income housing project. [71]

In defending Umoja Village, Rameau and other housing advocates insisted that "[g]entrification can be stopped only through protest."[72] Bound together, Village squatters and advocates linked protest and democracy.[73] Worried about encroaching on this emerging democratic community and weakening the expressive force of its civic protest, CEDAD students were hesitant initially to offer assistance to Village residents. Only now, months after the Village declared itself a new model community and subsequently burned to the ground in a fire, has CEDAD begun to reach out to displaced Village leaders and residents in partnership with Florida Legal Services.[74] Advanced in conjunction with community-based nonprofit organizations already active in Liberty City, the offers of aid focus on the urgent need to build affordable housing in the inner-city.

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67. *See* Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992); *Shantytown a Stark Lesson for Officials*, MIAMI HERALD, Jan. 17, 2007, at 14A.

68. *See Pottinger*, 810 F. Supp. at 1554, 1584-85; Michael Vasquez & Nicholas Spangler, *Proposed Law May Doom Tent City*, MIAMI HERALD, Dec. 15, 2006, at 1B.

69. See Lisa Arthur, *Students to Back Homeless with a 'Sister Shantytown,'* MIAMI HERALD, Feb. 19, 2007, at 1B.

70. *See* Nicholas Spangler & Gladys Amador, *Demonstrators Take Advantage of Super Bowl*, MIAMI HERALD, Feb. 4, 2007, at 3B.

71. *See* Matthew I. Pinzur, *'Missing' Families to be Listed on Wall*, MIAMI HERALD, Jan. 10, 2007, at 3B.

72. *See* Samuels, *Lesson*, *supra* note 60, at 2NC (quoting Max Rameau).

73. *See* Robert Samuels, *Homeless Gain Library at Umoja Village Shantytown*, MIAMI HERALD, Mar. 4, 2007, at 3NC.

74. Fire destroyed the Village in April, 2007. *See* Robert Samuels, *Umoja Village Burns to the Ground*, MIAMI HERALD, Apr. 26, 2007, at 1A.

To be race-conscious, CEDAD's offers of assistance must recognize the importance of direct participation by communities of color like Umoja Village in planning and monitoring the process of public and private housing construction and rehabilitation. In this way, CEDAD's assistance signifies a different kind of race-conscious lawyer intervention. Once again, the task for race-conscious community lawyers is to learn how to facilitate legal and non-legal interventions in order to expand the collaborative process among community groups, government agencies, and private actors in rebuilding the physical environment inhabited by poor, inner-city residents. Situated inside and outside the law, the interventions may involve basic assistance, conflict resolution or the integration of multidisciplinary resources, such as health or design professionals. Whatever the form of intervention, each gives meaning to lawyer-client cross-racial collaboration. The next section assays the groundwork of community lawyering disclosed in the overlapping histories of community economic development, the theoretics of practice movement, community organizing, and rebellious lawyering.

II
THEORIES OF COMMUNITY LAWYERING

"'Gentrification will become the issue of this generation. Just like segregation was the issue of the generation before us.'"[75]

CEDAD's work in Coconut Grove Village West, Overtown, and Liberty City illustrates the broad range of race-conscious legal and non-legal interventions open to lawyers working collaboratively with individual clients and client groups to aid low-income communities of color. The interventions encompass the threshold decision to provide advocacy assistance, the difficult judgment to mediate intramural group conflict, and the need-based determination to summon external resources. These hard choices acquire further complexity from their multicultural racial contexts. Complexity arises from the cultural differences, social tensions, and economic competition at work in such contexts. Racial identity, impacted by ethnicity, gender, and sexuality, adds to that complexity. Racial discourse, translated into shifting forms of colorblind, color-coded, and color-conscious speech, exacerbates it.

Resolution of the complexity of legal and non-legal interventions comes in part from adherence to the collaborative process of community-centered decision-making and in part from observance of the extra-legal lessons of the civil rights and poor people's struggles of the last century. Lawyer collaboration in community-centered decision-making instills alternative ways

75. *See* Samuels, *Lesson*, *supra* note 60, at 2NC (quoting Max Rameau).

of knowing clients and the social worlds they build outside law. These alternative sets of practical knowledge enhance a lawyer's ability to see, hear, and understand client community. At the same time, lawyer reference to the extra-legal lessons of ongoing civil rights and anti-poverty struggles connects advocacy to client and community norms existing outside of the juridical realm of courts, legislative bodies, and administrative agencies. Those outsider norms link lawyers to client-centered strategies of community education, organization, and mobilization.

Admittedly, even the best efforts toward resolution of legal and non-legal interventions may founder. The collaborative process of community-centered decision-making, for example, may be unavailable. Availability is a function of accessibility and efficacy. Depending on the situation of a community, the collaborative process may prove accessible to lawyers but ineffective for clients. Coconut Grove Village West presents a case in point. In Village West, the divergent needs of low-income homeowners and tenants, the economic competition between rival nonprofit development corporations, and the clash between black crime victims and black criminal offenders render meaningful, community-wide collaboration ineffective even when those groups seem accessible to lawyer intervention.

Similarly, the extra-legal lessons of civil rights and poor people's struggles may be inapplicable for the purposes of intervention. Applicability is a function of time and plaee. Subject to the circumstances of a particular community, the extra-legal lessons of grassroots struggle may appear inaccessible to lawyers and yet effective for clients. Liberty City's Umoja Village furnishes another case in point. In Umoja Village, the culture and social world of the encampment limited lawyer access and intervention but operated effectively for civic governance. Village West and Umoja Village demonstrate that both community-based collaboration and collective struggle are highly contextual. The cultural, geographic, and temporal contingencies of community-based collaboration and struggle inhibit efforts to formulate generalizable principles of legal and non-legal intervention. Nonetheless, well-worn theories of community lawyering can offer useful guidance.

Most current theories of community lawyering derive from the history of civil rights[76] and poor people's[77] movements. Stirred by long standing

76. For comprehensive treatments of the civil rights movement, see TAYLOR BRANCH, AT CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965-1968 (2006); TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-63 (1988); TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963-65 (1998); DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1986). For a survey of civil rights movement lawyers, see JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION (1994); RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *Brown v. Board of Education* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1976); MARK V. TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950 (1987).

traditions of community organization[78] and the modern, post-war politics of rights,[79] the theories aver a legal-political commitment to client and community collaboration. Simultaneously, they acknowledge the limits of rights discourse caused by remedial inadequacy, bureaucratic noncompliance, and a lack of street-level enforcement.[80] Despite criticism,[81] the anti-poverty practice of lawyer-client, community-based collaboration has flourished under the banner of cause lawyering[82] and critical lawyering.[83] The practice has gained added momentum from escalating clashes over environmental justice[84] and immigration.[85] For some, this evolving practice contemplates new forms of governance[86] and democratic activism[87] anchored to specific client and

77. For helpful accounts of twentieth century poor people's movements, see MARTHA F. DAVIS, BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973 (1993); FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 181-361 (1977).

78. On traditions of community organization in civil rights and anti-poverty campaigns, see JOHN DITTMER, LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI (1994); JOHN EGERTON, SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH (1994); ADAM FAIRCLOUGH, BETTER DAY COMING: BLACKS AND EQUALITY, 1890-2000 (2001); RICHARD CLOWARD & FRANCES FOX PIVEN, THE POLITICS OF TURMOIL: ESSAYS ON POVERTY, RACE, AND THE URBAN CRISIS (1975); ROBERT BAILEY, JR., RADICALS IN URBAN POLITICS: THE ALINSKY APPROACH (1974).

79. On rights discourse in mass protest movements, see GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (1991); STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE (2d ed. 2004); Ann Southworth, *Lawyers and the "Myth of Rights" in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469, 477-509 (1999).

80. *See* JOEL F. HANDLER ET AL., LAWYERS AND THE PURSUIT OF LEGAL RIGHTS 3-47 (1978).

81. *See* Gary L. Blasi, *What's a Theory For?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1085-94 (1994); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1102-08 (1994).

82. For wide-ranging studies of cause lawyering, see CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA (Austin Sarat & Stuart Scheingold eds., 2001); STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM AND CAUSE LAWYERING (2004); THE WORLDS CAUSE LAWYERS MAKE: STRUCTURE AND AGENCY IN LEGAL PRACTICE (Austin Sarat & Stuart Scheingold eds., 2005); John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1932-40 (1999).

83. *See* Melanie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 298-313 (1997); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 873-95 (1997).

84. For a systematic account of environmental racism and the environmental justice movement, see LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT (2001).

85. On the emergence of the immigrant rights movement, see JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS (2005).

86. *See* Julissa Reynoso, *Putting Out Fires Before They Start: Community Organizing and Collaborative Governance in the Bronx, U.S.A.*, 24 LAW & INEQ. 213, 244-64 (2006); William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46

community settings.[88] In each of these settings, the practice affirms the norms of client dignity and participation.[89] Dignitary and participatory norms alter the meaning of lawyer-client collaboration and the scope of lawyer intervention in race-conscious advocacy offering basic assistance, resolving intramural group conflict or supplying external interdisciplinary resources.

A. Community Economic Development

The community economic development movement links client dignity and equality norms to participation and self-sufficiency.[90] Shaped in part by anti-poverty protest,[91] the movement reflects a deep commitment to empowerment.[92] Consonant with dignity and participation norms, empowerment strengthens the democratic locus of community lawyering by linking civic engagement, citizenship, and advocacy.[93] The community economic development movement engrafts these normative features upon community-based models of legal services[94] emphasizing group

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WM. & MARY L. REV. 127, 173-98 (2004).

87. *See* Susan D. Bennett, *Little Engines that Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469, 490-507 (2002); Lucie White, *"Democracy" in Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073, 1093-98 (1997).

88. For useful applied analysis of local community lawyering initiatives, see Scott Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, *in* CAUSE LAWYERS AND SOCIAL MOVEMENTS 302-35 (Austin Sarat & Stuart A. Scheingold eds., 2006); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 110-30 (2000); Zenobia Lai, Andrew Leong, & Chi Chi Wu, *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1, 23-34 (2000).

89. *See* Martha Minow, *Lawyering for Human Dignity*, 11 AM. U. J. GENDER SOC. POL'Y & L. 143, 157-70 (2002).

90. On the theoretical underpinnings of the community economic development movement, see WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS AND THE NEW SOCIAL POLICY (2001); Scott L. Cummings & Gregory Volz, *Toward a New Theory of Community Economic Development*, 37 CLEARINGHOUSE REV. 158, 160-67 (2003).

91. *See* LARRY R. JACKSON & WILLIAM A. JOHNSON, PROTEST BY THE POOR: THE WELFARE RIGHTS MOVEMENT IN NEW YORK CITY 31-66 (1974); Ngai Pindell, *Community Economic Development Under Protest*, 32 WM. MITCHELL L. REV. 1719, 1721-29 (2006) (reviewing ANNELISE ORLECK, STORMING CAESARS PALACE: HOW BLACK MOTHERS FOUGHT THEIR OWN WAR ON POVERTY (2005)).

92. *See* William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 464-79 (1994); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 249-57 (1999).

93. On empowerment norms in community lawyering, see Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (reviewing GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992)).

94. *See* Raymond H. Brescia, Robin Golden, & Robert A. Solomon, *Who's In Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 848-62 (1998); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 571-90 (1999).

representation,[95] seen in Coconut Grove Village West, as well as regional and global outreach,[96] seen in Los Angeles and New York City.[97] Allied with public and private reinvestment strategies,[98] the economic self-sufficiency goals[99] of community development practice[100] help redefine the roles and skills of lawyers[101] advocating for inner-city socio-economic needs[102] ranging from child care to transportation.[103] The skills call for cooperative enterprises and partnerships[104] to assist small business development[105] and to spur egalitarian

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95. *See* Stacy Brustin, *Expanding Our Vision of Legal Services Representation—The Hermanas Unidas Project*, 1 AM. U. J. GENDER & L. 39, 46-58 (1993); Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873, 882-93 (1998).

96. *See* Scott L. Cummings, *Global-Local Linkages in the Community Economic Development Field*, *in* PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY (Clare Dalton ed., forthcoming 2008); Scott L. Cummings, *Recentralization: Community Economic Development and the Case for Regionalism*, 8 J. SMALL & EMERGING BUS. L. 131, 144-49 (2004).

97. *Compare* Scott L. Cummings, *Legal Activism in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CALIF. L. REV. 1927 (2007)(describing localism as an alternative labor strategy in Los Angeles) *and* Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1829 (2007)(discussing worker center based campaigns in New York City and global-linked networks of advocates in multiple areas and across national borders).

98. *See* RICHARD D. MARSICO, DEMOCRATIZING CAPITAL: THE HISTORY, LAW, AND REFORM OF THE COMMUNITY REINVESTMENT ACT 131-72 (2005); Michael Klausner, *Market Failure and Community Investment: A Market-Oriented Alternative to the Community Reinvestment Act*, 143 U. PA. L. REV. 1561, 1573-80 (1995); Nona Liegeois & Malcolm Carson, *Accountable Development: Maximizing Community Benefits from Publicly Supported Development*, 37 CLEARINGHOUSE REV. 174, 181-86 (2003) (enumerating community benefits).

99. *See* Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy: Tackling Homelessness Through Economic Self-Sufficiency*, 19 ST. LOUIS U. PUB. L. REV. 385, 400-04 (2000) (discussing job training and economic self-sufficiency for homeless persons).

100. *See* Jeffrey Segal, *Setting Up a Community Economic Development Practice at a Legal Aid Program*, 37 CLEARINGHOUSE REV. 225, 231-34 (2003).

101. *See* Susan R. Jones, *Current Issues in the Changing Roles and Practices of Community Economic Development Lawyers*, 2002 WIS. L. REV. 437, 440-65 (2002).

102. *See* Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689, 752-71 (1994); David Dante Troutt, *Ghettoes Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 HARV. C.R.-C.L. L. REV. 427, 490-506 (2000).

103. *See* Robert D. Bullard, Glenn S. Johnson, & Angel O. Torres, *Building Transportation Equity into Smart Growth*, *in* HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY 179-98 (Robert D. Bullard et al. eds., 2004); Rich Stolz, *Steering Transportation Policy and Planning Toward Community Development*, 37 CLEARINGHOUSE REV. 202, 207-12 (2003); Jennifer Wohl, *The Child Care Economic Impact Report: A Tool for Economic Development*, 37 CLEARINGHOUSE REV. 213, 220-23 (2003).

104. *See* Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 185-94 (1999); Laurie A. Morin, *Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities Through Cooperative Economics*, 5 D.C. L. REV. 125, 130-47 (2000).

105. *See* Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 200-18 (1997); Daniel S. Shah, *Mainstreaming Community Development: Business Strategies as*

economic growth.[106]

B. Theoretics of Practice

Sympathetic to the goals of community economic development, the theoretics of practice movement likewise celebrates the anti-subordination norms of client dignity and equality.[107] The movement posits these norms in seeking to refashion the roles and skills of lawyers in meeting the basic needs of poor people in health care, shelter, and welfare. Crafted more narrowly to assist individual clients, the skills accentuate modes of communication that fairly describe client identity.[108] The skills also underline methods of counseling that actively encourage client integration into the lawyering process, rather than marginalize the client as inferior or subordinate the client as a passive object.

The integration of client identity infuscs the lawyering process with particularized stores of practical knowledge gained outside the law. Every client brings practical knowledge to the lawyer-client relationship and to potential group and community partnerships. As the Liberty City and Overtown studies show, that knowledge draws on personal experiences and resources, as well as the resources of family and neighborhood, in negotiating law and the legal regulation of private (landlord-tenant) and public (caseworker-recipient) relationships in specific communities. The centrality of client and group participation to this process underscores the importance of collaboration.

Reflective collaboration among progressive lawyers, professional allies, and lay activists demands an appreciation of interdisciplinary analysis and an openness to alternative forms of learning, especially lay problem-solving by individual clients and client groups. Far-reaching, the collaborations may go beyond local strategic planning and direct action to include coalitions with regional, national, and international affinity groups combining the professional acumen of conventional litigation strategies and the practical wisdom of community activism. These collaborations encompass both economic justice

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Radical Approaches to Community Representation, 29 FORDHAM URB. L.J. 1633, 1635-44 (2002); Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121, 1132-47 (1996).

106. *See* Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 458-86 (2001); Penda D. Hair, *Community Justice Lawyering and Community Economic Development Practice*, 37 CLEARINGHOUSE REV. 145, 145-46 (2003).

107. For case studies from the theoretics of practice movement, see Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861, 911-26 (1992); *see generally* Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 717 (1992).

108. On alternative means of representing identity in community lawyering, see Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195, 201-25 (2002).

and environmental justice campaigns advancing from West Harlem, New York to West Oakland, California.[109] The integration of litigation with community organizing strategies heightens client and group participation in the lawyering process. Client participation in grassroots advocacy and organizing schemes ranges from attending rights education workshops to leading neighborhood cooperatives.

C. Community Organizing

Community lawyering is similarly enriched by models of law-and-organizing in both civil[110] and criminal[111] arenas. Organizing models press self-help skills[112] and collaborative engagement[113] to facilitate local, client- and group-participation in legal and political reform campaigns.[114] Effective legal reform and political mobilization hinge on compelling public expressions of community identity,[115] knowledge,[116] and power.[117] Opening public space to the assertion of community identity, knowledge, and power in law and politics requires the community lawyer to understand the silence inflicted on the poor by the socio-legal hierarchies of the private market and the public welfare state, for example in the roles and relationships of a private debtor and

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109. *Compare* Angela Harris, Margaretta Lin, & Jeff Selbin, *From "The Art of War" to "Being Peace:" Mindfulness and Community Lawyering in a Neo-Liberal Age*, 95 CALIF. L. REV. 2073 (2007) (describing the Wood Street train station community economic justice campaign in West Oakland, California) *and* Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999 (2007) (discussing the West Harlem Environmental Action campaign in West Harlem, New York).

110. *See* Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 460-70, 479-516 (2001).

111. *See* Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 427-57 (2001); Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L.J. 2419, 2456-70 (1996).

112. *See* Wayne Moore, *Operating Self-Help Branch Offices in Low-Income Minority Communities*, 37 CLEARINGHOUSE REV. 369, 371-72 (2003).

113. *See* Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 486-514 (2000); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 598-611 (2006); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 163-70 (1994).

114. *See* Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 CLINICAL L. REV. 639, 658-63 (1995); Ann Southworth, *Lawyer-client Decisionmaking in Civil Rights and Poverty Practice: An Empirical Study of Lawyers' Norms*, 9 GEO. J. LEGAL ETHICS 1101, 1131-46 (1996).

115. *See* Lisa A. Crooms, *Stepping into the Projects: Lawmaking, Storytelling, and Practicing the Politics of Identification*, 1 MICH. J. RACE & L. 1, 18-45 (1996).

116. *See* Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59, 62-67 (2004).

117. *See* Michael Diamond, *Community Economic Development: A Reflection on Community, Power and the Law*, 8 J. SMALL & EMERGING BUS. L. 151, 157-67 (2004); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 745-68 (1988).

public housing tenant.[118] To understand that silence as inflicted, rather than ingrained, is to recognize that the identity of the poor is socially constructed by the private and public forces of the market and the state. Community organization and mobilization mount resistance against those forces. Resistance in turn reconstructs identity around acts of individual and community power.

The socio-legal hierarchies impinging on the identity of the poor are linked to age, class, disability, ethnicity, gender, race, and sexual orientation. Intimately tied to poverty and powerlessness, these links reinforce hierarchical roles and relationships. Although constraining, each hierarchical role and relationship permits large and small acts of resistance. Performed by the likes of tenants and welfare recipients, the acts are acutely contextual in meaning. They signify both identity commitments and cultural convictions. Client acts of resistance express and affirm identity in particular cultural and social settings. For community lawyers, the meaning of client resistance is contingent upon context and perspective. Context, whether belonging to an inner-city park or a school yard, gives shape to resistance. In Overtown, for example, the inner-city park and school context of a threatened interstate expressway ramp expansion gave rise to a specific form of political protest and a carefully tailored substantive public health objection. Perspective, by comparison, translates the act of resistance into discourses of law and politics. In Umoja Village, for example, homeless squatters translated their collective act of protest into alternative discourses on property rights and egalitarian economic development.

Like other components of culture and society, law and politics are comprised of texts: oral and written, social and spatial, physical and symbolic. Lawyers' cognitive and interpretive readings of those texts shape the roles and relationships of legal-political advocacy. Framed by courts, legislative bodies, and regulatory agencies, the roles and relationships of advocacy are laced by a commitment to legal rights and political entitlements. Differences of race and class mediate that commitment, impairing lawyers' ability to perceive the intertwining of identity and narrative in the rights and entitlement claims of clients and communities. Identity instigates and derives status from rights claims—the claims of displaced tenants in Village West, homeless squatters in Umoja Village, and school children in Overtown. In the same way, narrative describes and obtains definition from such claims. Ever-present, difference constructs and is constructed by identity and narrative in law.

The dynamics of difference cut across class, gender, and race. Progressive lawyers working in impoverished communities invoke faith in their ability to

118. *See* 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, 546-63 (1987); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 19-52 (1990).

cross the boundaries of difference and embrace their subordinate clients as collaborators. This faith is grounded in rights-based empowerment. Predicated on a vision of clients as autonomous, self-determining agents, the theory of rights-based empowerment emphasizes both the dignitary and the participatory interests of the client. Individual self-sufficiency and group solidarity are vital interests pervading the community economic development and theoretics of practice movements. Both movements find normative resonance in Gerald López's idea of rebellious lawyering.[119]

D. Rebellious Lawyering

López focuses on the progressive lawyer as a regnant archetype.[120] He describes the typical regnant lawyer as a privileged outsider too blinkered by professional norms to engage in the transformative, community-based work of rebellious lawyering. He traces the tradition of regnant lawyering to the first wave of progressive lawyers who rushed to the aid of poor communities in the 1960s. Laden with the subordinating practice traditions of law and culture, and the concordant discourses and images of the helpless poor, this initial wave of lawyers instinctively reproduced in advocacy the traditional roles and relationships of their hierarchical legal education and training.[121] Both clinical and non-clinical strands of legal education proclaim the dominant role of lawyers, legislators, and legal decisionmakers (judges, administrators, and law enforcement officers) in law generally and in poverty law specifically.

The reproduction of the traditional roles and relationships of poverty law, López explains, caused progressive lawyers to reenact the cultural and socio-economic marginalization of poor clients and communities in their advocacy. Reenactment occurred naturally and necessarily in the daily work of counseling, negotiation, and trial advocacy. The natural logic of this everyday routine caused lawyers to dominate the advocacy process. The instrumental necessity of accommodating the adversarial system bolstered that logic.

Staggered by the intractable nature of poverty and thwarted by the unresponsiveness of courts, legislatures, and administrative agencies, López's regnant lawyers quickly retreated from poor communities. López ascribes the stymied and frequently self-sabotaging efforts of progressive lawyers to their failure to grasp the connection between professional norms and political goals. To López, regnant professional norms determined the cramped scope of lawyer knowledge, the crippling stance of lawyer role, and the disempowering quality

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119. For explication of regnant and rebellious ideas of lawyering, *see* GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 11-82 (1992).

120. This account builds on an earlier treatment of community lawyering garnered from Gerald López's vision of "rebellious lawyering." *See* Alfieri, *Practicing Community*, *supra* note 93, at 1750-64.

121. On hierarchy in legal education, see DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM 9-144 (1983).

of the lawyer-client relationship. The norms proved ignorant of the cultural, political, and socio-economic structures of subordination and the experiences of subordinated people. Over time, indifference to poor people and to places of impoverishment condemned the formal, problem-solving mission of progressive lawyers.

In López's view, ignorance of subordination and subordinated people caused regnant lawyers to infer that the perceived helplessness of the poor, manifested in the frequently observed individual dependence and collective passivity of clients, lay culturally embedded in the character of poor communities themselves. Applied to indigent communities of color, this inference attributed client helplessness to a deep-seated culture of poverty. The attribution of dependency to social pathology, rather than moral deviance, consigned clients to obeisance, thus authorizing lawyers to dominate legal-political campaigns mounted on behalf of poor communities.

The predominance of lawyer leadership fastened the legal-political campaigns of the poor and disenfranchised to litigation strategies of direct service and law reform marked by client absence and silence. Although well-intentioned, progressive lawyers regularly silenced individual clients, groups, and institutions to propel litigation campaigns. For López, the absence of meaningful client participation in those campaigns discouraged alternative community-building strategies and diminished the value of community education and organization. López endorses community education as a collaborative form of critical pedagogy.[122] He views community organizing as a key method of grassroots coalition-building, urging the merits of collective mobilization and problem-solving.

For decades, the prevalence of lawyer-led litigation campaigns repeatedly subordinated and erased individual clients and their corresponding communities in advocacy. Under the regnant idea of lawyering, client diminution and exclusion coincides with the natural order of poverty and the necessary imperatives of litigation. The combination of natural and necessitarian logic, in fact, creates a general expectation of exclusion shared by progressive lawyers and their anti-poverty allies in government and in the private sector.

To López, the widespread espousal of the regnant idea of lawyering celebrates professional identity, knowledge, and power. That celebration discounts indigenous, community-based sources of identity, practical knowledge, and political power. Conferring wisdom and status on progressive lawyers privileges their sole authority to describe the socio-legal world of poor communities. With that authority comes the prerogative of regnant lawyering to pronounce the intrinsic truth of the poor and poverty, a truth daily contested in

122. *See* PAULO FREIRE, PEDAGOGY IN PROGRESS: THE LETTERS TO GUINEA-BISSAU 71-154 (Carman St. John Hunter trans., 1978); PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 75-186 (Myra Bergman Ramos trans., 1970).

the political activism of community groups in Village West, Overtown, and Liberty City.

López denies that historical truth of the poor is either universal or inherent in any natural order. Instead, he regards truth as a provisional evaluation. By provisional, he means factually contingent, continuously negotiated, and inevitably partial. In Coconut Grove Village West, for example, the disparate impact of gentrification-induced displacement on homeowners and tenants produces the basis of both conflict and cooperation in regulating the development of public and private housing. Provisional truth of this sort values professional and practical knowledge. The competencies of practical knowledge accrue outside the ambit of professional education and training. This battery of competencies implies alternative paths to learning and to ways of knowing.

The rebellious transformation of regnant ways of knowing alters the standard treatment of legal materials and practices in progressive lawyering. Progressive lawyers typically rely on claims of purposivism and practicality to guide their legal-political reform campaigns. Although preferable to reliance on false claims of neutrality and objectivity, the practical judgments of purposive decision-making concerning the content of constitutional, statutory, and doctrinal materials are still easily susceptible to lawyer domination. In courts, legislative bodies, and administrative tribunals, the practical judgments of lawyers on the interpretation of constitutional, statutory, and doctrinal materials naturally suppress client voices. Correspondingly, the practical judgments of institutional discretion regarding the delivery of direct legal services and the structure of law reform strategies are equally prone to lawyer supremacy. Ethics rules and standards in fact delegate tactical decisions and strategic considerations regarding the means of advocacy to lawyer discretion.

To mitigate the supremacy of lawyer knowledge, rebellious lawyers posit client experience as a legitimate, independent source of useful knowledge. Validating the relevance of client experiential knowledge—the knowledge of tenants and homeowners as well as crime victims and ex-offenders—enables lawyers to recognize clients as partners and to integrate lay culture in advocacy. Like lawyers, clients capture their experience in stories. Aggregations of often conflicting narratives, the stories fashion identity and depict the multiple competencies of practical knowledge. The stories of Village West tenants and homeowners, Overtown parents, and Liberty City squatters all point to the competencies of practical knowledge learned in everyday life and the powerful identity they produce when activated.

The stock stories of progressive lawyers show their interpretive authority and ability to dominate the advocacy process and undermine client competencies. Elsewhere I have argued that the interpretive, identity-making

force of lawyer storytelling in poverty law practice stems from a pre-understanding of client dependency.[123] Construing dependency as an inherent or natural trait of the impoverished, I observed, permits lawyers to marginalize, subordinate, and discipline clients as passive objects in advocacy.[124] When confronted by the constraints of law and legal institutions, clients regularly yield their own interpretive authority to lawyers. This deference to the inequalities of class, education, and literacy reinforces institutional constraints, confirming their relative determinacy in practice.

Both the practice of law and the behavior of legal decisionmakers reflect a relative degree of determinacy and regularity in action. Practice determinacy is indicated by the slight deviations or shifts in the routines and standard conventions of representation displayed in the Overtown protest. Decisional regularity is denoted by predictability and consistency. For progressive lawyers, the determining routines and conventions of practice dictate erasing client identity, silencing client narrative, and suppressing client history.

Rebellious lawyers break from the routines of progressive law practice. Suspicious of their interpretive roles and dominant/subordinate relationships, they construct client identity, searching out evidence of client competence and practical knowledge, and applying that alternative knowledge to the task of legal and political advocacy. If tentatively applied, practical knowledge may work to accommodate and resist the commands of socio-legal actors (lawyers, caseworkers, judges).[125] Consider, for example, the practical knowledge displayed in Overtown in its community-wide opposition to interstate highway expansion or in Umoja Village in its structures of democratic governance.

Nevertheless, the process of client accommodation and resistance is ambiguous. Rebellious lawyers treat the ambiguity of accommodation and resistance as an opportunity to test their construction of client identity, narrative, and story. A moment of cross-cultural and cross-racial translation, the opportunity affords lawyers insight into the cultural, legal, and social experience of clients. The opportunity also gives lawyers a better view of the complications and competencies of client difference widely exhibited in Umoja Village.

Discourses of difference echo throughout the lawyering process arising in interviewing, counseling, and negotiation, at trial, and on appeal. They can be heard in client interview and counseling narratives, and in client trial stories. They reverberate in rights education workshops, community forums, and public hearings when clients stand to challenge public officials as they did in Overtown. And they resonate in letters, memoranda, briefs, and press releases

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123. *See* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2123-25 (1991) (hereinafter *Reconstructive Poverty Law Practice*).

124. *Id.* at 2125-30.

125. *See* Alfieri, *Practicing Community*, *supra* note 93, at 1758-59.

when adequately inscribed in the texts. Entrenched in story, the discourses sometimes contest traditionally assigned roles of dependency. Contesting dependency enables clients to apply their practical knowledge to legal advocacy.

The rebellious application of lay knowledge to legal advocacy explodes the myth of client dependency and incompetence told and retold in lawyer stories. Revising stock stories of dependence empowers client identity and realigns authority over the advocacy process. That realignment challenges the regnant story of natural or necessary lawyer leadership, disputing the normative subordination of clients and their communities. In its place comes a story of alternative socio-legal roles and institutional relationships disclosed everyday during the six-month history of Umoja Village. Rooted in local knowledge, those roles and relationships demonstrate the moral and political capacity of clients alternately to accommodate and to resist cultural and socio-economic conditions of subordination. Finding space between accommodation and resistance to treat clients as powerful moral agents in the struggle against subordination affirms the value of practical knowledge revealed in Village West, Overtown, and Liberty City.

The merger of client practical knowledge and lawyer expert training in advocacy forms the basis of the collaborative problem-solving model of rebellious lawyering. A model of skills transference and power sharing, collaborative problem-solving generates lawyer-client and client-community alliances. Too often, however, the alliances prove short-lived. In Overtown, for example, CEDAD abandoned its community-based interdisciplinary alliance with neighborhood activists, legal services lawyers, and public health physicians when the threat of a proposed interstate highway ramp expansion disappeared. The better course would have been to help broaden the public health and environmental justice agenda of the alliance in order to mobilize similarly situated communities of color in the City of Miami and Miami-Dade County.

Collaborative problem-solving also redefines traditional lawyer-client roles, reorganizes divisions of legal-political labor, and reallocates the authority to decide the means and objectives of advocacy. At certain times, the historical conditions of a community will themselves upend traditional roles, divisions of labor, and lines of authority. In Liberty City, for example, the squatters of Umoja Village independently seized leadership roles, reorganized their internal divisions of civic labor, and reallocated their own lines of decision-making authority and self-governance. In these circumstances, the model of collaborative problem-solving cautions against potentially disempowering offers of legal and non-legal intervention.

Cautiously unfolding, the experimental model of collaborative problem-solving maps a process of intermixing lawyers, clients, and lay advocates into local self-help cooperatives. In Village West, these cooperatives encompass

small businesses, homeowners, and tenants. To be effective, each of these groups must find common ground for cooperation and collective action. Fears of commercial and residential displacement establish some such common ground. The same fears, however, have done little to reconcile and unite crime victims and ex-offenders or resolve intramural competition between local nonprofits over economic development subsidies. Neither lawyer epistemology nor legal education equips community lawyers to settle these individual and institutional differences.

Efforts to bridge regnant and rebellious theories for the purpose of reforming progressive lawyering practices confront quarrels over lawyer epistemology and legal education.[126] Lawyer epistemology directs our ways of knowing law, culture, and society. Legal education—clinical and non-clinical—determines our ways of implementing that knowledge in response to the call of clients and communities. In spite of the common norms of dignity and participation, and the shared goals of self-determination and democracy, quarrels over epistemology and education continue to vex lawyers in their campaigns for economic justice. Put aside by the labor intensive work of CEDAD students in Coconut Grove Village West, Overtown, and Liberty City, the quarrels survive unresolved.

III
CRITIQUES OF COMMUNITY LAWYERING

"'We got this land because we stood up for what is right.'"[127]

CEDAD's work in Coconut Grove Village West, Overtown, and Liberty City reflects the controversial nature of race-conscious legal and non-legal interventions in low-income communities of color. The interventions spur controversy because they rest heavily on unchecked lawyer discretion in deciding whether or not to provide assistance, to mediate group conflict, and to bring in external resources. They also rely on disputed social constructions of individual and collective racial identity. Faith in the collaborative process of community-centered decision-making and the extra-legal lessons of the civil rights and poor people's movements does little to quiet doubts about unguided lawyer discretion and racialized social construction. Both fuel critiques of community lawyering.

Moving beyond López, one of the most penetrating contemporary

126. *See* Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 10-13 (1989); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 308-58 (1989).

127. Robert Samuels, *Low-Cost Homes May Rise From Burned Umoja Village*, MIAMI HERALD, May 1, 2007, at 1B (quoting Liberty City community organizer Amanda Seaton).

critiques of the community lawyering process comes from Asconio Piomelli.[128] The focal point of Piomelli's analysis is the community-based, empowerment theory of poverty law practice, and its corresponding vision of good lawyering, that emerged in the last two decades among progressive lawyers and law teachers. Piomelli fairly locates my writing within this theoretical framework, sympathetically aligning my vision of good lawyering with larger civil rights and poverty law traditions. Premised on the belief that subordinating forms of discourse, interpretation, and treatment damaged the integrity and effectiveness of the lawyer-client relationship, the framework refashioned the roles and goals of the lawyering process. In addition to traditional quantitative goals and objectives, the new framework stresses the qualitative importance of client collaboration and participation in advocacy.[129]

A. Poverty Law Traditions

Piomelli's foundational analysis of collaborative lawyering opens with a careful reading of my previous work, particularly *The Antinomies of Poverty Law*.[130] An early exemplar of the theoretics of practice literature, *The Antinomies of Poverty Law* urges empowerment-driven anti-poverty strategies devised to activate client class consciousness and encourage political organization and mobilization. Challenging traditional claims of instrumental efficacy and inherent indigent passivity, it assails direct service and law reform models of representation as ineffectual, and repudiates culture of poverty attributions as false.[131]

Piomelli evaluates both the logic and consequences of this nascent assault on poverty law traditions. His evaluation shows sensitivity toward cultural mischaracterization of the poor and skepticism toward the abandonment of legal instruments of social change. Sensitivity to overbroad cultural claims of indigent isolation and passivity implicitly comprehends the poor as a historical cluster of groups struggling to assert control over their lives and communities. Given the material circumstances at stake, that struggle may correlate with the economics of class. Moreover, even well-earned skepticism toward relinquishing the instruments of direct service and law reform litigation implicitly contemplates the tendency of courts and administrative tribunals to decontextualize, atomize, and depoliticize legal-political struggle. Decontextualization occurs when legal-political clashes move from the neighborhood street, vacant lot or welfare office to the courtroom. Atomization ensues when collective grievances fragment into isolated, individual claims dislodged from the context of group or community opposition. Depoliticization

128. *See* Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 113, at 430.

129. *Id.* at 431-33.

130. *See* Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88).

131. *Id.* at 666-90.

arises when political conflicts over the distribution of public and private resources switch to rights-based debates over the substantive content of constitutional, statutory, and common law doctrines, a transition under way in Coconut Grove Village West but blocked in Liberty City by the radicalism of the Umoja Village squatters. Skepticism notwithstanding, these shifts in context, scope, and discourse inhibit the potential for political struggle.

Positioned outside of struggles such as those engulfing Village West, Overtown, and Liberty City, Piomelli declines to track the adaptations and conversions of law and politics. Instead, he critiques the core process of dependent-individualization in poverty law practice. Governed by poverty lawyers, the process of dependent-individualization reinforces the lawyer dependence and community segregation of poor clients. Remedying this process requires critical dialogue and collective identity. Critical dialogue with clients and client communities about their collective interests raises consciousness and mobilizes grassroots alliances in local, state, and national coalitions.

Although receptive to the notions of critical dialogue and collective identity, Piomelli hesitates to portray the poor as a class and discounts the experience of critical consciousness. His hesitation obscures the social reality of poverty. The reality of poverty is complex and dissonant. Seeing class as an everyday public/private experience involving cultural, economic, and social interactions reveals the multifaceted nature of poverty harshly exhibited in Village West, Overtown, and Liberty City. Likewise, defining consciousness in terms of public/private domination and resistance exposes the tensions of poverty fracturing and dividing those communities.

Contrary to Piomelli, granting attention to the multiple dimensions of poverty betrays little hostility to direct service and law reform litigation. Standing alone, the insufficiency of litigation as a tool to raise client and community consciousness seems well-settled. That insufficiency is compounded by the tendency to vest decision-making power in lawyers, a result likely to stifle the development of client and community leaders. Controlling for this tendency, where possible, permits direct service and law reform to be used as limited catalysts for empowerment. When moored in community support, both methods may activate political consciousness and precipitate the growth of organizations among neighborhood groups such as tenants, homeowners, and parents.

Piomelli concedes this analysis, yet his qualms about my accounts of critical consciousness and dependent-individualization persist, infusing his broader critique of a second later work, *Reconstructive Poverty Law Practice*.[132] Amplifying the analysis of poverty lawyers' discourse, knowledge, and method, *Reconstructive Poverty Law Practice* puts forward a

132. Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 123.

reconstructive paradigm that alters the interpretive practices of the lawyer-client relation in order to empower clients and communities. The paradigm posits an alternative vision of the client as a self-empowering subject, rather than as a dependent object.[133] Equally engrossed in the lawyer-client relation and the context of urban poverty, Piomelli admits to the interpretive struggle between lawyers and clients, hearing the silenced voices of clients in his own clinical work, and recalling the suppression of their now forgotten stories. Yet, in bearing witness to these voices and stories, stories community lawyers hear everyday in places like Village West, Overtown, and Liberty City, he omits mentions of empowerment.

B. Reconstructive Practices

Reconstructive Poverty Law Practice focuses on an account of client empowerment borrowed from the case of Mrs. Celeste, the lead client represented by a legal aid litigation team in a class action lawsuit challenging the municipal application of federal food stamp regulations. The account contrasts Mrs. Celeste's story, winnowed from her testimony at an administrative hearing and a deposition, with the litigation team story, gleaned from federal court pleadings and memoranda. From this comparison, the account discerns four different interlocking narratives encompassing the notions of dignity, caring, community, and rights. Characterized as self-empowering narratives, the account finds scant trace of their incorporation in the litigation.[134]

In searching out suppressed narratives, *Reconstructive Poverty Law Practice* notes that the integrity and instructiveness of the text applies singularly to Mrs. Celeste and cautions against extrapolating its lessons to construct an essentialist vision of impoverished client narratives.[135] Not unfairly, Piomelli points out that the text strongly implies that clients always tell self-empowering narratives. Indeed, *Reconstructive Poverty Law Practice* suggests that an alternative client story composed of multiple narratives, each speaking in a different voice, always stands outside a lawyer-told client story. It also professes that multiple narratives imbue client stories with normative meanings associated with common civic values taken from the public and private spberes of democratic life, values such as selfhood, family, community, love, and work. Scornful of progressive lawyering traditions, it derides poverty lawyers for telling stories that describe clients in the language of dependency and powerlessness, and depicts them as dependent and inferior objects.[136]

Despite its scorn for debilitating practice traditions, *Reconstructive*

133. *Id.* at 2118-30.
134. *Id.* at 2109-18.
135. *Id.* at 2122.
136. *Id.* at 2110-30.

Poverty Law Practice acknowledges that poverty lawyers act under the beleaguering strain of high caseloads. Piomelli relies on this functional burden to explain lawyers' "predisposition to interpret clients' stories in a stock way that frames clients in the dependent role of downtrodden victim in need of rescue by poverty lawyers (and ultimately by judicial or administrative decision-makers)."[137] That focus, however, discounts the force of tradition in establishing lawyers' pre-understanding of the poor and their institutional routine of triage.[138]

Reconstructive Poverty Law Practice asserts that poverty lawyers' pre-understanding informs the act of naming in advocacy, an act portraying the client as dependent. Commencing at case intake triage, naming protects the lawyer's interpretive authority. Commonly applied in interviewing, counseling, and trial advocacy, naming arrogates the client's inherent power to define and speak for herself. Naming corresponds to the discrete movements of case selection triage when lawyers translate clients' oblique narratives into the unambiguous narratives of lawyer-spoken rights, a translation that never occurred in the Overtown protest or in Liberty City. Distinct from incorporation, this translation is tantamount to an act of silencing. Subsequent to triage, lawyers assign categories of value to the translated stories. The categories objectify clients in a dependent role, a role that never materialized in Liberty City during the rise of Umoja Village. For such categorical guises, lawyers survey past renderings of the client roles of victim, dependent, or incompetent seeking out the most efficacious performance in story, a performance absent from Village West's tenant and homeowner organizations.[139]

Reconstructive Poverty Law Practice explicates the interconnected movements of triage as a process of interpretive violence. Essential to the preservation of the dominant/dependent order of the lawyer-client relation, this process determines the order of speech in advocacy and the order of discretion in decisionmaking. Lawyers' traditional organization of speech and decisionmaking safeguards the prevailing order of lawyer-client hierarchy. The process grows out of lawyers' pre-understanding of the poor as inferior. It occurs when clients' speech is restricted or narrowly prescribed, and when clients are physically excluded from the forum or site of advocacy. It also ensues when a sense of client inferiority suffuses the lawyer-client relationship instilling rigid subject/object divisions of labor and authority enforced by professional hierarchy.[140]

Warily inspecting this process, Piomelli concedes that poor clients

137. Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 113, at 460.

138. *See* Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2479-98 (1998).

139. Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 123, at 2123-25.

140. *Id.* at 2125-30.

sometimes manufacture dependence as a mask to secure legal services. Further, he admits that poverty lawyers sometimes fail to recognize that the passivity and dependence they detect in clients may be an illusion of dependence projected by their own professional pre-understanding and reflected back by the client. These admissions prompt his uncertain receptivity to the remedial practices recommended in *Reconstructive Poverty Law Practice*. Rather than gainsay this uncertainty, it is perhaps better to acknowledge that my own prescribed practices may prove able merely to counter, though not overturn, the settled interpretive traditions of poverty law practice. Aspiration aside, those traditions allow progressive lawyers to seize only limited autonomy from the pre-understanding and violence of interpretive practices, and to extract only partial understanding of client circumstances from the voices of client narratives in Village West, Overtown, Liberty City or elsewhere.[141]

C. Collaboration

Collaboration stands at the core of the reconstructive practices urged in *Reconstructive Poverty Law Practice*. Piomelli understands the practice of collaboration as an invitation to lawyers to investigate the presumptive dependency of their clients more skeptically. He characterizes collaboration as an effort to push lawyers to search for a deeper, normative meaning in deciphering clients' stories, a sense of meaning that reveals clients to be the self-empowering subjects we see at work in Village West, Overtown, and Liberty City. He conceives of collaboration as a call for lawyer-client co-equal participation in the telling of a law-driven story, participation that makes room for client voice in the public telling of client stories. Indeed, collaboration issues a command to retell client stories by discrediting traditional images of client dependency and by crediting client narratives of daily struggle.[142]

To Piomelli, this community-directed command is muted by an excessive emphasis on lawyer-client interpretive violence and lawyer domination. Attention to both individual direct service cases and law reform test cases, however, offers an appropriate analytic scale and framework to evaluate which legal-political strategies stand best calculated to alter inequitable institutional and structural arrangements.[143] Any such evaluation must take account of the impediments of lawyer's interpretive violence and domination. Piomelli concedes as much, adding that this interpretive debate obscures the overarching point that lawyers' portrayal and treatment of clients impairs their willingness and ability to organize and mobilize politically. He observes: "Treated and depicted as dependent, isolated, and unable to help themselves or others, many lower-income clients fulfill the prophecy, adopting, and even internalizing,

141. *Id.* at 2131-45.
142. Piomelli, *Appreciating Collaborative Lawyering*, *supra* note 113, at 462.
143. *Id.* at 463-70.

their assigned role."[144]

To mount bolder collaborative challenges to institutional and structural arrangements of power, Piomelli urges progressive lawyers to consider the larger social, economic, or political forces outside of the lawyer-client relationship. In Village West, Overtown, and Liberty City, those forces include banks, home builders, private developers, nonprofit community development corporations, and government agencies. Piomelli recommends a fuller appreciation of how to persuade others to combat these typical public and private forces and, further, how to alter unjust institutional and structural relations with such forces. Confining persuasion to a process of storytelling, he comments, fails to elucidate how to tell persuasive stories. The same confinement crudely reduces the realm of story to a static lawyer-client duality of conflicting narratives. In fact, Piomelli insists, poverty lawyers often tell stories that depict their clients as active, responsible, and respectable actors. The lack of such empowering stories, he explains, may in fact rest on client self-perception or internalized stereotype. According to Piomelli, perceptions of the self run multi-dimensional, frequently without a single unifying story. Interwoven among multiple narratives, law stories for Piomelli evolve organically in complex relational and institutional contexts, unsusceptible to complete lawyer displacement or obliteration.[145] Nevertheless, decision-makers in judicial and administrative forums may be unpersuaded by clients' self-empowering stories.[146]

To overcome that institutional impediment, Piomelli proffers a vision of collaboration in the integrative terms of professional detachment, specialized knowledge, and empathy.[147] Echoing the community lawyering practices derived from clinical legal education,[148] he finds empathy in client-centered methods[149] of counseling[150] and problem-solving.[151] Intimately tied to

144. *Id.*

145. *Id.*

146. *Id.*

147. For an elaboration on empathy in clinical education, see Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 CLINICAL L. REV. 605, 612-37 (1999).

148. On the integration of community development models in clinical legal education, see Scott L. Cummings, *Clinical Legal Education and Community Development*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 208 (2005).

149. *See* Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 375-99 (2006).

150. *See* Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 119-57 (1997); National Economic Development and Law Center, *Counseling Community Organizations*, 37 CLEARINGHOUSE REV. 243, 250-51 (2003).

151. *See* Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLINICAL L. REV. 45, 49-57 (2002); Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405, 422-33 (2002); Andrea M. Seielstad,

reflective judgment,[152] these methods seek to promote justice[153] in collaboration with the politically and socially subordinated.[154] Justice in community lawyering may be tied to pro bono service,[155] interdisciplinary education,[156] and transactional training.[157] These ties bind collaboration to client participation and community education.[158] Devotion to a collaborative process of outreach and inclusion requires long-term commitment[159] and a redemptive vision of professionalism,[160] a commitment that comes from faith in communities like Coconut Grove Village West, Overtown, and Liberty City. The next section appraises the normative and practical dilemmas of race-conscious community lawyering practices witnessed in those impoverished communities.

Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education, 8 CLINICAL L. REV. 445, 448-56 (2002).

152. *See* Angela P. Harris & Marjorie M. Shultz, *"A(nother) Critique of Pure Reason": Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1785-1803 (1993); Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 CLINICAL L. REV. 623, 637-73 (2003).

153. *See* Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 290-98 (2001); Scott L. Cummings, *Legal Pedagogy and Economic Justice*, 17 MGMT. INFO. EXCHANGE 48 (2003).

154. *See* Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL'Y 201, 255-62 (2006); Stephen Loffredo, *Poverty Law and Community Activism: Notes From a Law School Clinic*, 150 U. PA. L. REV. 173, 189-204 (2001).

155. *See* James L. Baillie, *Fulfilling the Promise of Business Law Pro Bono*, 28 WM. MITCHELL L. REV. 1543, 1544-48 (2002); Susan R. Jones, *Pro Bono Pays Off: Transactional Lawyers Supporting Economic Development in the Nation's Capitol*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 18, 20-21 (1999).

156. *See* Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice--Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787, 791-98 (2002); Martha A. Lees, *Expanding Metropolitan Solutions Through Interdisciplinarity*, 26 N.Y.U. REV. L. & SOC. CHANGE 347, 354-68 (2001); Linda F. Smith, *Client-Lawyer Talk: Lessons from Other Disciplines*, 13 CLINICAL L. REV. 505, 507-16 (2006).

157. *See* Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 258-67 (2004); Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 WASH. U. J.L. & POL'Y 195, 199-211 (2003).

158. *See* Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 448-72 (1998); Georgette C. Poindexter, *Who Gets the Final No? Tenant Participation in Public Housing Redevelopment*, 9 CORNELL J.L. & PUB. POL'Y 659, 679-83 (2000).

159. *See* Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 300-05 (1996); Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 773-86 (1998).

160. *See* David Dominguez, *Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice*, 37 CAL. W. L. REV. 27, 40-47 (2000); Robert W. Gordon & William H. Simon, *The Redemption of Professionalism?*, *in* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 230, 236-40 (Robert L. Nelson et al. eds., 1992).

IV
DILEMMAS OF RACE-CONSCIOUS COMMUNITY LAWYERING

"'A place to live is a human right . . . as black people we have always been forced out.'"[161]

CEDAD's work in Coconut Grove Village West, Overtown, and Liberty City poses dilemmas of race-conscious legal and non-legal intervention arising from collaborations with individual clients and client groups. These dilemmas create the backdrop for CEDAD's community lawyering decisions to offer assistance in Umoja Village, to mediate homeowner/tenant, victim/offender, and nonprofit development conflicts in Village West, and to introduce medical-legal advocacy resources in Overtown. Driven by need and scarcity, these decisions implicate moral, legal, and political considerations. They also hold risks and sow tensions inside and outside the clinic and affected communities. In Umoja Village, for example, CEDAD hazards acts of legal-political interference. In Village West, CEDAD jeopardizes allegiances to competing groups. And in Overtown, CEDAD imperils grassroots mobilization. Entrenched in complex racial settings, such community-based decisions seem suffused in but largely unguided by race-conscious norms. Neither the collaborative process of community-centered decision-making nor the extra-legal lessons of the civil rights and poor people's movements afford clear-cut alternative guidance.

Resolution of the dilemmas of race-conscious community lawyering requires practical guiding norms. To be effective, practical norms must deal with the root sources of the dilemmas encountered in Village West, Overtown, and Liberty City. Elaborated below, these varied sources relate to claims and concerns about essentialism, institutional competence, role legitimacy, constitutional harm, racial injustice, and goal dissonance. Bounded by racialized narratives in law, culture, and society, the dilemmas resist easy cure under the standard conceptions of the lawyering process, a process skewed by adversarial norms of partisanship and moral non-accountability.[162] Too entangled in ethical conventions[163] and power relations,[164] standard

161. *See* Bailey, *supra* note 64, at 1B (quoting Jonathan Baker, a resident of Umoja Village).

162. *See* Robin D. Barnes, Colloquy, *Interracial Violence and Racialized Narratives: Discovering the Road Less Traveled*, 96 COLUM. L. REV. 788, 791-93 (1996) (discussing the role of social identity in creating racialized narratives); Richard Delgado, *Making Pets: Social Workers, "Problem Groups," and the Role of the SPCA—Getting a Little More Precise About Racialized Narratives*, 77 TEX. L. REV. 1571, 1582-83 (1999) (describing how a one-sided rhetorical racial analysis was harmful to Mexican-American communities).

163. *See* Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 176-206 (2000) (analyzing the dilemmas faced by community lawyers under traditional rules of ethics); David B. Wilkins, *Identities and Roles: Race, Recognition, and*

conceptions of legal practice secured by partisanship and non-accountability offer an incomplete remedy. Partisanship by its terms entails taking or switching sides in a dispute, not the reconciliation of sides. Moral non-accountability by definition discounts responsibility for the taking of sides. Moreover, such standard conventions of practice fall prey to cognitive[165] and institutionalized role[166] constraints. Cognitive constraints inhibit a full grasp of a client's situation. Role constraints hinder the ability to step into that situation.

However insoluble, the dilemmas over race-conscious advocacy[167] illuminate the link between law, culture, and politics in community lawyering. In the same fashion, the dilemmas infect cultural stratagems in lawyering as well.[168] In multicultural communities like Village West, Overtown, and Liberty City, cultural claims based on ethnicity, race, national origin, and religion are common. The difficulties posed by making racialized and cultural claims in litigation, lobbying, and transactional negotiations reignite debate about the content[169] and utility[170] of client narrative in advocacy and organizing. This debate entails disagreement over narrative coherence and efficacy in cases evocative of racial history and struggle. For low-income clients or communities of color, no general or universal narrative may accurately describe the situation of inner-city poverty. In Village West, for example, homeowners and tenants clash over the perceived costs and benefits of gentrification. In Overtown, nonprofit groups squabble over the feasibility of building affordable housing.

Professional Responsibility, 57 MD. L. REV. 1502, 1509-50 (1998).

164. *See* William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447, 1459-72 (1992) (discussing the role of power in the lawyer-client relationship).

165. *See* Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CALIF. L. REV. 733, 759-72 (1995) (evaluating the effectiveness of a disassociation strategy for combating racism in the courtroom); Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1266-81 (2002).

166. *See* Abbe Smith, *Carrying on in Criminal Court: When Criminal Defense Is Not So Sexy and Other Grievances*, 1 CLINICAL L. REV. 723, 739-45 (1995) (describing the institutional challenges faced by criminal defense attorneys).

167. *See* Christopher Slobogin, *Race-Based Defenses—The Insights of Traditional Analysis*, 54 ARK. L. REV. 739, 747-59 (2002) (analyzing three criticisms of the traditional role of a criminal defense attorney); Abbe Smith, *Burdening the Least of Us: "Race-Conscious" Ethics in Criminal Defense*, 77 TEX. L. REV. 1585, 1591-1601 (1999).

168. *See* Rashmi Goel, *Can I Call Kimura Crazy? Ethical Tensions in the Cultural Defense*, 3 SEATTLE J. SOC. JUST. 443, 451-59 (2004) (discussing the effects of declining to assert a cultural defense in a criminal trial).

169. *See* Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 490-529 (1994) (exploring the meaning of case theory and its role in legal practice); Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 7-30 (2000).

170. *See* Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 BROOK. L. REV. 889, 893-925 (1995).

In Umoja Village, residents debate the need for nonprofit housing development assistance. Although this narrative conflict may yield to more consistent core narratives of racial discrimination and class displacement, their descriptive instability may compromise their efficacy in advocacy forums.

Within the lawyering process, the coherence and efficacy of racial narratives rest in part on client-centered counseling.[171] Standard accounts of counseling often fail to acknowledge the sway of race in lawyering.[172] The accounts also fail to trace their discursive authority to law, culture, and society. Additionally, the accounts fail to differentiate the boundaries of law and politics. The absence of a resurgent civil rights and poverty law practice broadly evocative of prior historical struggles testifies to the limits of law and to the need for a coalition politics of cross-racial regional, national, and global alliances.

At the outset of such alliances stands the dilemmas of race-conscious lawyering. These dilemmas infect both civil and criminal justice systems, burdening prosecutors, defenders, and civil rights advocates. Their common elements stem from the use of racial identity and racialized narrative in lawyer decision-making across the domains of counseling, litigation, and negotiation. Contigent on context, the dilemmas vary in accordance with local socio-legal culturc, lawyer education and training, and client or community character.

A. Racial Essentialism

Racial essentialism poses the first dilemma of race-conscious community lawyering. Even when carefully crafted, race-conscious community lawyering runs the risk of encouraging an essentialist construction of racial identity and narrative in legal advocacy on behalf of communities of color. Essentialist constructions portray the people of Village West, Overtown, and Liberty City in a single image animated by a single identity spoken in a single voice. Advancing a provisional or unstable notion of black identity and narrative that allows for change and variation mitigates the risk of racial essentialism. But the ensuing tensions produced by instability, such as lawyer-client and client-community clashes over stigmatic identity claims or stereotypical narrative accounts, may blunt the independence of clients and dilute the power of communities. Identity claims, for example the claim of black inferiority, and stereotypical narratives, for example the story of black dependence, may trouble clients and their associated communities, resulting in dissonance or withdrawal instead of participation. As the history of Village West

171. *See* Camille A. Gear, Note, *The Ideology of Domination: Barriers to Client Autonomy in Legal Ethics Scholarship*, 107 YALE L.J. 2473, 2500-07 (1998) (describing the "ethical mirror model" for lawyer-client relationships).

172. *See* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 374-91 (1997).

demonstrates, client and community mobilization campaigns flounder without widespread participation.

The standard conception of lawyering prevents the deliberative consideration of a deeper moral community in lawyer-client counseling. It separates the civic obligations of citizenship and community membership from client decisionmaking. Debate over the content of client identity and narrative in advocacy is predicated on a fuller notion of autonomy than the standard conception of the lawyering process contemplates. Under the standard conception, lawyers define client autonomy mainly in terms of client decisions concerning the objectives of representation facilitated through communication, consultation, and informed consent.[173] Typically, the objectives purport to advance the rational self-interest of individual clients, rather than the interests of third persons, whether individuals, entities or communities.

In theory, principles of collective action may guide lawyer-client community deliberation consistent with client-centered rights and loyalties. Guidance comes from the articulation of client social responsibility and the interposition of lawyer civic counsel. Such counsel grounds a lawyer's advisory role in broader cultural and social contexts. It also transforms client decisionmaking from an empty exercise based on limiting assumptions about socio-legal constraints (education and mental health) to a meaningful act of guided discretion.[174] The communities of Village West, Overtown, and Liberty City comprise a spectrum of civic counseling opportunities. In Village West, strong civic counsel fails because of intramural group competition and conflict. In Overtown, intermediate civic counsel suffices because of the countervailing force of community mobilization and the absence of immediate external threats. In Umoja Village, weak civic counsel prevails because of the cultural, social, and political organization of squatter self-governance.

Discretion in the exercise of counseling opportunities and in the choice of narratives describing collective racial identity inevitably evokes the discourse and imagery of race in American law and society. Becausc both the discourse and imagery of race are deeply contested, discretion implies role morality and race-conscious responsibility. The formulation of a race- and community-conscious ethic of representation borrows from classical liberal norms of reciprocity and trust. Grounded in narrative integrity, this ethic of storytelling may fuel a racially reconstructive process locally, for example in Umoja Village, and globally, for example in the truth and reconciliation commissions

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173. *See* MODEL RULES OF PROF'L CONDUCT R. 1.2 (2006) ("Client-Lawyer Relationship: Scope of Representation and Allocation of Authority Between Client and Lawyer"); MODEL RULES OF PROF'L CONDUCT R. 1.4 (2006) ("Client-Lawyer Relationship: Communications"); MODEL RULES OF PROF'L CONDUCT R. 1.13 (2006) ("Client-Lawyer Relationship: Organization as Client").

174. *See* Alfieri, *Defending Racial Violence*, *supra* note 14, at 1340.

and reparation movements here and abroad.[175] As Umoja Village shows, racial reconstruction affects law, culture, and society. In fact, the squatters of Umoja Village established their own rules of conduct, generated alternative perceptions of racial culture, and manufactured a democratic social structure.

To the extent that racial reconciliation suffers from contingent identity constructions, narrative integrity may be obtainable only through tolerance for pluralism and experimentation in telling the stories of community resistance. Telling stories about the history of Village West, Overtown, and Liberty City offers insurgent accounts of socio-legal conflicts over race and space.[176] In each of these neighborhoods, it is crucial to link future community-based legal-political strategies to identity politics[177] and to color-conscious advocacy.[178] Equally important, it is appropriate to connect those strategies to restorative justice initiatives[179] and to reparations movements[180] in order to memorialize the devastation wrought by private exploitation and public neglect. Both restorative justice and reparation claims are part of the growing dialogue between nonprofit groups and city officials in Overtown and Liberty City. Making those connections in dialogue and in negotiation entails the assessment of compensation and restitution claims. It also involves the formulation of a racial reparations claim[181] and a reparations litigation strategy.[182] Erected on slavery reparations campaigns,[183] the strategy calls for apology[184] and

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175. *See* Anthony V. Alfieri, *Community Prosecutors*, 90 CALIF. L. REV. 1465, 1498 (2002) (citing the racially reconstructive outcomes of the South African Truth and Reconciliation Commission and the Japanese American reparation movement).

176. *See* John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair"*, 143 U. PA. L. REV. 1233, 1243-55 (1995); Audrey G. McFarlane, *Race, Space and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 343-49 (1999).

177. *See* Julissa Reynoso, *The Impact of Identity Politics and Public Sector Reform on Organizing and the Practice of Democracy*, 37 COLUM. HUM. RTS. L. REV. 149, 158-67 (2005) (discussing identity politics and organizing).

178. *See* Scott Cummings, *Affirmative Action and the Rhetoric of Individual Rights: Reclaiming Liberalism as a "Color Conscious" Theory*, 13 HARV. BLACKLETTER L.J. 183, 205-39 (1997).

179. *See* Stephen P. Garvey, *Restorative Justice, Punishment, and Atonement*, 2003 UTAH L. REV. 303, 304-11 (2003) (providing overview of traditional concepts of restorative justice).

180. *See* Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811, 814-34 (2006) (defining reparations and its theoretical underpinnings).

181. *See* Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 40 B.C. L. REV. 429, 438-49 (1998); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 502-17 (1998) (addressing obstacles to African American reparations).

182. *See* Adjoa A. Aiyetoro, *Formulating Reparations Litigation Through the Eyes of the Movement*, 58 N.Y.U. ANN. SURV. AM. L. 457, 464-72 (2003); Charles J. Ogletree, Jr., *The Current Reparations Debate*, 36 U.C. DAVIS L. REV. 1051, 1070-71 (2003) (discussing the types of reparations lawsuits available).

183. *See* Alfred L. Brophy, *Some Conceptual and Legal Problems in Reparations for Slavery*, 58 N.Y.U. ANN. SURV. AM. L. 497, 498-525 (2003) (addressing conceptual issues in framing reparations claims); Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and*

reconciliation.[185] The dilemma provoked by such multifaceted campaigns goes to institutional competence.

B. Institutional Competence

The community lawyering dilemma of institutional competence arises from the shift in advocacy from conventional, individual rights-based models to group mobilization-tailored models. This shift alters the functions and strains the competencies of community lawyers. Core advocacy functions—counseling and negotiation—may be yielded and reassigned to lay advocates, for example, Village West homeowners, Overtown parents, and Umoja Village squatters. However, basic advocacy competencies, such as fact investigation and pretrial tactics, may diminish in the reallocation to lay people and organizers, forgoing both efficacy and efficiency.[186]

Advocacy strategies aligned toward restorative-justice experiments in community reconciliation and citizen participation in neighborhood revitalization heightens the danger of client/community trade-offs and intra-class conflicts, as seen in the growing homeowner/tenant conflicts in Village West. A byproduct of collective representation, the strategic realignment of advocacy tactics and deliberative decisionmaking may induce lawyer bad faith in counseling and negotiating community impact cases like the Overtown protest and the Umoja Village encampment. Bad faith erodes client-centered rights and loyalties, undermining commitments to effective assistance and adversarial zeal.[187]

Even when the risk of bad faith counseling or negotiation is controlled, color-conscious advocacy practices may prove unmanageable. The mutability of racial identity and the instability of racialized narratives may render guided discretion unworkable. In Village West, for example, racial identity ranges awkwardly across multiple categories of color, race, ethnicity, and nationality. The consequent diversity of racialized narratives risks reproducing white/black and black/brown dichotomies ill-suited to the mixed-race classifications and racial gradations common among the residents of Village West and its adjacent neighborhoods. Mitigating this risk requires careful attention to lawyers' roles

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Other Historical Injustices, 103 COLUM. L. REV. 689, 725-46 (2003) (examining policy designs for reparations).

184. On the role of apology in reparations campaigns, see WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE (Roy L. Brooks ed., 1999); Eric K. Yamamoto, *Race Apologies*, 1 J. GENDER RACE & JUST. 47 (1997).

185. *See* Jennifer J. Llewellyn & Robert Howse, *Institutions for Restorative Justice: The South African Truth and Reconciliation Commission*, 49 U. TORONTO L.J. 355, 372-79 (1999) (discussing theories of restorative justice); Jamie L. Wacks, *A Proposal for Community-Based Racial Reconciliation in the United States Through Personal Stories*, 7 VA. J. SOC. POL'Y & L. 195, 210-21 (2000).

186. *See* Alfieri, *Community Prosecutors*, *supra* note 175, at 1499-1500.

187. *See* Alfieri, *Race Prosecutors, Race Defenders*, *supra* note 6, at 2263.

and to discretionary community interventions calculated to temper identity conflicts and modulate narrative tensions. Casting that role and demarcating its boundaries presents the dilemma of role legitimacy.

C. Role Legitimacy

The community lawyering dilemma of role legitimacy afflicts all of CEDAD's work in Village West, Overtown, and Liberty City. The role of community lawyers in forging group-based fairness initiatives and restorative justice experiments springs from democratic norms of civic engagement and political participation. Lawyer-assisted community initiatives present opportunities for democratic deliberation and renewal, as the residents of Umoja Village demonstrate. Affording those opportunities to clients and client groups requires revisions in role performance, program infrastructure, and professional training.

Revising the standard conception of progressive lawyering uproots conventional routines of identity disfigurement and narrative stereotype common to representing communities of color. In doing so, it overturns the primacy of a private, contractarian vision of the lawyer-client relationship and the privilege of lawyers' tactical decisionmaking. Exemplified by the Umoja Village, this toppling makes space for the inclusion of a public, community-oriented ethic of race-conscious responsibility grounded in the unfamiliar advocacy norms of moral dialogue and consensus. These norms cast the lawyer in the broader role of moral custodian, responsible for and responsive to race-conscious dialogue with clients and communities. This dialogue offers other-directed empathy and solidarity in place of paternalism and inequality. The goal of lawyer-client solidarity inspires CEDAD's outreach to the communities of Village West, Overtown, and Liberty City.

Albeit appealing, race-conscious dialogue may betray professional commitments to colorblind neutrality in advocacy. Both program infrastructure and professional training often reflect those commitments. Legal services programs regulated by federal or state legislative oversight may adopt a colorblind posture to comply with statutory mandates. Professional training habits ingrained with equal access norms may encourage the same posture. Departing from that posture may induce a sense of self-betrayal, resulting in alienation from traditional role conceptions of advocacy. Estrangement of this kind may dispirit advocates and induce a feeling of ambivalence about the law and the profession, undercutting the pursuit of civic community in advocacy.[188] To be sure, CEDAD students sometimes express an initial sense of ambivalence when confronted with the stark reality of racism and poverty in communities like Village West, Overtown, and Liberty City. Their ambivalence is attributable in part to the race-neutral traditions still prevalent in legal

188. *See* Alfieri, *Community Prosecutors*, *supra* note 175, at 1501-02.

education and popular culture. Once they become engaged in daily community work, however, students generally evolve from a colorblind to a color-conscious perspective not only to meet the needs of clients, but also to accommodate the reality of urban poverty. This evolution in racial perspective presents the dilemma of constitutional harm.

D. Constitutional Harm

The dilemma of constitutional harm in community lawyering relates to the constitutional incompatibility of race-conscious standards of discretion in advocacy. The creation of generalizable standards of racial identity and narrative collides against the neutral axioms of liberal jurisprudence and the colorblind traditions of adjudication. And yet, carving out race-conscious standards opens up historically segregated public and private spaces in law and politics, the spaces revealed by Overtown's opposition to local interstate highway expansion and Umoja Village's homeless encampment. As both communities show, the spaces afford moments of individual deliberative autonomy and group deliberative democracy.

Furthermore, the expressive stigma harm inflicted by racialized narratives on minority communities inhibits voluntary, cross-racial community. When community-based, citizen-led modes of racial reconciliation confront impediments to cross-racial communication and consensus, community membership narrows and self-government weakens, a result displayed in the group conflicts separating black homeowners from black tenants, and polarizing black crime victims from black criminal offenders in Village West. As a consequence, subgroups proliferate, straining diversity and plurality.

It is insufficient to call for normative integration in community-building under a politics of law tolerant of racial stigma. Stigma is too damaging normatively and experientially. Normatively, stigma marks individuals and groups as members of an inferior caste, consigning them to a subordinate status. Experientially, stigma subjects individuals and groups to both internal disparagement and external derision. Constitutional tolerance for stigma in identity and narrative will not activate voluntary, local, citizen-led modes of racial reconciliation. Transformative reconciliation requires a reservoir of common experience and struggle in law and politics. Out of that struggle communities may discover the empathy necessary for forgiveness and unity, a unity absent from Village West yet present in Umoja Village.[189] The presence of unity, however thin and ephemeral, poses yet another dilemma, that of racial injustice.

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189. *See* Alfieri, *Prosecuting Race*, *supra* note 13, at 1246-58.

E. Racial Injustice

The dilemma of racial injustice in community lawyering surrounds the traditionally held right to exploit historical stereotypes under the standard conception of advocacy. The standard conception permits a client to exploit historical patterns of racial injustice in order to safeguard his or her liberty. For criminal offenders in Village West and elsewhere, exploitation may involve a range of trial tactics such as selective prosecution charges, jury nullification appeals, black victim denigration strategies, and diminished capacity claims. Rationalized by the maxim of zealous advocacy, these tactics preserve the right to racial injustice, enhancing a client's self-regarding precept of autonomy. This precept explodes in Village West in the escalating confrontation between black criminal offenders and black crime victims. By exchanging short-run incidents of racial injustice to promote a long-run measure of justice or an aggregate body of higher justice, the right to racial injustice ignores the system-wide costs of racial partisanship in law and politics, costs incurred by both criminal offenders and victims.[190]

The systemic costs of racial partisanship challenge lawyers' categorical duties of obedience and loyalty. Both the precepts of obedience to law and loyalty to clients fall within the standard conception of advocacy.[191] The duty of obedience relies in part on the evaluative norms of legal merit and justice applied in contextual judgments.[192] The duty of loyalty, by comparison, hinges chiefly on the relational norms of legal agency and trust. Racialized identity claims and narrative declarations exploitive of stereotypes stem from a weak commitment to legal merit and justice norms. Strengthening this commitment sacrifices the competing norms of client loyalty and zealous advocacy. Yet, privileging narrative bias surrenders legal norms of fairness and democratic citizenship, thus undercutting the reconciliation of crime victims and criminal offenders in Village West. The hierarchical sanctioning of a black/white or black/brown racial dichotomy encodes bias in the positivist function of advocacy creating a final dilemma of goal dissonance.[193]

F. Goal Dissonance

The final dilemma of goal dissonance in community lawyering pertains to client-community goal correspondence and discord. The standard conception of advocacy proclaims the value and viability of client-community goal consensus. Deliberative dialogue among individuals and groups provides an instrument for building consensus around both the means and objectives of

190. For an incisive account of the right to injustice, see WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS 26-52 (1998).

191. On the standard conception and the duty to obey the law, see *id.* at 77-88.

192. On contextual judgment in legal ethics, see *id.* at 138-69.

193. *See* Alfieri, *(Er)Race-ing an Ethic of Justice*, *supra* note 7, at 951-53.

representation. But the historical record of client-community consensus in communities of color is ambiguous, marred by the conflict and fragmentation found in Village West.

The record of civil rights campaigns reveals jurisprudential and practical obstacles to the collective or other-directed deliberation dictated by client-community goal consensus. The obstacles grow out of thc adversarial tendency to counterpose individual, group, and community interests in litigation, especially institutional reform litigation. Counterposing individual and group interests in situations of larger goal commonality condemns the unifying cfforts of race-conscious community advocacy. Insofar as these efforts may subordinate individual client interests, they may run afoul of the guarantee of effective assistance. Indeed, the conflicts plaguing Village West homeowners and tenants, and criminal offenders and victims alike, may limit CEDAD's role to mediation, rather than group-specific advocacy.

Admittedly, individual client interests are regularly subordinated in complex joinder and class action litigation. Progressive lawyers generally deem unremarkable the resulting limitation on a client's ambit of choice. Indeed, ethics and procedural rules largely cede representational discretion to the judgments of class counsel exerted under the supervision of federal and state courts.[194] However, neither ethical safeguards nor procedural protections reconcile the conflicting interests of community-based individuals and groups seeking race-based relief in law and politics.[195] Reconciliation will not follow from amended procedures or revised administrative systems. Reconciliation will come only from uneasy dialogue and the discovery of common racial ground.[196]

CEDAD's search for dialogue and common ground in the communities of Village West, Overtown, and Liberty City generates intricate dilemmas of race-conscious legal and non-legal intervention arising out of collaborations with individual clients and client groups. The dilemmas implicate essentialism, institutional competence, role legitimacy, constitutional harm, racial injustice, and goal dissonance. Together they burden CEDAD's community lawyering decisions to offer assistance to the Umoja Village homeless squatters, to mediate the homeowner/tenant, victim/offender, and nonprofit conflicts in Village West, and to channel medical-legal advocacy resources to Overtown. Even when governed by a collaborative process of community-centered

194. *See* MODEL RULES OF PROF'L CONDUCT R. 1.2 (2006) ("Client-Lawyer Relationship: Scope of Representation and Allocation of Authority between Client and Lawyer"); FED. R. CIV. P. 23.

195. *See* Michael Diamond & Aaron O'Toole, *Leaders, Followers, and Free Riders: The Community Lawyer's Dilemma when Representing Non-Democratic Client Organizations*, 31 FORDHAM URB. L.J. 481, 509-47 (2004) (discussing cthical dilemmas faced by lawyers representing community groups).

196. *See* Alfieri, *Lynching Ethics: Toward a Theory of Racialized Defenses*, *supra* note 14, at 1101-02 (considering four emerging objections to race-conscious responsibility).

democratic deliberation, race-conscious norms fail adequately to guide these decisions. Thwarted by race, community lawyers must turn back to faith.

CONCLUSION

"'Just have faith.'"[197]

To assert that community lawyering is about faith, faith in others outside the law, is to express something very different than a simple reaffirmation of the professional norms of legal-political activism. That affirmation, albeit crucial to maintaining a commitment to community lawyering, merely renews a positivist or scientific faith in our abilities as legal technicians and policy engineers. It does not posit an alternative faith outside the law in the historical struggle and political engagement of others. Both historical struggle and political engagement are essential to the defense of communities like Village West, Overtown, and Liberty City. Faith comes from *people* and *places*, here the local individuals and groups served by CEDAD students since 2000. Ingrained in the norms of everyday advocacy and organizing, that faith arises as a professional call to public service and as a personal summons to redemption.[198] At bottom, it is a mixed secular and sacred call for *faith in community*.[199] How we come by that faith in others and how we sustain it in ourselves are enduring questions of progressive lawyering.

My best answer to these questions, mulled over two decades of laboring in clinical education and poverty law, is to look beyond ourselves to the identities and narratives bound up in, and clouded by, *difference*. Racial difference, coupled with the distinctions of class, language, gender, and more, guides the analysis of Critical Race Theory and LatCrit Theory. It also influences the lawyering process and the representation of indigent clients and communities of color. My own previous investigations of the role of race, lawyers, and ethics in the criminal justice system point to the centrality of racial identity and racialized narrative in the prosecution and defense of cases of racially-

197. Robert Samuels & David Ovalle, *Police Use Stun Gun on Squatter*, MIAMI HERALD, Mar. 2, 2007, at 1B (quoting Glenda Gutierrez).

198. Community lawyering is always about loss and redemption. Loss results when people assume that difference precludes mutual or reciprocal understanding. Redemption comes from finding common understanding through difference, even if that understanding allows only a partial glimpse into the meaning of difference. In this way, community lawyering creates daily opportunities for human loss and redemption. The opportunities arise in every meeting between progressive lawyers and poor clients both in large and small moments of interaction.

199. On faith in lawyering, see Robert J. Araujo, S.J., *Political Theory and Liberation Theology: The Intersection of Unger and Gutiérrez*, 11 J.L. & RELIGION 63, 79-80 (1995) (connecting the work of liberation theologians to the justice-based writings of Roberto Unger); *see generally* Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075 (1998).

motivated violence. The same identity-making and narrative practices materialize in assisting communities of color in combating poverty.

Contemporary practices of race-conscious lawyering are discernible in CEDAD's work throughout the communities of Village West, Overtown, and Liberty City. Because CEDAD's clinical mission is to educate and assist low-income tenants, homeowners, small businesses, and nonprofit groups in fostering grassroots forms of economic development, clinic students approach problem-solving through outreach, technical assistance, and self-help instruction. Well-educated and trained in legal problem-solving, they instinctively seize hold of constitutional, statutory, and doctrinal materials, rather than explore historical and political sources of community organization and mobilization. Only after they learn of the Jim Crow history of racism segregating Village West, Overtown, and Liberty City and actually witness the political power of grassroots protest do the students understand that the lessons of collaboration, empowerment, and collective resistance sometimes lie outside of the law. Those extra-legal lessons echo in the civil rights movement and poor people's movement struggles of the last century. The lessons survive critiques of community lawyering and the dilemmas of race-conscious representation.

More than a decade after the emergence of the theoretics of practice movement in the legal academy, neither progressive lawyers nor progressive teachers gainsay the transformative potential of clinical education guided by well-settled public interest law norms.[200] Now, out of necessity,[201] we increasingly turn our attention to speculation about what comes after public interest law.[202] Speculation attends both urban and suburban communities,[203] and encompasses both domestic and global advocacy.[204] The widening context of advocacy, spanning transnational issues of economic distribution,[205] environmental justice,[206] low-wage labor,[207] and digital inequity,[208] pushes

200. *See* Lucie E. White, *The Transformative Potential of Clinical Legal Education*, 35 OSGOODE HALL L.J. 603, 605-11 (1997).

201. *See* Ross Dolloff & Marc Potvin, *Community Lawyering—Why Now?*, 37 CLEARINGHOUSE REV. 136, 137-39 (2003).

202. *See* Scott L. Cummings & Ingrid V. Eagly, *After Public Interest Law*, 100 NW. U. L. REV. 1251, 1282-93 (2006) (reviewing JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS (2005)).

203. *See* James A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and Their Impact on Poor and Minority Ethnic Populations*, 21 UCLA J. ENVTL. L. & POL'Y 45, 65-71 (2003).

204. *See* Scott L. Cummings, *The Internalization of Public Interest Law*, 57 DUKE L.J. (forthcoming 2007).

205. *See* Steve Wrone, *Financial Education and Asset-Building Opportunities for Low-Income Communities*, 37 CLEARINGHOUSE REV. 272, 280-82 (2003).

206. *See* Lincoln L. Davies, Note, *Working Toward a Common Goal? Three Case Studies of Brownfields Redevelopment in Environmental Justice Communities*, 18 STAN. ENVTL. L.J. 285, 288-95 (1999).

207. *See* Jennifer Gordon, *A Movement in the Wake of a New Law: The United Farm*

progressive lawyers and teachers to concentrate once again on building community resources[209] and mobilizing community action.[210]

Doubtless, advocacy alone will not deliver the necessary resources to rebuild or effectively to mobilize inner-city communities here and abroad. To that end, we must explore alternative methods of community organization, some taken from interdisciplinary sources and negotiation models,[211] and some gleaned from ongoing experiments in building social capital.[212] Further, we must embrace public-private partnerships,[213] including joint ventures with education[214] and faith-based communities.[215] In all these endeavors, we must seek out the possibility of dialogue[216] but accept the paradox of community[217] and concede the need for patience.[218] Sadly, our generational mentors in the civil rights movement learned those painful lessons too often and too well.[219]

Workers and the California Agricultural Labor Relations Act, *in* CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 88 at 277-301.

208. *See* Ellis Jacobs, *Legal Aid's Role in the Fight for Telecommunications and Computer Access in Low-Income Communities*, 37 CLEARINGHOUSE REV. 259, 263-70 (2003).

209. On the deployment of community resources in organizing justice campaigns, see PENDA D. HAIR, LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE 141-55 (2001); MARK R. WARREN, DRY BONES RATTLING: COMMUNITY BUILDING TO REVITALIZE AMERICAN DEMOCRACY 15-39 (2001).

210. *See* Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101, 1129-55 (1990).

211. *See* David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. ON POVERTY L. & POL'Y 55, 66-88 (2005); Carrie Menkel-Meadow, *When Litigation is Not the Only Way: Consensus Building and Mediation as Public Interest Lawyering*, 10 WASH. U. J.L. & POL'Y 37, 50-58 (2002).

212. *See* Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLINICAL L. REV. 67, 105-09 (2006).

213. *See* Raquiba LaBrie, *The Role of Foundations in Integrating Antipoverty Work into a Broader Systemic Change Agenda*, 37 CLEARINGHOUSE REV. 140, 141-44 (2003).

214. *See* Enrique Armijo, *COPCS: Higher Education Institutions as Community Development Actors*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 365, 367-69 (2005); Gregory L. Volz, Keith W. Reeves & Erica Kaufman, *Higher Education and Community Lawyering: Common Ground, Consensus, and Collaboration for Economic Justice*, 2002 WIS. L. REV. 505, 537-50 (2002).

215. *See* JAMES F. FINDLAY, JR., CHURCH PEOPLE IN THE STRUGGLE: THE NATIONAL COUNCIL OF CHURCHES AND THE BLACK FREEDOM MOVEMENT, 1950-1970 (1993); Tim Suenram, *Minority Poverty and the Faith Community*, 37 CLEARINGHOUSE REV. 154, 155-56 (2003).

216. *See* Nancy Cook, *Looking for Justice on a Two-Way Street*, 20 WASH. U. J.L. & POL'Y 169, 187-98 (2006); Marie A. Failinger, *Face-ing the Other: An Ethics of Encounter and Solidarity in Legal Services Practice*, 67 FORDHAM L. REV. 2071, 2097-2103 (1999).

217. *See* Scott L. Cummings, *The Paradox of Community: A View from the Prismatic Metropolis*, 13 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 8, 13-14 (2003); Lucie E. White, Goldberg v. Kelly *on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 877-887 (1990).

218. On the frustrations of progressive lawyering, see Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992).

219. On the tensions internal to civil rights advocacy, see Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 482-93 (1976); William B. Rubenstein, *Divided We Litigate: Addressing Disputes Among*

Most important, we must look beyond the tragedy of our limits[220] and celebrate the promise of educating and training new agents of social change in the clinical classroom, on campus, and in the community around us.[221] To both students and teachers, the lessons of community collaboration and resistance are manifold and daunting. In the catechism of community, the first and last lesson is faith, sometimes blind, sometimes clear-eyed, always hopeful.

Group Members and Lawyers in Civil Rights Campaigns, 106 YALE L.J. 1623, 1627-44 (1997).

220. *See* Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 132-42 (1992).

221. *See* Ann Southworth, *Representing Agents of Community Economic Development: A Comment on Recent Trends*, 8 J. SMALL & EMERGING BUS. L. 261, 265-71 (2004).