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Lawyering from Below: Activist Legal Support in Contemporary Canada and the US

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LAWYERING FROM BELOW:
ACTIVIST LEGAL SUPPORT IN CONTEMPORARY CANADA AND THE US

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ABSTRACT

A vast literature has considered the proactive use of law as a tool by progressive social movements, but far less attention has been paid to the way activists respond to involuntary engagement with law as a result of repression and criminalization. This dissertation explores the legal support infrastructure of grassroots protest movements in Canada and the US by tracing the evolution of contemporary activist legal support through two periods. The tactic of jail solidarity and an emerging legal collective model are highlighted as the key features of the global justice organizing era (1999-2005) while in the second age of austerity era (2008-2018), I discuss evolving approaches to law collective work in various protest movements and highlight a renewed focus on anti-repression as a framing praxis of both organizing and legal support. Grounded in my own activist legal support work over more than two decades, this research rests on data arising from detailed interviews and analysis of more than 125 archival documents.

I develop two areas of inquiry. First, I trace critiques of movement lawyering in the legal literature to demonstrate that those critiques are often shared by legal support organizers. Divergent opinions on the appropriate role of lawyers and norms of professional ethics in law collective practice reflect long-standing contradictions in progressive lawyering practice. Accordingly, I argue that the legal work of non-lawyer activists ought to be understood as a complementary – if also sometimes disruptive – model of movement lawyering. Second, I demonstrate that an analysis of radical legal support speaks to the post-arrest experiences of protesters and the impact of such repression on mobilization – phenomena largely absent from the literature on state repression of social movements. I consider this dynamic through the lens of legal mobilization, arguing that the pedagogical work of law collectives, understood as a site of social movement knowledge production, plays a significant role in mediating the complex relationship between repression and mobilization. I conclude by exploring the legal consciousness of activist legal support organizers and argue that the education and organizing praxes of law collectives are evidence of a form of prefigurative, counter-hegemonic legality.

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This dissertation was researched and written in three cities I call home: Belgrade, Toronto (Treaty Lands and Territory of the Mississaugas of the New Credit First Nation and the Dish with One Spoon Wampum), and Vancouver (unceded territories of the xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), and Sel̓íl̓witulh (Tsleil-Waututh) Nations).

It is dedicated to the memory of my grandparents. Smrt fašizmu, sloboda narodu!

TABLE OF CONTENTS

CHAPTER 1
"A LITTLE SOLIDARITY GOES A LONG WAY": INTRODUCTION AND OVERVIEW

> A lesson that would be reinforced throughout my whole radical law experience is that a little solidarity goes a long way in terms of transforming the ordinary experience of incarceration and arrest from one that is supposed to be alienating and one that's supposed to be objectifying and break your spirit to one that is empowering and one where power is built.
>
> John Viola, 2017[1]

In the pre-dawn hours of October 16, 2001, several hundred demonstrators gathered in front of Toronto's city hall.[2] At the same time, twenty minutes away in the west end neighbourhood of Parkdale, I was among a handful of activists sitting in a borrowed storefront office clutching cups of coffee and waiting sleepily for the phones to start ringing. We did not have to wait long. That morning's protest had been called by the Ontario Common Front coalition as part of a grassroots province-wide campaign of resistance against Ontario's neo-conservative government and its Bay Street backers. When protesters arrived on foot and in rented buses, police officers attempted to pre-emptively search their belongings; those who refused to consent to a search were immediately arrested for breach of peace.[3] By 6:00am, the phones in our temporary office were ringing steadily as our nascent radical legal support group, the Common Front Legal Collective, dealt with its first set of arrests. We stayed busy throughout the day – deploying

[1] Interview of John Viola (15 March 2017), lawyer and legal collective member.
[2] CBC News, "Cops bust protesters before march on Bay Street", *CBC News* (16 October 2001), online: https://www.cbc.ca/news/canada/cops-bust-protesters-before-march-on-bay-street-1.271542.
[3] James Rusk, "Toronto Police apologize to protesters", *The Globe and Mail* (11 August 2004), online: https://www.theglobeandmail.com/news/national/toronto-police-apologize-to-protesters/article1139372/.

lawyers, alerting the friends and family members of arrested protesters, and most importantly, taking calls from those in custody. Shortly after the demonstration's finale, a 'snake march' through Toronto's financial district, wound down came a well-timed if entirely unrelated announcement: Ontario Premier Mike Harris had resigned.[4]

Months later, the Common Front Legal Collective continued to support twenty defendants facing criminal charges from 'O16' as the protest, following in the style of recent global justice mobilizations, had been dubbed. The dozen members of the Collective were all non-lawyers; some were law students, the rest activists and organizers whose knowledge of the law primarily derived from direct experiences of criminalization. That winter, I was little more than a year out of law school, no longer an articling student but not yet a lawyer. I had been an activist since high school and like most of the Collective, had previous involvement in providing legal support during both local demonstrations and global justice summit convergences. We had formed Common Front Legal in the midst of the anti-globalization movement, caught up in the post-Seattle moment.[5] By O16, just a month after the events of 9/11, that moment appeared over. The Collective remained active however, and we were soon providing legal support for a myriad of causes such as anti-poverty, immigrant rights, and Indigenous solidarity protests as well as 2003's massive anti-war demonstrations.

Almost two decades later, I remain involved in and fascinated by the work of legal collectives and other radical legal support organizations. Much of what follows arises out of my own experiences with providing legal support to grassroots movements, as a criminal

[4] CBC News, "Ontario premier to resign", *CBC News* (16 October 2001), online: https://www.cbc.ca/news/canada/ontario-premier-to-resign-1.300076.
[5] See chapter 3, section C for more details.

defence lawyer but more often as an organizer, educator, and/or fellow activist. As detailed in the next chapter, this positionality has informed my methodological approach to this research, but more fundamentally, the very idea for this dissertation emerged out of the legal and activist work I have been engaged in since the mid 1990s. In many ways, radical legal support is who I am as a political person; it has been and continues to be my central contribution as an activist and my hope is that this project will spur further research into this challenging work.[6] I have approached the dissertation as an 'embedded' activist-researcher, meaning that I "deliberately include myself in what I discuss."[7] The story of O16 is only the first of several first-hand accounts of mobilizations and the radical legal support that accompanied them and I began with it quite intentionally. Although this dissertation examines several types of activist legal support formations, it was my membership in the Common Front Legal Collective and the relationships we developed with other law collectives that initially sparked my passion for the work of defending social movements.

Legal collectives[8] are volunteer groups composed of primarily non-lawyer activists engaged in providing legal support for other grassroots activists and organizers,

[6] While this kind of sustained writing requires some temporary stepping back from active participation in the very movements and struggles the research emerges from and is accountable to (see Craig Fortier, "Unsettling Methodologies/Decolonizing Movements" (2017) 6:1 Journal of Indigenous Social Development 20 at 28), the opportunity to critically reflect and theorize is a crucial (if often neglected) element of movement praxis and as elaborated on in chapter 6, such moments are essential to the production of movement knowledges.

[7] Chris Dixon, *Another Politics: Talking Across Today's Transformative Movements* (Berkeley: University of California Press, 2014) at 13.

[8] Reflecting the practice of activist legal support organizers, I use the terms "law collective" and "legal collective" interchangeably throughout this dissertation. As demonstrated by the list of activist legal support projects in Appendix A, collectives have used both terms in their names and there is no evidence of any intended distinctions attached to the choice of "law" or "legal" to name a collective in any of the materials I reviewed or interviews I conducted. Similarly, "legal support" refers to a type of organizing work (other examples would be logistical or technical support), rather than a broader conceptualization of law or the legal field.

particularly during protests, demonstrations, and other mass mobilizations. Initially called law communes, legal collectives first arose out of the New Left movements of the late 1960s as explicitly political, non-hierarchical alternatives to traditional law firms. The global justice movement of the late 1990s incubated a resurgence of more activist-focused legal support projects, including a short-lived network of collectives across Canada and the United States. More than thirty law collectives and other radical legal support organizations have been active at various times since 1999, including at least nine in Canada.[9] Over the past twenty plus years, law collectives and activist legal support projects have provided legal support to thousands of activists and protesters by facilitating access to criminal defence counsel, fielding legal observers, staffing legal hotlines, and organizing court and jail support. Radical legal support organizers have provided countless workshops and trainings, from basic "Know Your Rights" sessions for protesters to impromptu solidarity trainings in police wagons and more advanced train-the-trainer workshops on organizing your own legal support. These trainings, like the legal guides, manuals, comic books, videos, websites, and other popular legal education resources developed by activist legal support providers, are resolutely political, aimed at defending and building movements for radical social change. The provision of direct support and legal assistance alongside legal information and resources (on criminal law and procedure, constitutional rights, trial advocacy, etc.) is approached as a movement-building tactic, grounded in the need to counter state repression at every stage of organizing. These dual roles – popular legal education and direct support – are also evidence of a commitment to radically prefigurative

[9] See Appendix A for a full list.

movement praxis.[10] For the legal collectives of the global justice movement era as well as more recent iterations of radical legal support, the law as it currently exists is inherently repressive, intimately tied to the very systems of domination grassroots social movements struggle against. In their largely involuntary engagements with law, radical legal support organizers strive towards what one activist legal support project described as "forms of individual and collective empowerment that are alien to the legal process, where we are usually objects rather than agents."[11]

A. Engagements and Arguments

This dissertation explores this intersection of law and social movements, aiming to understand how law collectives and other radical legal support organizers reconfigure the politics of movement lawyering and popular legal education through the cultivation of an insurgent and prefigurative form of counter-hegemonic legality. It acknowledges this small but distinct corner of legal work as a site of movement knowledge production, one whose stories have largely gone untold. With few exceptions,[12] both social movement and legal

[10] As discussed further in chapter 6, section E, my use of the term "prefigurative praxis" is inspired by both Gramscian theory (exemplified by Carl Boggs' classic formulation of prefiguration as "the embodiment, within the ongoing political practice of a movement, of those forms of social relations, decision-making, culture, and human experience that are the ultimate goal": "Marxism, Prefigurative Communism, and the Problem of Workers' Control" (1977) 11 Radical America 11, online: https://theanarchistlibrary.org/library/carl-boggs-marxism-prefigurative-communism-and-the-problem-of-workers-control) and more recent movement discourses ("The core idea here is that *how* we get ourselves to a transformed society (the means) is importantly related to *what* the transformed society will be (the ends). The means *prefigure* the ends.": Dixon, *supra* note 7 at 84-5).

[11] Doc 70 (Community RNC Arrestee Support Structure [CRASS], 2010) at 81-82 (for this and all subsequent references to primary documents, please refer to the list in Appendix C for full details about each document). See chapter 4, section A for more on CRASS.

[12] See e.g. Amory Starr, Luis A Fernandez & Christian Scholl, *Shutting Down the Streets: Political Violence and Social Control in the Global Era* (New York: NYU Press, 2011), Frances Olsen, "Commentary – Legal Responses to Mass Protest Actions: The Dramatic Role of Solidarity in Obtaining Generous Plea Bargains (2003) 41 Osgoode Hall Law Journal 363; Beverly Yuen Thompson, "The Global Justice Movement's Use of "Jail Solidarity" as a Response to Police Repression and Arrest: An

scholars have failed to closely examine the work of providing activist legal support, particularly the contributions of non-lawyer legal collectives who engage with the legal apparatus of state repression without conceding its legitimacy. Largely left out of the related legal literatures – on public interest and radical lawyering, law and social movements, and law and organizing – are the non-lawyer activists engaged in legal work such as popular legal education, protest defence, jail and court solidarity, and defendant organizing and support. I draw on cognate literature in law as well as the work of social movement scholars to situate activist legal collectives within relevant debates on law and social movements, movement lawyering, protest policing, and state repression. This approach acknowledges that for several decades, legal studies scholars and social movement researchers outside the legal academy largely 'talked past' one another,[13] and it thus responds to the need for research which embarks on "empirical and theoretical inquiry that connects these two traditions."[14] Studying the work of movement-based radical legal support organizers also requires venturing beyond the realm of criminalization of dissent and into the more complex terrain described by Scott Barclay, Lynn C. Jones, and Anna-Maria Marshall as research that goes "deeper than a view of legal consequences as positive or negative for the cause and instead delve[s] into questions that dissect the complexity and evolving nature of interactions between law and movement over the life course of the

Ethnographic Study" (2007) 13 Qualitative Inquiry 141; Amory Starr & Luis Fernandez, "Legal Control and Resistance Post-Seattle" (2009) 36:1 Social Justice 41. See also Kris Hermes, *Crashing the Party: Legacies and Lessons from the RNC 2000* (Oakland: PM Press, 2015).

[13] Scott Barclay, Lynn C Jones & Anna-Maria Marshall, "Two spinning wheels: Studying law and social movements" in Austin Sarat, ed, Special Issue Social Movements/Legal Possibilities, Studies in Law, Politics and Society (Somerville, MA: Emerald Group Publishing Limited, 2011) 1 at 2, DOI: https://doi.org/10.1108/S1059-4337(2011)0000054004.

[14] Michael W McCann, "Introduction" in Michael W McCann, ed. *Law and Social Movements* (Aldershot: Ashgate, 2006) xi at xxi.

movement and in changing political environments."[15] This dissertation traces the trajectories of several prominent protest movements in Canada and the US over the course of two distinct eras of mobilization, charting the interplay of state responses, legal support organizing, and broader movement strategies during these periods and the life cycles of those movements.

While the dearth of scholarly writing about radical legal support organizing has served as one prompt, addressing this absence is not the sole contribution I seek to make here. A more significant motivation is the much louder silence (inside and outside the academy) about non-lawyers doing movement legal work – and doing it well, in creative, principled, and radically disruptive ways. This omission is significant (and maddening!) on its own because legal support work is an important element of protest movement infrastructure,[16] but also because such work by non-lawyers has crucial contributions to make to our understanding of movement lawyering *by lawyers*. A secondary motivation is to challenge the overwhelming focus (again, in the academy and more broadly) on how movements use law as a proactive tool for social change by turning attention to how movements are forced to engage with law through repression and criminalization. In doing so, I contend that the movement defence praxes of activist legal support organizers demonstrate the counter-hegemonic potential of radical legal work that does not take the legitimacy or continued existence of the law for granted and that recognizes that with the intervention of legal support, repression may be a mobilizing force. For over two decades,

[15] Barclay, Jones & Marshall *supra* note 13 at 12.
[16] See e.g. the work of Alan Sears who defines infrastructures of dissent as "the means through which activists develop political communities capable of learning, communicating and mobilizing together" and argues that such infrastructure is "a crucial feature of popular mobilization, providing the basic connections that underlie even apparently spontaneous protest actions." Alan Sears, *The Next New Left: A History of the Future* (Winnipeg: Fernwood, 2014) at 2.

this work has been my primary experience of the intersection of law and social movements – personally, professionally, theoretically – and it was time to name and explore this experience more explicitly.

After detailing two distinct periods of radical legal support organizing, this dissertation develops two key areas of inquiry. First, I trace the critiques of movement lawyering set out in the legal literature and demonstrate that those critiques are often shared by activist legal support organizers, whose work is guided by a desire to avoid the same problems faced by progressive lawyers. Similarly, debates about the relationships between lawyers, communities, and/or movements in the movement lawyering, law and organizing, and clinical legal education literature parallel debates among and within law collective networks. Divergent opinions on the appropriate role of lawyers and norms of professional ethics in law collective practice reflect long-standing contradictions within movement and community-based lawyering. Core themes arising from my primary research (for example, activist legal support providers' commitments to internal and external accountability, the demystification and decentralization of legal expertise, and a rejection of legal support work as service provision) map onto the arguments which have been at the heart of evolving approaches to progressive lawyering since the 1970s. Consequently, I argue that the legal work of movement-based non-lawyers addresses key questions and illuminates central debates about lawyering and movement building.

Second, I demonstrate that an analysis of the direct support and popular legal education work of activist legal support organizers speaks to a significant absence in the literature on state repression of social movements: the post-arrest experiences of activists and the subsequent impact of such repression on mobilization and organizing. I consider

this dynamic through the lens of the dominant legal literature on social movements – the legal mobilization model – arguing that the pedagogical work of law collectives, understood as a site of social movement knowledge production about law, repression, and the state, plays a crucial role in mediating the complex relationship between repression and mobilization. I then turn to exploring the distinct legal consciousness of activist legal support organizers in order to argue that their education and organizing praxes in response to repression and the criminalization of dissent are a window into the construction of a generative, collective form of legal consciousness that straddles the borders between law's hegemony and its potential for resistance. I conclude by envisioning a model of lawyering from below – by both lawyers and non-lawyer activists – as a form of prefigurative, counter-hegemonic legality.

In doing so, my research foregrounds movement strategies and actors; utilizing activist-research methodologies, I catalogue, analyze, and theorize the work of movement-based legal collectives and legal support organizers in Canada and the US since the late 1990s. Ultimately, this is a dissertation founded on direct engagement with movement praxis: "[i]t is about putting the thoughts and concerns of the movement participants at the center of the research agenda and showing a commitment to producing accurate and potentially useful information about the issues that are important to these activists."[17] As detailed in the next chapter, my analysis rests on data arising from my in-depth interviews with over twenty current and former law collective members, analysis of more than 125 primary documents, including activist legal guides, training materials, and other resources produced by legal support organizers, and my own role as a participant-observer in activist

[17] Douglas Bevington & Chris Dixon, "Movement-relevant Theory: Rethinking Social Movement Scholarship and Activism" (2005) 4:3 Social Movement Studies 185 at 200.

legal support since the late 1990s. The interview data is weaved throughout the dissertation and drives both its narrative and analysis, reflecting the role of radical legal support organizers in driving knowledge production in and about law. My use of lengthy excerpts from interviews and primary documents is meant to convey a flavour of the poetics of the movements, activists, and projects this dissertation arose out of, poetics that activist-historian Robin D.G. Kelley urges us to recover in the service of crafting new possibilities.[18]

The scope of this study is limited in two main ways. First, I do not look beyond Canada and the US, although protest movements all over the world engage in some form of legal defence organizing.[19] While my data and overall orientation is equally focused on the work and experience of legal support organizers in these two national state contexts, the analytical balance tends to fall on the US side due to its much larger body of literature on law and social movements.[20] Second, I do not examine the legal support efforts of right wing or conservative movements nor the full spectrum of left-wing legal projects, such as political prisoner support initiatives and bail or legal defence funds or in the US, grand jury resistance organizing. Beyond these caveats, there are no doubt key projects, actors, and/or events that I have unjustly omitted.

B. Organization and Contents

The next chapter introduces the work of radical legal support in more detail and then lays out this study's activist-research methodology, guiding ideals and ideas, and my approach

[18] See the introduction to Chapter 2 below.
[19] See e.g. Starr et al. *supra* note 12 and Anna Feigenbaum, Fabian Frenzel & Patrick McCurdy, *Protest Camps* (London: Zed Books, 2013).
[20] See chapter 5, section A for more on this.

to primary research sources. It is followed by two chapters covering recent eras of contemporary activist legal support, each of which tells two key stories about the intersections of law, politics, and grassroots social movements. Chapter three examines the global justice era and its dissolution (1999-2005), using one tactic (jail solidarity) and one organizing model (the law collective of the global justice movement) to trace the emergence and evolution of radical legal support during a period marked by mass mobilizations. Chapter four covers the era of anti-austerity and racial justice activism between 2008 and 2018 and continues to follow the evolution of activist legal support through the emergence of new legal support models and structures. A central thread in this post-2008 period is the growing centrality of anti-repression tactics in response to changes in protest policing during a period of more diffuse and decentralized mobilizations. In both eras, I foreground the impact of radical legal support on movement participants and non-movement actors alike, demonstrating that "a little solidarity goes a long way" toward producing social movement knowledge, illuminating movement lawyering practices, and suggesting counter-hegemonic alternatives.

Chapters five and six move away from historicizing and into such analysis and theorizing. In chapter five, I put the work of radical legal support into conversation with the literature on movement lawyering and law and social movements, revealing that the various critiques of movement lawyering set out in the legal literature are often shared by law collectives and that activist legal support organizing may be driven by similar appraisals of the politics of law. I conclude that the ethical and political commitments of radical legal support organizers speak to key questions about the role of movement lawyering – a defining debate of the so-called "social movement turn in law." Chapter six

examines the role of radical legal support organizers in catalyzing social movement knowledge production about law, repression, and the state. After canvassing the impact of radical legal support on the post-arrest experiences of activists and resulting patterns of mobilization, I contend that a defining element of activist legal work is the ability to mobilize repression and foment the diffusion of insurgent forms of legal consciousness. Building on these insights, the chapter concludes with a sketch of lawyering from below as a vision of legality that emanates from the work of non-lawyers as well as lawyers and prefigures an alternate set of legal and political relations. In the seventh and final chapter, I recap the dissertation's core arguments, reflect on the role of radical legal support in our current moment of growing resistance coupled with encroaching crisis and authoritarianism, and consider its potential in the future. Throughout, I focus on the unique contributions of radical legal support organizers to expanding and shaping discourses – scholarly and activist – about the intersections of law and social change.

CHAPTER 2
RETRIEVING RADICAL LEGAL PRAXIS: BACKGROUND AND METHODOLOGY

> Recovering the poetry of social movements… particularly the poetry that dreams of a new world, is not such an easy task.
>
> Robin D.G. Kelley, 2003[1]

Robin D.G. Kelley's assertion of the importance and difficulty of recovering movement poetry points to the necessity of methods that are rigorous, clear, and expressly aligned with the commitments of the movements this dissertation emerges from. In this chapter, I aim to articulate just such an approach. I begin by introducing the work of law collectives and other radical legal support organizers in more detail, setting out a comprehensive synopsis of the core tasks and practices of activist legal support. I then canvas the purpose and significance of this work in contemporary protest movements – politically and practically – before briefly examining relevant predecessors in previous social movements beginning in the late 1960s. In the second half of the chapter, I provide an overview of activist-research methodologies and their application to this project before detailing my approach to collecting, coding, and analyzing primary research sources (interviews and archival materials). I conclude by identifying five modes of radical legal support praxis evidenced by that data.

[1] Robin D. G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2003) at 10.

A. SETTING THE CONTEXT

> Activists defend our rights and lives with volunteer lawyers, training legal workers on the fly, answering the phone all night… Lay legal workers learn the relevant laws, the court system, to provide counsel and evidence. The ragtag legal collectives of the activist scene compile the data: they can prove the political integrity of the unarmed activists and the illegal brutality of the police.
>
> Amory Starr, Luis Fernandez, and Christian Scholl, 2011[2]

i. Radical legal support: purpose, politics, practice

Radical legal support organizers are not, and never have been, the sole movement response to criminalization and repression. Modern social movements have long been assisted by lawyers (those with an explicit commitment to movement or radical lawyering as well as those without, particularly in the case of criminal defence counsel), non-profit legal organizations and NGOs, and 'lay lawyers' or community advocates. Such aid remains invaluable, but radical legal support by and for activists aims to do more than lend assistance or provide a service; it is embedded within the infrastructure of movement organizing and is evidence of a broader prefigurative alignment. Law collectives and other radical legal support projects draw from and expand the political capacity of the movements they emerge from.[3] Neither neutral 'civil libertarians' nor detached human rights defenders, radical legal support organizers are partisan allies and/or members of social movements which come under attack by the state and private actors because they challenge – through various means, including extra-legal ones such as direct action and civil disobedience – the oppressive ways our society is organized. A 2002 article published in the *Earth First! Journal* encapsulates this orientation:

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[2] Amory Starr, Luis A Fernandez & Christian Scholl, *Shutting Down the Streets: Political Violence and Social Control in the Global Era* (New York: NYU Press, 2011) at 145.
[3] See chapter 6, section B.

> Over-reliance on lawyers (who are by definition part of the system) or groups like the American Civil Liberties Union (whose behaviour ranges from quite helpful to politically abhorrent) … disempowers our community. We need *accountable*, activist-driven legal support structures. One way to organize this is the law collective model. Contemporary law collectives are community-based activist organizations familiar with the law and the politics of the legal system.[4]

This emphasis on accountability speaks to more than a discomfort with the legal profession, although a critique of top-down or domineering lawyering practices is consistently invoked by activist legal support providers: "A legal collective can be a number of things. A trusted group of activists who work with lawyers to track us through the arrest, jail, and court process is invaluable. Legal collectives are *never to tell activists what to do,* but help facilitate with communication, advance training, and interfacing with lawyers."[5] Appeals for accountability are also a reminder that radical legal support is primarily about movement building, about ensuring that criminalization and repression do not succeed in pushing organizers out of movements or dissuading new activists from joining them. "We think legal support is important for the success and sustainability of our movements," wrote the Midnight Special Law Collective in 2007,

> The criminal justice system is designed to isolate and disempower people. If activists are supported in jail and helped in court, they'll be in the streets again. But if something goes down and there's no legal support, people will be demoralized at best and locked up at worst."[6]

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[4] Doc 69: Phaedra Travis, Sarah Coffey & Paul Marini, "Wrenching the Bench: People's Law Collectives and the Movement, *Earth First! Journal* (Beltane 2000), online: https://web.archive.org/web/20070824232035/http://www.earthfirstjournal.org/article.php?id=123 [emphasis added].

[5] Notes from Nowhere, "Direct Action: Jail Solidarity" in Notes from Nowhere, eds, *we are everywhere: the irresistible rise of global anticapitalism* (New York: Verso, 2003) 326 at 327 [emphasis added].

[6] Doc 79.

The movement-building function of radical legal support is predicated on a recognition that state repression is multi-faceted and a concomitant understanding that intervention at various levels or moments of criminalization is vital for retaining movement participants. Those interventions require a bundle of specialized skills drawn from movement expertise, skills that often lie outside of the repertoire of even the most dedicated progressive or radical lawyers. Former Midnight Special Law Collective member Dan Tennery-Spalding describes the importance of movement-based legal support to the experience of arrest and detention:

> You're scared, you're confused, you're hungry and thirsty, you don't know what's going to happen to you. Being able to make sense of that moment and having someone you can call, like a total stranger you can call and who will take care of you… it's such a powerful thing and I think that's absolutely the difference between that being a terrifying moment and a radicalizing one. And *that's something that's unique to having someone who has done the work of setting up a hotline and publicizing it and working and staffing it and being able to give you quality answers that are specific enough to you* – and also having the emotional intelligence to know where you're coming from and help you out. That's really uniquely powerful and something that you don't get anywhere else.[7]

Such specialized expertise is often the reason law collectives and other radical legal support projects do occasionally merit mention in the social movement literature. In his discussion of law's role in "regulating and controlling dissent" in Canada, Byron Sheldrick names legal teams and legal observers as examples of the "strategies for dealing with the potential for arrests" developed by activists.[8] Anna Feigenbaum, Fabian Frenzel, and Patrick McCurdy investigate place-based social movement practices, locating legal support within "action infrastructures and practices", key organizational dimensions of protest

[7] Interview of Dan Tennery-Spalding (9 April 2017).
[8] Byron M. Sheldrick, *Perils and Possibilities: Social Activism and the Law* (Winnipeg: Fernwood, 2004) at 41.

camps worldwide.[9] As an element of core movement infrastructure, they note, legal support resources are among the "kinds of items, roles and spaces one might find" in encampments and other protest spaces.[10] In their study of social control and protest at global justice era summit mobilizations in Europe and North America, Amory Starr, Luis Fernandez, and Christian Scholl discuss legal support as one aspect of the "political economy of solidarity" and locate activist legal teams within the direct-action sector of protest infrastructures, observing that "the activist legal team is often the best first responder, since other lawyers are unprepared for the peculiarities of protest detention systems."[11] The remainder of this section details the central tasks which constitute the legal support infrastructure of a protest, mass mobilization, or other action likely to attract repression or criminalization. As outlined in the second part of this chapter, this account (like those that follow), relies on movement-derived primary research sources, particularly my interviews and the archival documents collected for this dissertation, to chart the work of legal collectives and other radical legal support projects and to preview key themes and debates.

Legal support planning can begin months or even years before a large mobilization while small, local actions may make do with a few phone calls, group texts, or emails marshalling legal support the night before. The latter is particularly likely in cities with a standing activist law collective, while major one-off mobilizations are often accompanied by the formation of a temporary action legal team. In the aftermath of mass arrests however, it is not uncommon for this distinction to dissipate, as with the Common Front Legal Collective in the wake of O16: "Unlike legal teams, which are short-term and action-

[9] Anna Feigenbaum, Fabian Frenzel & Patrick McCurdy, *Protest Camps* (London: Zed Books, 2013) at 27-8.
[10] *Ibid* at 46.
[11] Starr, Fernandez & Scholl, *supra* note 2 at 128-131.

specific, law collectives are long-term structures with a wider scope of goals. Many of the recent collectives began as legal teams that had to reorganize in a crisis to be able to support all of those arrested."[12] In either scenario, core legal support organizers will also encourage, and likely rely on, other activists' collective responsibility for – and participation in – legal support provision:

> While there will be a centralized legal support team, the more individuals and affinity groups can take care of their own legal support, the more effective the centralized legal team will be. This is a great role for people who can't — or don't want to — risk arrest during the protests.[13]

Whether permanent or temporary, the legal team will have to establish guidelines around membership and how to vet potential volunteers. There is long-standing disagreement about the place of lawyers in legal collectives or action legal teams,[14] but even groups that allow lawyers as members will be composed primarily of non-lawyers.[15] While this practice is the result of both limitations on lawyers' time and energy and a commitment to building skills and capacity in movements, it also speaks to the underlying politics of radical legal support. Former Common Front Legal Collective member AJ Withers highlights the importance of bringing lived experiences of criminalization into legal support organizing:

> Legal professionals almost always, not always but almost always, don't have criminal records. And haven't been arrested. There's the very rare exception… Having been the person that was facing fifteen charges… and being like 20 [years old] and not knowing

[12] Doc 69 (*Earth First! Journal*, 2002).
[13] Doc 18 (Coldsnap Legal Collective, 2008).
[14] See chapter 5, section D.
[15] In the US, non-lawyer legal support organizers often refer to themselves as 'legal workers' (see e.g. Starr, Fernandez & Scholl, *supra* note 2 at 130: "The majority of the [legal] work can be done by nonprofessionals, who in the process gain skills and knowledge as "legal workers.""), but this term is much less commonly used in this context in Canada and apart from mentions in quotations, I do not use it in this dissertation.

> how the system works and just fucking terrified… that's actually a really valuable perspective to have in a legal collective.[16]

Regardless of the legal team's make-up, recruiting pro bono lawyers (particularly criminal defence counsel, but in some cases, immigration and/or family lawyers as well), to be on-call during the action is a crucial preparatory task. Only lawyers can formally advise detained activists, communicate with police and jail staff, and represent arrestees at bail hearings, and yet the relationship between radical legal support organizers and the legal profession is often a fraught one. A much-cited legal solidarity handbook written in the early 2000s includes a section titled "Lawyers: what's the use?" that begins by noting that "[t]here are some excellent lawyers with good politics out there who can be a great resource to coordinate with the legal team for the action" but goes on to caution that "it's important that the activists maintain control. Give the lawyers questions and instructions in writing and ask for responses in writing to be sure that they understand what you want and that they do it."[17] In the lead up to an action, legal support organizers will often participate in planning meetings, sharing insights gained from researching anticipated police tactics and/or legal developments and updating activists on the logistics of legal and solidarity arrangements. The place of legal support organizers in movement decision-making, particularly with respect to questions of tactics, is often contentious[18] but there is no doubt that popular education and the sharing of legal knowledge are core functions of radical legal support at all stages of organizing. Lawyer and long-time legal support organizer John Viola argues that "one of the main goals of doing radical legal support… is to de-professionalize and decenter, decentralize the [legal] model. To break it off so you're not

[16] Interview of AJ Withers (25 April 2017).
[17] Doc 42 (Midnight Special Law Collective, 2003) at 7 and 8.
[18] See chapter 5, section B.

just relying on a group of professionals to come down with their expertise to do things but that it's much more of a grassroots popular and popular education-based model."[19] Whether using legal skills to inform action strategies, train activists and community members, or produce resource materials, a universal and explicit goal of radical legal support projects is decentralizing and diffusing legal knowledge:

> We approach our legal rights activism with the greater mission of educating, empowering, and supporting our community. Based on this mission, we aim to decentralize information as much as possible so it can be easily passed on to others, therefore reaching out to as many communities as possible through a network of knowledge. We also seek to provide people with the information necessary to make educated decisions based on their own needs and desires, and to empower them to act upon their decisions by providing a network of support and solidarity. This mission allows people to act autonomously while being a part of a larger, stronger community that is able to combat repression.[20]

Once a protest or action has begun, the legal team's focus turns to supporting and tracking protesters (and bystanders) who have been detained or arrested. Organizers may ensure that protest participants are reminded of this function by providing them with a flyer containing legal information and the arrest hotline number and/or by asking people to write the phone number on their body. Other members of the legal team will be ready to answer the hotline, possibly in a formal action legal office if the situation warrants such infrastructure. Arrest hotlines often operate 24 hours a day during mass mobilizations, sometimes for days or even weeks on end, allowing legal support organizers to track arrestees through the arrest process, marshal lawyers, support solidarity tactics, mobilize jail and court support, and provide updates to action organizers and the broader movement, the friends and family of arrestees, and the media. Some law collectives and legal teams

[19] Interview of John Viola (15 March 2017).
[20] Doc 18 (Coldsnap Legal Collective, 2008). See chapter 6, section B for more on popular legal education.

field legal observers and/or 'street team' members to both monitor arrests and observe and document police behaviour. Starr et al. consider legal observing (or 'counterobservation') to be an anti-repression tactic used by activists to "resist spatial control", noting that "[a]ctivists and sympathetic legal workers have developed a grassroots culture and method of watching and documenting police behavior", turning legal observing into "a paraprofessional volunteer role".[21] Other radical legal support organizers work alongside legal observers deployed by legal organizations, particularly in the US where the National Lawyers Guild's mass defense program trains and coordinates legal observers in dozens of cities.[22]

After a protest or mobilization has wrapped up, the work of tracking defendants, pursuing civil suits, gathering evidence (from legal observers and other participants), organizing defendant support structures, and/or longer-term prisoner support begins. Some of these tasks may have arisen even prior to the conclusion of an action while others emerge later and can drag on for years after. The consequences of criminalization and repression are complex and often contradictory, both individually and collectively. Arrestees and activists may be drawn deeper into organizing or they may leave, overwhelmed by trauma and/or worn out by the impact of arrest and prosecution, whether or not they are ultimately convicted.[23] Organizations and movements may be strengthened, ripped apart, and/or diverted into endless court support, fundraising, and defendant coordination, tasks often

[21] Starr, Fernandez & Scholl, *supra* note 2 at 123 and 126.
[22] See Chapter 5, section B(ii) and generally National Lawyers Guild, "NLG Legal Observer® Program" (undated), online: https://www.nlg.org/legalobservers/. The National Lawyers Guild [NLG] is a long-standing progressive bar association in the US; its "mission is to use law for the people, uniting lawyers, law students, legal workers, and jailhouse lawyers to function as an effective force in the service of the people by valuing human rights and the rights of ecosystems over property interests": NLG, "About" (undated), online: https://www.nlg.org/about/.
[23] See chapter 6, section C(ii).

made more difficult by repressive bail conditions or other legal mechanisms. Radical legal support is an explicitly self-replicating project generally,[24] but the aftermath of a mass arrest is often an opportunity for legal collectives and other groups to take on new members or to form new groups to replace action legal teams staffed by out-of-towners. Sooner or later the cycle begins again, reproducing and expanding the legal skills and political capacity of movements and legal support organizers. This dissertation charts such shifts within protest movements since 1999, but the roots of the global justice era law collectives and subsequent radical legal support projects lie in earlier movements.

ii. Communes, collectives, and committees: activist legal support predecessors

In 1968, Columbia Law School's Legal Research-Action Project [Legal RAP] brought together "students, community residents, law students, lawyers, and other Movement sympathizers … to analyze the American legal system and plan actions against the criminal courts."[25] One of the purposes of the Legal RAP was to "attempt to break through the "professionalism" of the legal apparatus, its mystique, its removal from us as people, to understand it like it is – demystified."[26] Driven by similar aspirations, the first wave of law collectives or communes emerged during the same period. In an attempt to restructure law firm practice, non-hierarchical collectives of lawyers and non-lawyers mushroomed throughout the US and Canada.[27] Most law collectives were founded on explicitly radical,

[24] New York City's justUS Collective makes this orientation clear: "Many hands make work light. We can help you to set-up a legal collective in your city, borough, or community. A part of the justUs mission is to create sustainable legal resources. We can be a resource for you as you are to others." See Doc 33.
[25] Robert Lefcourt, "Preface" in Robert Lefcourt, ed. *Law against the people: essays to demystify law, order, and the courts* (New York: Random House, 1971) vii at vii.
[26] *Ibid* at vii-viii.
[27] Most were short lived, although a "handful of law collectives organized along those lines still exist — for example, the People's Law Office in Chicago, Illinois": Coldsnap Legal Collective, doc 18 at 5. See also

movement-based politics aimed at "the redistribution of wealth and power".[28] The Washington D.C. Feminist Law Collective's 1976 statement of purpose is representative: "One of the goals of our collective is the formation of a radical institution in which we do not split our lives between workplace and political effort."[29] Other collectives, such as the Boston Law Commune, took an approach closer to the work of contemporary activist law collectives: "The Commune aimed to provide legal services to antiwar activists and grassroots organizers, including defense against government repression… Its members also sought to participate as activists, not simply as lawyers, in radical movements."[30]

As the law communes of the 1970s began to disband, a distinct solidarity-based approach to legal support was emerging from the anti-nuclear movements of the 1980s. A handbook prepared by the Livermore Action Group in Berkeley, California for the International Day of Nuclear Disarmament in 1983 appears to contain the earliest mention of an action-focused, non-lawyer "legal collective" tasked with conducting pre-action legal briefings, tracking people through the legal system, and developing jail and legal strategies.[31] This handbook, like one prepared for an earlier blockade of the Livermore Labs in 1982,[32] is heavily focused on the atypical legal process facing activists arrested in

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Paul Harris, "The San Francisco Community Law Collective" (1985) 7 Law & Policy 19; Robert Reinhold, "'Law Communes' Seeking Social Change" *The New York Times* (5 September 1971) 1, online: https://nyti.ms/1Lv6V9M; Roger Geller, "Alternative Law Practice: The Law Collectives and Communes in the 1970s" *Mass Dissent* (Winter 2015), online: http://www.nlgmasslawyers.org/alternative-law-practice-law-collectives-communes-1970s/.
by

[28] Alan K Chen & Scott Cummings, *Public Interest Lawyering: A Contemporary Perspective* (New York: Wolters Kluwer Law & Business, 2013) at 78.

[29] Quoted in *Ibid.*

[30] Anthony P Sager, "Radical Law: Three Collectives in Cambridge" in John Case & Rosemary C.R. Taylor, eds, *Co-ops, Communes & Collectives: Experiments in Social Change in the 1960s and 1970s* (New York: Pantheon Books, 1979) 136 at 139.

[31] Cynthia Sharp, "Legal Collectives" in doc 6A at 42 (Livermore Action Group, 1983).

[32] Doc 7A. The handbook's introduction makes the pedigree of such activist legal resources clear: "this handbook is just the youngest descendant in a long line of partial plagiarism of thoughts and graphics

planned mass civil disobedience actions. As detailed in the next chapter, the jail and court solidarity tactics developed during these and other anti-nuclear protests would have an enormous influence on the legal tactics used by activists at global justice summit mobilizations almost twenty years later, most notably during the convergence against the World Trade Organization meeting held in Seattle, Washington in late 1999. *Out and Outraged*, a civil disobedience handbook prepared for the 1987 National March on Washington for Gay and Lesbian Rights adapted much of the legal content of the Livermore Action Group's handbooks but supplemented it with a section on "Jail Issues for Lesbians and Gay Men", presaging the anti-oppression orientation of contemporary activist legal guides.[33] The *Handbook for Nonviolent Action* published by the War Resisters' League in 1989 continued this practice of reusing the text of previous handbooks but adding materials as needed, in this case on "Dealing with Racism and Classism During an Action, Arrest and Jail."[34] Other movements of the late 1980s and early 1990s developed their own approaches to legal support. Squatters in New York City's Lower East Side formed the Tompkins Square Legal Defense Committee to support and track people arrested at protests and to make up for the lack of "external expertise on the kinds of legal needs [squatters] had"[35] while anti-logging blockaders on Canada's west coast mobilized widespread support for mass trials.[36]

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which were lifted from the Diablo Handbook, which were lifted from the Pentagon '80 Handbook, which were lifted from the Seabrook May 24 handbook… which were lifted from the mythical, primordial anti-nuclear Handbook": doc 6A.

[33] Doc 5A.

[34] Doc 3A.

[35] Interview of Sarah Hogarth (12 May 2017).

[36] Irina Ceric, "Clayoquot Sound (Canada)" in Immanuel Ness, ed. *International Encyclopedia of Revolution and Protest: 1500 to the Present* (Chichester: Wiley-Blackwell, 2009).

In interviews completed for this project, most legal support organizers recalled a generally *ad hoc* approach to activist legal support prior to the global justice movement, at small, local protests and larger mobilizations alike. Mac Scott, an organizer with experience in legal collectives in Toronto and New York, explained that

> prior to that what you often had – and you still have in a lot of places where there's not an organized either committee or collective or legal support – you'd have one or two organizers within an organization who would know how to do legal support just from having done it on the fly and they would basically organize legal support.[37]

John Viola recounted a clear memory of the first time he witnessed activists carry out organized legal support. In the aftermath of mass arrests at protests marking the 50th anniversary of the United Nations' founding in San Francisco in 1945, he described how a few people

> just started working the phones, just non-stop to see who was in and who was being released and really make sure that nobody had gotten left behind, and that people knew where and when to go get people out of jail. And it was incredibly powerful to see that you know, and I would say that it made a huge impression on me right away.[38]

This was also my experience as a young environmental and Indigenous solidarity activist in Toronto in the early and mid-1990s. Arrests, anticipated or not, were dealt with haphazardly and our legal support responses relied on the involvement of more experienced organizers who knew which sympathetic lawyers to call. I gave my first activist legal workshop in the summer of 1998 in near total ignorance of the histories of more organized

[37] Interview of Mac Scott (23 April 2017).
[38] Interview of John Viola (15 March 2017).

resistance to criminalization, little knowing that some of those movement defence practices would be resurrected just a year later.[39]

B. Activist-Research Methodologies

> We should demand more from researchers and academics, to shift the culture away from appropriation and obfuscation of peoples' lives for the researchers own academic gains, but to express them in realities that are supportive and build power for others, and to make them available for everyone to gain insight and shared knowledge from. To me those are steps towards academic theories, processes, and approaches that are liberatory.
>
> scott crow, 2018[40]

One of the main goals of this dissertation is to produce movement-relevant theory: "social movement theory that seeks to provide 'useable knowledge for those seeking social change'".[41] Douglas Bevington and Chris Dixon argue that the development of such theory rests on "a distinct process that involves dynamic engagement with movements in the formulation, production, refinement, and application of the research"[42] and requires direct engagement with movements by researchers who are not and should not be detached or disconnected from these movements. Given my more than two decades of experience in

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[39] We did have access to *Offence/Defence: Law for Activists*, a handbook published in 1996 by the Law Union of Ontario, a long-standing progressive lawyers' organization (doc 2A). See Appendix A for a list of activist legal support of projects I have contributed to as a member or collaborator, in Toronto (2001-2013) and Vancouver (2013-present).

[40] Interview of scott crow by Luther Blissett, "Developing an Anarchist Theory of Activism while Encountering Academic Thieves: an interview with scott crow" (27 August 2018), online: https://freedomnews.org.uk/developing-an-anarchist-theory-of-activism-while-encountering-academic-thieves-an-interview-with-scott-crow%E2%80%A8/

[41] Richard Flacks, quoted in Douglas Bevington & Chris Dixon, "Movement-relevant Theory: Rethinking Social Movement Scholarship and Activism" (2005) 4:3 Social Movement Studies 185 at 189. See also Max Chewinski, "Activists and the Academy: Making Social Movement Research Useful" (2017) 54:3 Canadian Review of Sociology 363.

[42] Bevington & Dixon *supra* note 41 at 190. Dynamic engagement relies on reciprocity, "treating movement participants as capable and active participants in the generation of theory" and asking scholars to "draw on institutional resources to offer time and opportunity for some activists to pursue more extended reflection": at 190.

various law collectives and other activist legal support projects, my methodological approach in this dissertation is one of direct engagement informed by participatory, activist-researcher practices. This approach acknowledges that movement-relevant research "benefits from those extra layers of analysis that [are] made from a different angle than that of a 'detached observer.'"[43] It is through direct engagement that I have been able to access and make use of the two primary research sources for this study: interviews with current and former radical legal support organizers and a personal archive of law collective and radical legal support materials and resources. As detailed below, my interviews sought to explore several key areas: the relationship between social movements and activist legal support organizers; popular legal education as demystification; professionalization and the inclusion of lawyers in legal collectives; and general approaches to radical legal support work. I completed 19 open-ended interviews with a total of 22 participants in 2017 and early 2018,[44] deliberately keeping the sample size small in order to focus on individuals with at least two years' experience in a law collective or other radical legal support group while still ensuring that the interviewees included members of a representative range of activist legal support projects and met approximate gender parity.[45] Targeted sampling ensured that participants included activists without formal legal training as well as lawyers and paralegals. These interviews built on a detailed content analysis of radical legal support materials. I reviewed, cataloged, and coded 125 primary source documents produced in Canada and the US over the last twenty years, as well a handful of significant radical legal

[43] Mike King, *When Riot Cops Are Not Enough: The Policing and Repression of Occupy Oakland* (New Brunswick, NJ: Rutgers University Press, 2017) at 16.
[44] I conducted one interview with two separate participants and another with a group of three participants who requested to have their responses recorded collectively rather than individually attributed (see Appendix B for details).
[45] See Appendix B.

support resources from earlier movements.[46] The documents, obtained from my own collection, internet searches, and through outreach to legal collective networks, include Know Your Rights handouts and training outlines, activist legal guides, workshop materials, videos, legal support office manuals, reports, media releases, and other documents. Part ethnographer, part participant observer,[47] this approach is similar to the "multimethod" approach of other social movement scholars who combine participant observation, analysis of relevant policy and legal materials, interview-based studies, and archival materials.[48]

As a question of method, such direct engagement with movements underlies the production of movement-relevant theory, a process which requires a "direct examination of the discussions taking place within a given movement", and of "locating the issues and questions of most importance to movement participants."[49] The ultimate test of movement-relevant research is "whether it is read by activists and incorporated into movement strategizing."[50] But particularly if the research gives rise to critique, direct engagement does not end when the research ends, and may in fact require on-going dialogue between activists and researchers.[51] "[N]ot simply chumminess with a favored movement", direct engagement provides an incentive for the production of accurate and relevant research on social movements. As an engaged activist-researcher, at stake for me is the responsibility to produce work that is accurate both factually – that I record, archive, and historicize

[46] See Appendix C.
[47] King, *supra* note 43 at 15.
[48] Starr, Fernandez & Scholl, *supra* note 2 at 18-19.
[49] Bevington & Dixon, *supra* note 41 at 198.
[50] *Ibid* at 199.
[51] *Ibid*. This project has included on-going dialogue at various points, particularly in the post-interview, pre-writing phase. I am also planning on inviting further activist peer-review and consultation prior to eventual publication.

accurately – and analytically – that I ask the right questions and explore the most relevant issues. In other words, I am aiming not for hagiography or playing it safe, but rather for what Andrew Ross describes as advocacy research produced via "participation by conviction."[52] This responsibility is shaped by an accompanying ethical commitment to recognizing that some conversations ought to remain within movement spaces (this is more than a question of airing "dirty laundry"; examples that arose during this research include leaving out examples or anecdotes that could have potential legal repercussions for participants and/or identify specific interpersonal conflicts). The ethics I rely on here are personal; they grow out of a "relationship of accountability" with research participants and other movement actors "that goes beyond the informed consent forms and ethical protocols of the university."[53] While I cannot predict how this research will be received by radical legal support organizers and other activists, I wrote it with two audiences in mind: the academy and my comrades. The initial questions I asked in interviews and the issues and debates I have chosen to explore started with questions that arose from both my own experiences and years of conversations spent "identifying and engaging key movement discussions".[54] Only then did I look for scholarly research which shed light on these questions and could be further developed into movement relevant theory. In other words, the theoretical analysis I develop in this dissertation has grown out of direct engagement, not the other way around. For example, in examining the connection between radical legal support (especially the work of non-lawyers) and movement lawyering, I focused on the

[52] Andrew Ross, "Research for Whom?" in *Militant Research Handbook* (New York: NYU, 2013) 8 at 8.
[53] Craig Fortier, "Unsettling Methodologies/Decolonizing Movements" (2017) 6:1 Journal of Indigenous Social Development 20 at 27.
[54] Chris Dixon, *Another Politics: Talking Across Today's Transformative Movements* (Berkeley: University of California Press, 2014) at 14.

most common practical, strategic, and ethical dilemmas raised by interviewees and in primary documents, aiming not only to begin addressing persistent problems but also to, in effect, speak (activist) truth to (lawyering) power by highlighting neglected practices and knowledges. And as detailed in my discussion of movement knowledge production in chapter six, that analysis rests almost entirely on the idea of "movement-generated theory"—the self-reflective activity of people engaged in struggle."[55] It "seeks to draw out useful information from a variety of contexts and translate it into a form that is more readily applicable by movements to new situations – i.e. theory."[56] I recognize that this is an exercise of power. As Dixon points out, I set "the framework for understanding … and I make interpretive claims about the statements and activities of others."[57] This is an enormous responsibility and one I take seriously, especially given that few others have attempted to document or theorize the work of radical legal support providers.

C. Primary Research Sources and the Work of Radical Legal Support

The primary materials I rely on in this study were never intended to be exhaustive; this is not the final word on activist legal support in Canada and the US over the last two decades. I am certain that there are radical legal support projects that I missed, key individuals I should have spoken to, and resources I would have benefited from reading. Nonetheless, the materials and voices I have assembled tell a compelling story about the politics of law, the day-to-day work of grassroots social movements, and the significance of legal support to struggles for a better world. As detailed below, working with both the archival materials

[55] *Ibid*. See also Aziz Choudry, *Learning Activism: The Intellectual Life of Contemporary Social Movements* (Toronto: University of Toronto Press, 2015).
[56] Bevington & Dixon, *supra* note 41 at 189.
[57] Dixon, *supra* note 54 at 13.

and interviews was an iterative process. I developed initial coding categories and general interview questions at the research ethics stage, but the categories evolved as I began reviewing the documentary sources and conducting interviews, both of which opened up unexpected areas on inquiry and focused attention on some topics and questions at the expense of others. The following is the list of categories I eventually used to code both interview transcripts and archival materials:[58]

1. Purpose/importance of radical legal support
2. Relationship (of legal support) to social movements
3. Lawyers as members – pro
4. Lawyers as members – con
5. Policies regarding lawyer membership
6. Lawyers: ethics/prof responsibility
7. Popular Education
8. LC trainings/materials – politics/content
9. LC trainings/materials – style/design
10. Movement knowledge production
11. Jail support and solidarity
12. Court support and solidarity
13. Legal observing
14. View/understanding of police and the state
15. View/understanding of criminal justice system
16. View/understanding of law
17. View/understanding of rights
18. Service provision
19. Gendered and emotional labour
20. Description of organizational work/structure
21. Anti-Oppression

As my project developed, it became clear that some categories were more relevant to interviews and some to the archival materials. For example, I consistently asked participants about their views on legal support as service provision, but this issue barely

[58] The order in which the categories are listed in no way reflects a hierarchy in terms of the relative importance of the topics, in general or to my project.

registers in the documentary data, apart from internal discussions at law collective network conferences.[59]

i. Interviews

My interview participants were former and current legal collective members and/or radical legal support organizers with at least two years' experience in one or more legal collectives in Canada and/or the US since 1999. Due to resource and time constraints, prospective participants who are or were members of legal collectives which had already been the subject of interviews were sometimes excluded in order to ensure that the sample was inclusive of a representative range of legal collectives and/or to ensure approximate gender parity. I recruited participants through the networks fostered through my own work in radical legal support. My initial list of participants yielded further introductions, particularly to newer organizers. Ultimately, I was unable to interview several people I had originally identified, and while their work is somewhat represented by other members of their collectives or through documentary materials, their absence remains felt.

Of the 22 people I interviewed, just over half identified as women, genderqueer or non-binary. The participants were overwhelmingly white, reflecting some of the internal and external critiques of radical legal support discussed throughout the remainder of the dissertation. The age and experience level of participants varied widely, from activists in their twenties politicized by the Occupy movement to those who had first participated in radical legal support during the late 1980s or early 1990s. Half of the participants had no professional legal experience outside of legal collectives or other movement work. Only

[59] See chapter 3, section C.

six of the participants were lawyers, although another four were or had been paralegals, some with formal education and others with on-the-job experience only.

There are limits to confidentiality due to context as the legal collective network is small and relies on establishing and maintaining working relationships. Research participants were given the choice of (1) anonymity (neither the participant's name nor the legal collective(s) they were part of will be used in publications), (2) partial anonymity (the relevant legal collective(s) will be identified but not the participant's name), or (3) no anonymity (the relevant legal collective(s) and the participant's name will be used). However, due to the public nature of law collective work (e.g. the existence of media reports), full anonymity could not be guaranteed.

Prospective research participants committed to a semi-structured interview (in person or via video conferencing/telephone), with the majority conducted in person in Toronto, New York City, Vancouver, and the San Francisco Bay area. Although the interviews were largely conducted as conversations, I explored four core areas with each participant: their own biography/legal support experience; connections between law and social movements; professionalization; and popular legal education. This structure assured discussion of the key ideas and topics I had set out to study, while allowing participants to shape and direct the conversation, sometimes in unexpected ways. For example, I did not initially plan to ask participants about how legal support labour is often gendered, but this issue was repeatedly raised during interviews and became a topic of research.[60] I transcribed all of each interview and then extracted relevant excerpts on the basis of the categories set out above. In keeping with my commitment to movement-relevant research,

[60] See Chapter 5, section C(ii).

I wanted to ensure that participants spoke for themselves in their own voices and as a result, both these extracts and the resulting quotes that I use throughout the dissertation are quite lengthy. Similarly, I only 'cleaned up' quotes to remove distracting and unnecessary filler words ("um", "you know", etc.) and ensure clarity.[61] The key themes I identify in section D below emerged, in part, out of this interview process as a deliberate attempt to identify and directly engage with the debates, ideas, and goals of radical legal support providers.

ii. Documentary/archival materials

I began this research by turning to my own collection of both paper and electronic files, a collection full of dozens of documents that I had been saving for the better part of 25 years, at least in part in anticipation of a project such as this one. Aziz Choudry jokingly refers to himself as a hoarder in respect of his own movement baggage, but also notes that there is "very real work to be done in collecting, documenting, and archiving these materials" and that "histories are transmitted in many struggles through such informal collections."[62] My first step was to cover my living room floor in piles of zines, flyers, workshop outlines, media articles, meeting agendas, handbooks, conference schedules, and the miscellaneous detritus of demonstrations, convergences, and movements, past and present, some victorious, most less so. The piles took shape according to the law collective responsible, or by event, or just by the slightest commonality. I followed a similar process with electronic files and emails although there were some resources, especially those I had been involved in developing, that I had in both paper and digital form and cross-referencing

[61] This approach was shaped by Patricia Ewick & Susan S. Silbey's research methods appendix, "On Secrets and Wizardry" in *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998) at 259-61.
[62] Choudry, *supra* note 55 at xi and 26.

those turned into a task of its own. The interviews I describe above yielded additional resources and materials. Finally, I turned to the internet, pulling additional documents, and reviewing current and archived sites[63] and materials. As with the interview transcripts, I pulled out relevant – and sometimes lengthy – excerpts from all of these materials, coding them into one or more categories. Below, I set out the key types of legal support sources and discuss representative examples of each, drawing on the coding categories discussed above to highlight core themes.

Guides and handbooks

By far the most common type of materials, guides and handbooks cover a wide variety of formats, topics, approaches, and intended audiences. The paradigmatic resource is the 'know your rights' guide, ranging from quarter page flyers or business cards distributed at demonstrations to lengthy and detailed zines, comic books, and at least two books.[64] Other sub-categories of handbooks include guides to jail and court solidarity, legal observer training materials, instructions for photographing or videotaping protests, freedom of information resources, orientation guides for particular convergences (which often included non-legal info as well), and explanations of specific laws, policies, and/or procedures. Such legal information often includes a high degree of local particularity. The Bay Area Anti-Repression Committee's legal guide includes detailed information about local jails (e.g. "You may be forced to take a TB test. If you are female assigned, you may

[63] Although almost every law collective and legal support group mentioned in this study has or had a website, I have not included websites as a separate category. Rather, relevant pages and posts unavailable as paper or PDF documents were cataloged by title alongside off-line sources.
[64] Katya Komisaruk, *Beat the Heat: How to Handle Encounters with Law Enforcement* (Oakland: AK Press, 2003) and Tilted Scales Collective, *A Tilted Guide to Being a Defendant* (New York: Combustion Books, 2017).

be forced to take a pee pregnancy test. Be aware that Santa Rita Jail strip searches all inmates brought in."[65]) while Montreal's Collective Opposed to Police Brutality has long collected and disseminated otherwise inaccessible research about local policing practices at protests and under municipal by-laws.[66]

Workshop and training materials

This category consists of workshop outlines, agendas, and instructions that were generally prepared for those who would be delivering workshops, not the participants. Some of these were made publicly available while others were shared amongst networks of radical legal support providers. The most common are know your rights and jail and court solidarity workshops and legal support provider trainings. The trainer instructions consistently reflect participatory or popular education approaches, including discussions of learning styles and accessibility. As in other materials produced for activists and organizers, the use of 'us' language is ubiquitous, demonstrating a clear attempt to minimize, if not eliminate, the boundaries between both educator and learner and movement participants and legal support organizers (for example, a 1999 guide asks, "Where would we be locked up, if we're actually detained?" and responds, "They can't keep us all in jail, because they only have room for about 200 more prisoners, and there are many, many more of us!"[67]).

Newsletters

[65] Doc 6 (2014) at 13.
[66] Doc 16 (2017). COBP also refers to international law: "Political profiling is another type of police discrimination, based on political identities, real or perceived. The Police Department of the City of Montreal (SPVM) was singled out for this type of discrimination by the Committee of Human Rights of the United Nations in 2005 for his practice of mass arrests at events associated with the extreme left."
[67] Doc 19 (DAN Legal).

While the function of newsletters has been largely replaced by online updates, whether through a law collective's own website and/or through social media, some collectives and other radical legal support organizations did publish regular newsletters. Newsletters often covered the status of trials and other legal proceedings (particularly those arising from mass arrests or cases where activists faced serious charges), highlighted the recent work of the collective or project, and drew connections to related community issues and initiatives. A November 2004 newsletter issued by the Common Front Legal Collective demonstrates this approach:

> There are constant battles for justice taking place in courthouses as activists and organizers targeted for state repression wind their way through the criminal 'justice' system bureaucracy. Common Front Legal wanted to cover these battles to ensure that defendants and claimants are not isolated and that word of legal victories makes it back to the streets. We hope to be able to spread the word about groups' and communities' resistance to the long arm of the law and to show that the criminalization of dissent isn't working – in the streets and in the courts, people are fighting and they're fighting to win.[68]

Reports and articles

This category comprises reports, analyses, and other types of writing which reflect on, evaluate, and/or document radical legal support work, most often at the conclusion of a mass mobilization or other event. I also included media articles written by law collective members in movement or legal publications in this category. These materials reflect significant efforts at internal self-reflexivity ("What We'd Like to Do Better Next Time, and What We Did Right" in the words of DC Justice & Solidarity[69]), as well as more public-

[68] Doc 11 at 4.
[69] Doc 21 at 7 (2001); see also doc 70 (CRASS, 2008).

facing efforts to assess legal support successes and failures and to record tools, methods, skills, 'best practices', and the like.

Miscellaneous

I include here materials I found to be relevant and interesting, but which did not fit into other categories. The most significant of these are various conference materials (schedules, minutes, background reading, event descriptions, etc.), but this category also includes event posters, open letters, internal correspondence, YouTube videos, and public materials that combine one or more of the categories described above.

iii. Radical legal support: five praxes

As I combed through the data gleaned from the coded interview transcripts and document analysis, a series of core ideas, claims, and controversies gradually emerged. Successive rounds of distilling and (re)organizing this data revealed that it coalesced around five modes of theory and practice: solidarity, movement building, popular education, anti-repression, and anti-oppression.[70] These five praxes in turn shaped the structure of my study, suggesting both the dividing lines between recent eras of radical legal support (chapters 3 and 4), and the empirical foundations for my analyses of movement lawyering, knowledge production, and counter-hegemonic legality (chapters 5 and 6). I set out the key concepts, terms, and debates of each mode of praxis below, formulated for the most part

[70] I owe a debt here to the 'four antis' analysis originally formulated in volume one of *Upping the Anti: a journal of theory and action* and subsequently expanded in Chris Dixon's study of contemporary anti-authoritarian currents: anti-capitalism, anti-imperialism, anti-oppression, and anti-authoritarianism. Dixon, *supra* note 54 at 16-17.

just as they arose from the voices, labour, and deliberation of activists, legal support organizers, and movement lawyers.

Solidarity

Solidarity is the organizing concept that underlies the four other modes of radical legal support praxis in addition to being a praxis of its own. Solidarity is flipping the script on power. Solidarity means standing with those at greater risk and with the most serious charges; it means no one gets left behind. Solidarity is both respecting and critiquing a diversity of tactics. Solidarity pushes back against a legal/criminal justice system that is inherently oppressive and illegitimate. Solidarity can be a threat to lawyers' identity and status and requires recognition of inherent power dynamics and knowing how to manage lawyers' resistance to solidarity tactics. Support and solidarity are distinct but related and overlapping ideas, both of which are ultimately prefigurative. Similarly, court and jail solidarity are related but distinct tactics, although the core of both is collective bargaining and action. Solidarity is mutual aid. Solidarity means building bridges to non-activists and broader communities and between movements and legal professionals. Solidarity is self-organization – not service provision.

Movement building

Radical legal support builds movements when it is embedded, credible, and authentic, when it avoids service provision and builds trust. Movement building means fostering sustainable and accountable legal support but also recognizing that sometimes accountability is in tension with the law collective's own autonomy. Movement building

centers anti-oppressive process (especially consensus decision making) as the basis of autonomous, collective organizing. Radical legal support builds movements when it empowers individuals, networks, and communities while recognizing the limits of empowerment – legal knowledge makes you safer, not safe. Radical legal support builds capacity and challenges power and expertise. It is about identifying and resisting professionalization, avoiding reliance on lawyers and NGOs, and balancing participation of lawyers and non-lawyers. Movement building requires avoiding, preventing, and challenging dehumanization, trauma, and isolation. Radical legal support is about fostering and challenging (sub)cultures of resistance; it understands legal expertise as cultural capital. But it can also fail to build connections with broader movements and those most directly affected by law on an everyday basis. Exceptionalizing activist experiences is not movement building.

Popular education

Popular legal education teaches the law and how to resist it. Practicing solidarity requires education (e.g. strategies vs. tactics). Popular education is about the demystification and decentralization of legal and movement knowledge, which is collective knowledge that is often based on direct experience. Education is a way to build capacity and skills as a challenge to power and expertise. Popular education is participatory, accessible, and interactive, and is meant to be passed on (training the trainer) and adapted. Popular education teaches that rights are the product of struggle and community building, it emphasizes self-defence. Knowing your rights (knowledge as power), should be coupled with caution about the limits of rights. Radical legal support pedagogy contains mixed

messages: some trainings reflect lingering liberalism (e.g. law and rights as a check on police power, "Magic Words", etc.) but others recognize and/or challenge liberal legalism (e.g. not asking for permits, not perpetuating the myth of the 'unarrestable'). Popular education is about law as social control (e.g. the current and historic role of police) and the criminalization of dissent (e.g. political/instrumental arrests), both within and beyond activist communities/milieus. Defendant organizing is a form of political education and outreach. Education by non-lawyers counters the 'chilling effects' of lawyers: their tendencies to play it safe and not challenge the limits of professional ethics.

Anti-repression

Solidarity is the most important tool against state repression and the dishonesty, manipulation, and intimidation that underlie police interactions. Law is inherently repressive but it is also uncertain, inconsistent, contradictory. Anti-repression should be the basis for education about interactions with the state, viewing and enacting radical legal support as a repertoire of anti-repression strategies and methods/tactics (some of which are also employed by non-radical legal support providers, often in different ways, e.g. 'neutral' legal observers or copwatchers). Anti-repression needs to be localized to counter specific examples of repressive state practice and should teach people how to navigate and survive the criminal justice system by centering one's own judgment, instinct, common sense, and experience in encounters with law enforcement or the state. Anti-repression is also a prefigurative politic of care; it calls for both self-care and mutual aid to counter trauma and prevent further repression. An anti-repression orientation de-exceptionalizes activist experiences of repression and draws connections between movements, communities, and

legal professionals. It maintains a critique of lawyers, even radical ones ("law school changes you" was a common refrain), coupled with a practical understanding of lawyers' risk, conflict issues, and time and money limitations.

Anti-oppression

Anti-oppression politics should be the guiding framework for the work of radical legal support – both outwardly (movement building) and inwardly (within collectives/projects). Anti-oppression is the basis of solidarity and a prefigurative practice of mutual aid aimed at protecting the most vulnerable and targeted (anti-oppression as anti-repression). An anti-oppression orientation understands law and criminal justice as inherently racialized and critiques and challenges the whiteness of radical legal support organizers. More recently, it also means an understanding of law as colonial and increasing recognition of settler-colonialism. Anti-oppression is the basis of evaluating risk, risk being the product of both systemic forms of oppression (race, gender (identity), class, etc.) and political vulnerabilities (high-profile organizers, perceived leaders, anarchists, etc.). Internally, anti-oppression requires centering emotional support in the work of radical legal support and addressing sustainability, burnout, and trauma. Radical legal support work is feminized/gendered; a commitment to anti-oppression requires collective processes and decision-making practices that counter oppressive practices within groups, especially sexism and gendered and racialized labour. This includes recognizing the professional status of lawyers as a kind of privilege.

These five praxes appear and re-appear in the pages to come. While solidarity is a foundational praxis of radical legal support, it is especially central to the next chapter,

which tells the story of law collectives during the global justice era. Movement building and anti-oppression are likewise constant pre-occupations, but they also play a key role in chapter five's analysis of the intersections of movement lawyering and activist legal support. Popular legal education guides my discussion of knowledge production and counter-hegemonic legality in chapter six. Anti-repression lies at the heart of both analytical chapters, while also driving the evolution of radical legal support structures traced in chapter four.

CHAPTER 3
CONTEMPORARY RADICAL LEGAL SUPPORT, PART 1: THE GLOBAL JUSTICE MOVEMENT (1999–2005)

This chapter follows the trajectory of contemporary law collectives through the first of two recent periods of social movement politics and organizing. In this chapter and the next, I contrast these two eras and their exemplary events: first, the rise and fall of the global justice movement and the resurgence of activist legal collectives (1999-2005), and second, the more recent era of anti-austerity and racial justice organizing (2008-2018). Relying primarily on interviews and movement documents, I trace the law-politics relation in order to both historicize and document radical legal support and to introduce some of the events, ideas, and practices that will be discussed in the remainder of this dissertation. I set out the key events and players of each era in the context of the five themes developed in the previous chapter. As detailed below and in chapter four, radical legal support providers have themselves consistently acknowledged and grappled with shifts in the place of legal collectives over the last two decades, even questioning the appropriateness or value of the law collective model itself in more recent moments. This concern reflects some of the key differences between these two social movement eras, one defined by mass mobilizations and an organizing structure built on spokescouncils and affinity groups, the other by more diffuse, even spontaneous uprisings and mobilizations shaped by fluid decision making structures. This second era also marked the demise of longstanding legal collectives which had epitomized the model of contemporary legal support in the earlier period as well as the emergence of more specialized and/or temporary law collectives and other legal support projects. I tell two defining stories about each era. The tactic of jail solidarity and an

emerging legal collective model and network are discussed as the key law-related features of the global justice organizing era in Canada and the US. In the second, age of austerity era, I look at shifting approaches to radical legal support work in Occupy and racial justice movements and a renewed focus on anti-repression as a framing praxis of both grassroots organizing and legal support.

A. SEATTLE 1999: WHERE IT ALL BEGAN (AGAIN)

> Keep your focus on the meaning of what you are doing as your hands are cuffed behind you. Your challenge now and for a long time to come will be to remember, at each stage of what happens to you, that you have a choice: acquiesce or resist. Choose your battles mindfully: there will be many of them and you cannot fight them all. Still every instance of resistance slows the system down, prevents its functioning, lessens its power.
>
> Starhawk, 1999[1]

The shutdown of the World Trade Organization [WTO] negotiating meeting held in Seattle, Washington in late November of 1999 was a watershed moment in the emergence of an anti- or alter-globalization movement in the Global North. In the lead-up to the mass non-violent direct action on what would become known as N30, the legal arm of the Direct Action Network [DAN] had already spent weeks organizing a legal support structure, setting up a legal hotline, and training activists on their legal rights and court and jail solidarity tactics.[2] The events of N30 and the days that followed have firmly established themselves as movement legend, in part because of the seemingly miraculous outcome of

[1] Starhawk, "Making it Real: Initiation Instructions, Seattle '99" (1 December 1999), on-line: https://starhawk.org/Activism/activism%20writings/1999-WTO%20Articles/Making%20It%20Real-Day%202.pdf.
[2] Docs 19 and 20 (1999).

the approximately 600 arrests arising from several days of protests.[3] A majority of those arrested on the streets of Seattle, including many who had not intended to get arrested (or in some cases, even participate in protests) and had not taken part in direct action trainings, refused to give their names to police and remained in custody, holding meetings and attempting to negotiate with prosecutors as a group. Outside the jail, thousands gathered for what became an around-the-clock vigil. After four or five days, with no acceptable offers coming from the prosecutor and a new workweek looming, the arrestees agreed to give their names if everyone was released without being required to post cash bail. The defendants then turned their focus to court solidarity, entering pleas of not guilty and requesting speedy trials and court-appointed counsel *en masse*. These tactics were generally effective; approximately 7% of those arrested pleaded guilty, but as the ninety-day deadline for a speedy trial loomed, the prosecution began dismissing cases. Ultimately, only six people charged with misdemeanours were brought to trial and of those, the lone conviction resulted in probation and a small fine.[4] These legal solidarity tactics were not new but during the Seattle WTO, the members of the DAN Legal Team and a lawyer named Katya Komisaruk brought them to a whole new generation of activists. These two stories, of a tactic—jail solidarity—and an organizing model—the legal collective—would come to define the era of radical legal support that followed.

[3] The description in this paragraph relies on: Frances Olsen, "Legal Responses to Mass Protest Actions: The Dramatic Role of Solidarity in Obtaining Generous Plea Bargains" (2003) 41:2 Osgoode Hall Law Journal 363 at 366; Doc 27 at 1 (Just Cause Law Collective, 2005); Beverly Yuen Thompson, *JANE WTO: Jail Solidarity, Law Collectives, and the Global Justice Movement* (PhD Dissertation, New School for Social Research, 2005) [unpublished, Thompson, *Jane WTO*] at 117.

[4] Felony charges were settled out of court: Kari Lydersen, "Jail Solidarity in Seattle" in Eddie Yuen, Daniel Burton-Rose & George N Katsiaficas, eds, *The Battle of Seattle: The New Challenge to Capitalist Globalization* (New York, N.Y: Soft Skull Press, 2001) 131 at 133.

In the summer of 1987, Komisaruk, the core organizer of DAN Legal, had walked onto a US Air Force base in California and used ordinary hand tools to damage a computer mainframe and satellite dish used for guiding nuclear missiles.[5] She was convicted of destruction of government property and sentenced to five years in prison but was released on parole after only two – and admitted to Harvard Law School the same week.[6] Through her work in the anti-nuclear and Plowshares movements of the 1980s, Komisaruk was familiar with large-scale jail and court solidarity. A blockade of the Livermore National Laboratory in California on the summer Solstice in 1983 that ended with over one thousand arrests, is just one example.[7] The activists involved had agreed on a jail solidarity strategy prior to the action and for two weeks following their arrests, most of the detainees refused to go to court for their arraignments "until the court finally agreed, with great reluctance, to sentences that were equal for all (first, second, or multiple offenders alike) and did not include probation."[8] This type of jail solidarity was something Komisaruk had "sort of grown up with" but she felt that this movement expertise had been lost: "In the 1980s a lot more lawyers were trained in jail solidarity actions. Then there was a slow period and the knowledge kind of laid dormant."[9] Many of those lawyers were no longer available however, and in the lead up to Seattle, Komisaruk drew on her own experience and activist networks to develop workshops and trainings to share the tactical knowledge of jail

[5] Thompson, *Jane WTO, supra* note 3 at 14.
[6] "In Defense of Disobedience", *Harvard Law Bulletin* (Fall 2000), online: https://today.law.harvard.edu/defense-disobedience/.
[7] See chapter 2, section A(ii) above for more detail on the significance of the resource materials prepared for this action.
[8] David Kubrin, "Scaling the Heights to Seattle" in Yuen, Burton-Rose & Katsiaficas, *supra* note 4, 59 at 63.
[9] Lydersen, *supra* note 4 at 134.

solidarity with anti-WTO organizers. It was a powerful and persuasive tool that resonated with a new generation of direct action organizers:

> Jail/court solidarity is a combination of non-cooperation techniques and collective bargaining that groups of activists can use to take care of each other in the legal system. Jails expect prisoners to get in line and march where they're told. Courts expect defendants to sit quietly and give up their right to trial. Neither of these systems is set up to deal with large, organized groups of people who simply say, "No, I won't."[10]

Looking back in 2001, Komisaruk noted that they had "been able to germinate this very old seed from the early 80's. And now it's growing really well in the new millennium."[11]

Komisaruk and other members of DAN Legal remained in Seattle for several months, working with local activists and lawyers to prepare the 600 misdemeanor cases for trials that largely never happened. In March of 2000, DAN Legal changed its name to the Midnight Special Law Collective [MSLC] and a few months later, after close to a year of crisscrossing the US to provide legal support, the collective settled in Oakland, California.[12] Only a month later, in October, 2000, Komisaruk and the other members of Midnight Special – all non-lawyers – parted ways; MSLC would remain resolutely lawyer free for the remainder of its existence. Komisaruk then formed the Just Cause Law Collective, "a highly skilled and talented legal team in Oakland, California" that "holds training sessions and gives legal advice for organizers of actions as well as training folks who determine to do "direct action", civil disobedience, etc. and are under risk of arrest".[13] Although Just Cause called itself a law collective – its website was lawcollective.org – and produced high quality training materials that are still in circulation today, the organization

[10] Doc 29 (Just Cause Law Collective, 2004).
[11] Thompson, *Jane WTO, supra* note 3 at 116.
[12] Doc 106.
[13] Email from Zachary Wolfe, May 17, 2001.

would evolve into more of a criminal defence firm and it had limited participation in the remaining global justice mobilizations of the early 2000s. MSLC remained active until 2010 and became a model for other legal collectives in Canada and the US as well as a core member of a nascent radical legal support network. Among the many reverberations of the Seattle WTO actions, jail solidarity (as mythology as much as reality) and the Midnight Special Law Collective were crucial factors in the development of legal collectives and a broader activist orientation toward law, repression, and criminalization. In the sections that follow, I discuss how these two stories – of a tactic and an organizing model – serve as entry points into a more nuanced understanding of radical legal support during this era, the remainder of the global justice movement, and through to the mobilization against the 2003 invasion of Iraq.

B. So, so, so! Solidarité! The Rise and Fall of Jail Solidarity

Despite the centrality of jail solidarity to the lore of Seattle, not everyone agrees that the tactic was as successful as it is generally perceived. In the months after Seattle, organizers and others engaged in sustained critique of the WTO actions and the broader global justice movement; legal support – including jail solidarity – was certainly not immune to this examination. Among sections on security, logistics, communications, and scenario and tactics, the in-depth *Seattle Logistics Zine* included a detailed discussion of how legal support was organized in Seattle, including what had not worked.[14] rahula janowski, a member of DAN Legal wrote, "I expect that we'll be seeing a resurgence of [solidarity] tactics in upcoming protests as a result of their success (although total success was not

[14] Doc 101 (2000).

achieved in jail, court solidarity has pressured the prosecutor so much that cases are being dismissed left and right)."[15] Journalist Kari Lydersen concluded that the release deal negotiated by DAN Legal, which required the huge crowd of supporters who had maintained a vigil at the jail for days to disperse, was both contentious and confusing.[16] While Komisaruk argued that this decision reflected a necessary shift from jail to court solidarity, others interviewed by Lydersen told her that the deal was "an abandonment and betrayal of the idea of jail solidarity".[17] There was widespread confusion about the deal, among both activists and Seattle's public defenders, who also criticized DAN Legal, and especially Komisaruk, for failing to take advantage of local court rules and procedures.[18] Most importantly, the release deal did not include those charged with felonies and there was confusion about which detainees supported the deal, if they had participated in jail solidarity, and if DAN Legal would even represent those charged with felonies.[19]

But whether or not jail solidarity actually 'worked' in Seattle is not the most salient question. There is a persistent mythology around Seattle and jail solidarity is a part of that mythology, even if the tactic's effectiveness fails to live up to examination. "Everyone's trying to recreate Seattle," a law student who had served as a legal observer told Lydersen.[20]

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[15] Doc 101 at 52.
[16] In a book chapter reflecting on Seattle, Chris Dixon reported that "a representative from the DAN legal team announced that they had been negotiating with city officials who had granted a concession: if we ended the blockade, they would allow pairs of DAN lawyers and paralegals (in other words, organizers) to consult with groups of jailed protesters. Many present grumbled, saying that the city was only allowing prisoners the rights already owed to them. The affinity group that had sparked the action, however, urged us to exit the blockade with them. And slowly but surely, protesters began to march home." From "Five Days in Seattle: A View from the Ground" in David Solnit & Rebecca Solnit, eds, *The Battle of the Story of the Battle of Seattle* (Oakland: AK Press, 2009) 73 at 101. See also the updated and expanded version: "Remembering for the Future: Learning from the 1999 Seattle Shutdown" (30 November 2019), on-line: http://writingwithmovements.com/remembering-for-the-future-learning-from-the-1999-seattle-shutdown/.
[17] Lydersen, *supra* note 4 at 133.
[18] *Ibid* at 133-4.
[19] *Ibid* and Olsen, *supra* note 3 at 368. See also American Civil Liberties Union of Washington, "Out of Control: Seattle's Flawed Response to the Protests Against the World Trade Organization" (June 2000).
[20] Lydersen, *supra* note 4 at 133.

Beverly Yuen Thompson argued that "[a]though arrest often signifies the end of the protest episode," the use of jail solidarity by global justice activists "defined this stage as a heightened realm of conflict that could exemplify the connection between global injustice and the domestic repression of rights."[21] Writing after the conclusion of the global justice movement, Lesley Wood contended that jail solidarity was one of a bundle of 'Seattle Tactics' (along with affinity groups, the black bloc, puppetry, and blockades), which while not unique to Seattle, spread to activists across Canada and the US in the period after the WTO protests.[22] For the purposes of this research, the mythology of jail support in Seattle is important for two reasons. First, because it is at least in part the result of a traceable genealogy from the work of radical legal support providers in the anti-nuclear movements of the 1980s to the global justice movement more than a decade later. The tactic of jail solidarity would continue to be passed down through various forms of popular education and other movement work, providing an example of both movement knowledge production and tactical diffusion.[23] Second, I use jail solidarity as a means of understanding how law collectives responded to and evolved during the global justice movement. Although solidarity in a broader sense continues to underlie virtually all radical legal support work, this section looks at how one particular tactic – jail solidarity – contributed to the development of a distinct set of practices and roles for the legal collectives of this era. Using primary sources, I trace the trajectory of a particular type of jail solidarity centered on non-identification as part of a broader story of legal support organizing.

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[21] Beverly Yuen Thompson, "The Global Justice Movement's Use of 'Jail Solidarity' as a Response to Police Repression and Arrest: An Ethnographic Study" (2007) 13:1 Qualitative Inquiry 141 at 142 [Thompson, "Jail Solidarity"].
[22] Lesley J Wood, *Direct Action, Deliberation, and Diffusion: Collective Action after the WTO Protests in Seattle* (New York: Cambridge University Press, 2012) at 1 [Wood, *Direct Action*].
[23] See chapter 6, section A.

This form of jail solidarity had two big successes in the aftermath of Seattle. Four months after N30 came A16, one of several days of protest against a meeting of the World Bank and International Monetary Fund held in Washington, DC in April 2000. A16 resulted in the arrest of almost 1300 people, including a significant number of non-protesters caught up in a mass arrest.[24] About 150 of those arrested refused to identify themselves, putting strain on a city jail that was already so crowded that an existing court order imposed financial penalties on the warden whenever the facility's capacity was exceeded.[25] (Komisaruk likened the effect of this tactic to "a boa constrictor swallowing a watermelon."[26]) A16 arrestees held meetings in custody to formulate collective demands and when court-appointed lawyers filed motions for their release, many activists refused to go to court, with some stripping naked and tying themselves to their bunks.[27] Those protestors who did make it to court dismissed their lawyers and withdrew any pending motions for release, eventually prompting a judge to order the prosecution to negotiate with the arrestees and their chosen lawyers. These negotiations resulted in an agreement that reduced all misdemeanor charges to civil infractions carrying a set fine of $5.00.[28] The deal even applied to those who had already pleaded guilty or forfeited bail.

Just a few months after the success of jail solidarity at A16 came another major mobilization of the still burgeoning global justice movement: a convergence[29] at the

[24] Lydersen, *supra* note 4 at 136.
[25] Olsen, *supra* note 3 at 366 and Doc 27.
[26] "In Defense of Disobedience", *supra* note 6.
[27] Olsen, *supra* note 3 at 366, Doc 27, and Lydersen, *supra* note 4 at 136.
[28] *Ibid*.
[29] In an article about the 2010 Vancouver Olympics, Esperza and Price define a convergence as "a protest event in which (a) activists have an ideologically anti-capitalist orientation; (b) a significant number of activists travel from outside of the area; (c) there is a determinable police response; and (d) property is damaged.": Louis Edgar Esparza & Rhiannan Price, "Convergence repertoires: anti-capitalist protest at the 2010 Vancouver Winter Olympics" (2015) 18:1 Contemporary Justice Review 22 at 25. I use the term

Democratic National Convention [DNC] held in Los Angeles in August 2000. Three days of large demonstrations resulted in approximately 170 arrests. Activists had determined in advance that non-identification alone would not be enough to clog the city's jails and as a result, about fifty of the arrestees began a hunger strike, demanding that prosecutors come to the jail and negotiate with them directly. When taken to court for arraignment, each hunger strike made the same statement:

> Your Honor, I am in solidarity with all the other activists arrested here. We want to negotiate collectively with the prosecutor, to work out a universal plea bargain. Until then, we will not give our names or addresses, nor will we promise to return to court if we are released.[30]

In the jail, "designated eaters" monitored the physical and mental health of the hunger strikers while prison officials both pleaded with the activists to eat and attempted to entice them into eating by giving out "goody bags" of chocolate and other treats.[31] After several days, the prosecutor gave in and visited the jail for lengthy meetings with the detainees during which a deal was negotiated. As at A16, all misdemeanor charges were reduced to infractions with fines waived in consideration of time served and the deal applied to those who already been released.[32] As in Seattle however, those charged with felonies during A16 and the Los Angeles DNC were again excluded from both the jail solidarity actions and the resulting deals. In a 2004 guide cataloging examples of jail and court solidarity, Komisaruk argued that solidarity tactics at these convergences "were not useful in negotiating on behalf of those charged with felonies or with federal offenses,

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more broadly to refer to a mass mobilization marked by a convergence of local and visiting activists who participate in various protests and actions which may be centrally coordinated and usually share an organizing infrastructure, including legal support. I do not consider the presence or absence of property damage to be a significant factor.

[30] Olsen, *supra* note 3 at 367 and Doc 27.

[31] Thompson, *JANE WTO, supra* note 3 at 77 and Doc 27.

[32] Olsen, *supra* note 3 at 367 and Doc 27.

approximately 15 to 30 people in each city. It was necessary to defend these cases using standard legal strategies."[33] Coming at the apex of the global justice movement, this shortcoming was not enough to disrupt the popularity of jail solidarity, but the tactic would never again be as effective as it had been in Washington and Los Angeles, and would end up being seriously critiqued by the very same legal support providers who had once championed – and taught – its techniques.

The Midnight Special Law Collective organized legal support at all three of the mobilizations discussed above, continuing the thread Komisaruk (then still a member of Midnight Special) had traced between global justice activists and earlier movements. In the lead up to A16, the collective trained 1500 activists and 200 legal observers wherever they could, "in warehouses, schools, parks and churches", and staffed three phone lines around the clock during the protests.[34] Midnight Special then headed across the country to Los Angeles, spending two months prior to the DNC training activists and organizing lawyers and then staffing 24-hour phone lines during and after the demonstrations.[35] In addition to establishing a model of legal support for mass mobilizations, the materials and resources created by DAN Legal and Midnight Special would cement the status of jail solidarity tactics as key tools of resistance. Their widely circulated Solidarity Handbook underscores this blueprint:

> The most visible part of Legal Solidarity is physical resistance to authorities' demands in jail. Though resistance to the criminal injustice system is part of the empowering nature of Legal Solidarity, non-cooperation is not done for it's [sic] own sake. Always use resistance to take care of each other. Other than to

[33] Doc 27.
[34] Doc 106.
[35] *Ibid*.

> address immediate health and safety concerns, the end goal of all of your tactics should be to obtain a universal plea bargain.[36]

The handbook spelled out detailed methods for acting in solidarity: "A tactic is something you do (e.g. chant incessantly). A demand is something you want (some water). You use tactics to get demands met ("We're going to chant incessantly unless you bring us some water.")"[37] Crucially, non-identification was only one of several non-cooperation tactics listed. After splitting from Midnight Special, Komisaruk's work with Just Cause continued to advocate for the use of jail solidarity tactics, albeit with a clearer recognition of the tactic's limitations:

> In order to determine whether and how to use solidarity tactics, activists must research the current capacity of the jails (or temporary holding facilities) and of the court system. Activists should ask their lawyers for predictions about how the prosecutor's office and the judges may react. In addition, they should assess the political forces that might influence negotiations with the prosecution or courts (such as the mayor, the police, the voters, and the business or religious communities).[38]

Such movement knowledge lay at the heart of jail solidarity's successes – and arguably contributed to its mythology even when it failed. Beyond formal trainings and the distribution of handbooks and other resources, jail solidarity praxis was taught by protesters to one another, sometimes immediately following their arrests. Yuen Thompson quotes one activist interviewed in 2002:

> One of the things that happened on the buses [in Seattle], was that people who had done legal training with the legal collective, gave mini-legal trainings. So from not knowing anything, by the time I got to the processing place, I'd been a part of a mini-workshop on jail solidarity and a "know your rights" workshop. … And some of those people had been involved in the organizing but lots had been

[36] Doc 42.
[37] Doc 42.
[38] Doc 27; see also doc 29.

> at workshops. *I guess that's one direct benefit of having legal collectives do so much educational work*.[39]

Frances Olsen argues that solidarity training – formal and *ad hoc* – allowed activists to resist or deny attempts by the state to criminalize dissent and that the "extraordinary number of training sessions" preceding Seattle, A16, and the Los Angeles DNC served to counterbalance the intimidation effect of warnings issued by police in the lead-up to these mobilizations and aimed at "moderate" protesters.[40]

Despite these successes, the summer of 2000 also saw the tactic of non-identification beginning to falter. Wood argues that by the end of that summer, "the noncooperation tactics of jail solidarity ceased to be effective in achieving activist demands of release, reduced charges, or better treatment."[41] Unlike their counterparts in Los Angeles, the 420 activists arrested while protesting the Republic National Convention [RNC] in Philadelphia in late July and early August 2000 were "unsuccessful in achieving their demands of anonymous release, medical care for the injured, and reduced charges for those charged with felonies."[42] Amidst widespread physical, psychological, and sexual abuse, several hundred John and Jane Does engaged in non-cooperation tactics for up to two weeks but the prosecutors and city refused to negotiate and the detainees ultimately decided that "jail solidarity just wasn't working."[43] Instead, the R2K Legal Collective, formed by RNC arrestees in the months after their release for the purpose of "taking their legal defense into their own hands, and forcing the process to be political",[44] succeeded in

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[39] S. Kerr, quoted in Thompson, "Jail Solidarity", *supra* note 21 at 153 [emphasis added].
[40] Olsen, *supra* note 3 at 365.
[41] Wood, *Direct Action, supra* note 22 at 38.
[42] Lesley Wood, "Breaking the Wave: Repression, Identity, and Seattle Tactics" (2007) 12:4 Mobilization: An International Quarterly 377 at 382 [Wood, "Breaking the Wave"].
[43] Danielle Redden quoted in Lydersen, *supra* note 4 at 136. See also Wood, *Direct Action, supra* note 22 at 128.
[44] "R2K Legal" (undated), online: http://r2klegal.protestarchive.org/r2klegal/.

organizing enormously successful court solidarity: 97% of those criminally charged were either acquitted, had their charges dismissed or were able to take advantage of a non-conviction plea bargain.[45]

Just as the Philadelphia RNC was a "summit-like" opportunity for activists in the Northeast US to experiment with the Seattle tactics, including jail solidarity, the Organization of American States [OAS] meeting held in Windsor, Ontario in early June 2000 presented a similar opportunity for Toronto and southern Ontario global justice activists.[46] Lacking a local legal collective, protest organizers formed a legal working group and began recruiting lawyers in both Toronto and Windsor as well as crafting a legal strategy.[47] Communications from the legal working group clearly demonstrate the continuing resonance of jail solidarity: activists researched the capacity of local jails and courts, calculating the "number of judges, justices of the peace, crown attorneys, court rooms" and emphasizing that "to determine the feasibility of solidarity tactics, it is essential we have an idea of numbers".[48] The legal working group asked lawyers for examples of jail solidarity in Canada, but recent precedents seemed difficult to come by and the different context raised specific concerns: "the Canadian community is MUCH smaller than the US activist scene, and remaining anonymous may prove impossible."[49] Nonetheless, an email sent less than two weeks before the summit underscores the hold jail solidarity had on the imaginations of global justice organizers: "Considering size/capacity of the coalition's

[45] Wood, *Direct Action, supra* note 22 at 128-9 and "R2K Legal", *Ibid.* See also Kris Hermes, *Crashing the Party: Legacies and Lessons from the RNC 2000* (Oakland: PM Press, 2015).
[46] Wood, *Direct Action, supra* note 22 at 128.
[47] I was not a member of the Windsor OAS legal working group (I was out of the country during the summit itself and for a couple of weeks prior), but I did assist with legal research and outreach to defence counsel.
[48] Doc 23 (2000).
[49] *Ibid*.

legal team, is there guidance anyone can offer re. how to approach jail solidarity training for protesters in Windsor?"[50] The OAS Shutdown Coalition's Legal Information Kit distributed to activists reflected the organizers' preoccupation with—and uncertainty about—jail solidarity. The guide begins by emphasizing that the planned "action is not meant to recreate the mass direct actions in Seattle [or] DC" but concludes with a "word on non-cooperation/'jail solidarity'": "What, if any, jail solidarity tactics to use is a decision you will have to make after discussions with other activists, and after receiving non-violence and legal trainings in Windsor."[51] Once the OAS meeting began, approximately 2500 protesters were met by 3700 police officers and an 8 foot high exclusionary fence surrounding the summit site.[52] Seventy eight people were arrested, the vast majority under the breach of peace provisions of the *Criminal Code*,[53] a relatively small number as compared to other global justice convergences.[54] Amid reports of physical and sexual abuse in custody, arrestees engaged in various non-cooperation tactics. Four protesters went on a hunger strike, but although they were released after several days, all faced serious criminal charges.[55] According to Wood, "[a]rrestees tried to use jail solidarity in order to operate collectively and to protect those with higher charges, but they failed to

[50] Email from Stefanie Gude, May 22, 2000.
[51] Doc 111 (2000).
[52] Wood, *Direct Action, supra* note 22 at 126.
[53] *Criminal Code*, RSC 1985, c. C-46, s. 31.
[54] King and Waddington canvas various explanations for this low number of arrests: a small turnout of protesters, the use of "key policing strategies" gleaned from Seattle and Washington, DC ("close partnership between the forces involved, intelligence-led policing, and a venue lending itself to the construction of an exclusionary perimeter"), and the enormous and repressive police presence. Mike King & David Waddington, "The Policing of Transnational Protest in Canada" in Donatella della Porta, Abby Peterson & Herbert Reiter, eds. *The Policing of Transnational Protest* (Abingdon: Ashgate, 2006) 75 at 82.
[55] Stefanie Gude, "Canada, Windsor, Hunger Striking Political Prisoners still being Jailed in Windsor" (7 June 2000) and "Final Four Released - OAS Protesters out of Jail" (9 June 2000), Citizens on the Web News – Anti Globalization Archive, online: https://web.archive.org/web/20110301010953/http://citizensontheweb.ca/.

gain any concessions."[56] She concludes that "[m]ost participants saw the Windsor protests as a failure."[57]

The rapidly decreasing efficacy of jail solidarity seen in Philadelphia and Windsor is the first of two reasons for its equally rapid decline in use by activists (the second, described below, centers on the tactic's politics). Wood argued that the police in various North American cities "learned to limit the disruptiveness of the tactic" by detaining activists separately and using larger detention facilities.[58] Old habits die hard however, and while Wood found that after the summer of 2000, "activist legal trainers in Toronto and New York stopped instructing activists to refuse to give their names", that process took time, and organizers from both cities were active in planning legal support for the next major global justice mobilization, the Summit of the Americas held in Québec City in April 2001. The Québec Legal Collective was already in existence, having been organized by activists and law students in Montreal a few months earlier with the goal of supporting local protests.[59] As resistance to the proposed Free Trade of the Americas [FTAA] grew, Québec Legal took on coordinating legal support for the summit where the agreement was to be negotiated – and resisted. In February 2001, members of Québec Legal, the New York City People's Law Collective (NYC-PLC, discussed in detail below), and R2K Legal in Philadelphia, along with myself as a representative of activists in Toronto, met in New York City to plan legal support for the Québec City convergence. In addition to discussing the legal resources available for arrestees in Québec City and strategizing around the US-Canada border (particularly how to ensure that US activists were able to attend the summit

[56] Wood, "Breaking the Wave", *supra* note 42 at 380
[57] *Ibid*.
[58] Wood, *Direct Action, supra* note 22 at 38.
[59] Interview of Participant 10 (5 February 2018).

and the need for legal support during a planned cross-border action on Akwesasne Mohawk territory[60]), a key discussion item at the meeting was jail solidarity. Our biggest concern was that the Orsainville Detention Centre, with room for over 700 people and located about half an hour outside of downtown Québec City, was to be emptied in anticipation of the protests. The Québec Legal representatives' apprehensions echoed those of the Windsor OAS Legal Working Group: there were no relevant Canadian precedents and "jail solidarity ha[d] not been tried on this scale in Canada". They also noted that Québec City judges were like "small town judges" with a reputation for imposing harsh sentences on activists. But others present at the meeting noted that organizers of previous global justice summits had heard all the same warnings: jail solidarity would never work, "the judges suck", we would never be able to "clog the system", and so on. Such dire warnings may not be accurate they argued, and "decisions should be made on activist analysis".[61]

Despite these misgivings, the legal information pamphlet prepared for the summit by Québec Legal highlighted the central importance of a solidarity-based praxis to activist legal defence. Although the guide did not refer to jail solidarity by name, the section on "solidarity during detention" advised activists to "Use group decision-making to decide if you want to engage in non-compliance (e.g. refusing to identify, passive resistance, refusal to wear clothes, hunger strikes, etc.…) or other tactics, and what the goals of such tactics are."[62] Others involved in organizing for the Summit of the Americas produced similar materials. A briefing on crisis intervention prepared for the legal team by Toronto-based activists who had been jailed in Windsor anticipated that jail solidarity would be used and

[60] See generally David Graeber, *Direct Action: An Ethnography* (Oakland: AK Press, 2009).
[61] Doc 107 (2001).
[62] Doc 58 (2001).

urged legal support providers in Québec City to outreach to local hospitals as a "counter measure" to police scare tactics: "give basic legal analysis of jail solidarity, explain that activists brought in may be using this tactic/why we use it… it affects the care they may receive."[63] In March 2001, a well-attended weekend of workshops for activists planning to go to Québec City organized by the Toronto group transACTION included several legal trainings and jail solidarity featured prominently – if ambivalently – in the conference booklet. Although non-identification was not specifically discussed (jail solidarity was defined as "a variety of tactics by which direction action arrestees influence the legal process and take care of each other through collective action"), a list of items *not* to bring to protests instructed activists to "make your decision on what I.D. to leave behind".[64] Once the summit began on April 20th however, transACTION's warning that as "demonstration security measures increase [so] does harassment from the police and security agencies"[65] would prove prescient.

Six thousand officers drawn from four police forces and armed with a variety of less than lethal weapons, including tear gas, rubber bullets, a water cannon, tasers, and pepper spray, were involved in policing the Summit of the Americas.[66] Amidst seemingly endless clouds of tear gas and in the shadow of the 'Wall of Shame' exclusionary fence surrounding the meeting site in downtown Québec City, 463 people were arrested over several days of protests and 300 were ultimately charged with criminal offences.[67] Arrestees, their hands tightly bound with plastic zip ties, were held on buses or in police

[63] Doc 108.
[64] Doc 110 at 11. A handout on law for activists prepared by another key activist group, Toronto Mobilization for Global Justice (generally known as Mob4Glob), did not mention solidarity at all: see doc 64.
[65] Doc 110 at 11.
[66] King & Waddington, *supra* note 54 at 85-87.
[67] Doc 36 (Libertas bulletin, summer 2002).

vans for up to twenty hours, sometimes in areas where tear gas was still being deployed. Denials of water, food, and washroom access were widely reported to the legal team. At the vacant Orsainville jail, now under the temporary administration of Québec's provincial police force, the Sûreté du Québec, detainees were nonetheless held in overcrowded cells (many in view of empty cells), and the denial of food, water, medical care, and other basic needs continued.[68] On April 22nd, the third day of the summit, after waiting many hours in the same frigid courtyard where detainees reported being stripped and hosed down, ostensibly to remove tear gas traces, I was one of several lawyers, Québec Legal members, and other legal team volunteers who were finally granted access to the arrestees, some of whom had already been in custody for 48 hours.[69] It was only at this point that we learned that approximately thirty of the jailed activists had refused to identify themselves and that two women had gone on hunger strike. The activists engaging in non-cooperation tactics had four demands: meeting with lawyers, meeting as a group, that everyone face the same charges, and that everyone be released together.[70] While these non-cooperation tactics may have contributed to the legal team gaining access to Orsainville, their key demands of equal charges and release were not met. It was not until very late on the 22nd, after the summit had ended, that detainees began being released in significant numbers, and both their charges (or lack thereof) and release conditions varied widely, even arbitrarily.[71]

In the months after the summit, Québec Legal, now renamed the Libertas Legal Collective, continued working with defendants, some of whom also formed their own

[68] Doc 59 ("From Québec to Orsainville" report, 2001).
[69] I was an articling student at the time and was therefore permitted to meet with arrestees on my own. Other non-lawyer members of the legal team were paired with defence counsel in order to enter the detention center and conduct interviews.
[70] Doc 109 (Québec Legal press release, 2001).
[71] Doc 59.

group, the Political Prisoners Union of Québec [PPUQ]. Although hampered by the fact that all cases were tried separately, the PPUQ produced a court solidarity-focused defendants' guide and organized a "legal solidarity action":

> Some prisoners have decided that if they are found guilty and sentenced to pay a fine, they will collectively refuse to pay the State and will instead donate the money to a charitable organization. This must be done very publicly to be effective, so contact your local media and as many groups as possible and hold a press conference to announce your action… The organization that you support with your donation could be one that is working to fight capitalism (like CLAC [Convergence des luttes anticapitalistes]) or another group that you support.[72]

While the durability of such court solidarity tactics would prove to be long lasting, the Summit of the Americas, the last major global justice convergence before 9/11, should be understood as one of a series of mobilizations which forced organizers and radical legal support providers to rapidly adapt to the state's ability to respond to and limit the effectiveness of jail solidarity and other disruptive tactics. Just two years later, a Libertas pamphlet for activists protesting a WTO meeting in Montreal in July of 2003 made no mention of jail solidarity[73] and a Libertas representative would tell other legal collective members that "Jail solidarity is not something that happens here. For us, this is not a big part of what we do."[74]

In the aftermath of Windsor and Québec City, and in anticipation of an Ontario wide campaign challenging the province's conservative Mike Harris government, I was one of several activists who formed the Common Front Legal Collective [CFLC] in Toronto in the summer of 2001.[75] Reflecting our misgivings about non-identification

[72] Doc 57 at 8.
[73] Doc 35.
[74] Doc 89.
[75] See Chapter 1, introduction, above.

centered jail solidarity and the still persistent mythology of Seattle, the Common Front collective's legal guide for activists issued in September of 2001 specifically addressed the "thorny issue of non-identification" in the Canadian context:

> Keep in mind that in the ordinary course of things, people are not released from detention unless the police are certain of their identity. This means that if you are choosing to not identify yourself while in custody, it is unlikely that you will be released under a nickname or anonymously. In a mass arrest situation in which many people refuse to identify, this may change, but we have not had enough experience with this sort of jail solidarity in Canada to be able to give more certain advice.[76]

It would be several years before we could get through a legal workshop for activists without the issue of non-identification arising. During a CFLC meeting in August 2001, jail solidarity and non-identification were discussed as two separate agenda items. While recognizing the broader political potential of jail solidarity to "be used not only for demonstrators but also to establish links with general prison inmates, to protest for jail conditions, etc." we were concerned that activists had differing opinions about the post-Québec climate:

> ID documents: The tactic of not providing ID worked well in Seattle and Washington. Partly, because the State was unprepared for the amount of arrests and the use of this particular tactic. This changed in Québec. Rather than working for the people, it actually confused lawyers and people ended up identifying themselves anyway. However, for the purposes of Oct. 16, *some people will still refuse to provide ID and we need to be prepared*.
> - In trainings we should outline both experiences.
> - Suggest that a friend hold the ID preferably someone who is not going to be arrested. Also, get photocopies of ID in case it gets lost.
> - If nickname is being used, it must be something that is recognizably bogus i.e. Daffy Duck or Jesus Christ. Avoid nicknames that could be taken as real. If this happens then people could be charged with impersonation, obstructing a police officer, and so forth.

[76] Doc 10 at 10-11.

> - Let people know that giving out nicknames will make it hard for us to find them.[77]

Looking back on this era, AJ Withers, a founding member of the collective, noted the importance of what "we did in terms of legal education… because people had American legal education access or looked to Seattle and so we made important interventions around jail solidarity for the Canadian context."[78]

The work of the Common Front Legal Collective also epitomizes the second reason radical legal support organizers began questioning jail solidarity, especially narrowly construed as non-identification: even before the tactic began losing its effectiveness, some law collectives were already critiquing the politics of jail solidarity and its seemingly hegemonic position with the global justice repertoire. CFLC's 2001 legal guide for activists stressed "that not everyone can participate in all jail solidarity tactics. Remember that some people need to get out (i.e. they're parents, or have medical needs, or have been assaulted). Solidarity means being able to make room for different needs and abilities and not resenting people for making the choices they need to make to protect themselves."[79] Similarly, a guide written for the Québec City FTAA summit by Vermont's short-lived Back Alley Legal Collective stated, "[t]he use of jail/court solidarity should NOT deter anyone from participating in the action. Pressure for everyone to conform is counter to the spirit of solidarity. Always remain respectful and aware of people among the group who may not wish to join the solidarity action."[80] Both of these guides also gesture toward legal collectives' growing understanding of, and attention to, trauma-sensitive and anti-

[77] Doc 123 (CFLC Meeting Minutes, August 14, 2001) [emphasis added].
[78] Interview of AJ Withers (25 April 2017).
[79] Doc 81.
[80] Doc 5.

oppression focused approaches to legal work. As outlined further in the next section of this chapter, this would become a major component of Common Front Legal's work, well beyond the question of jail solidarity.

As the global justice movement wound down and activists began experimenting with the Seattle tactics during local and smaller scale actions, the political critiques of jail solidarity continued to build. Common Front Legal, for example, was closely aligned with Toronto's Ontario Coalition Against Poverty [OCAP], an organization which "argued that the police treat their members differently than they do the more privileged, middle-class, white, global justice protesters."[81] One OCAP member interviewed by Wood in 2003 "described the tactic of jail solidarity as "a tactic of the privileged.""[82] At the 2005 Law Collective Network conference (discussed in more detail below), a representative of DC's Justice & Solidarity collective reported that they had changed their approach to jail solidarity "because if cops are watching people outside at a vigil, they aren't processing visitors for people inside (as was just learned recently by talking to people in the jail)".[83] An interview with a member of the same collective a dozen years later confirmed this learning process:

> … we had A16 and people did jail solidarity. And that was a sexy tactic. And then later having a different understanding of what happened and that it had shut the jail down basically and then people who were stuck there for much longer, they weren't allowed to receive visitors, and that it really impacted them in very, very negative ways. And this thing that we thought, at the time, was like this cool, smart thing to do, was actually this really horrible thing to do and not at all thoughtful about how it was affecting people that weren't making these conscious decisions to be in jail. And then we started to work that into the trainings that

[81] Wood, "Breaking the Wave", *supra* note 42 at 383.
[82] *Ibid*.
[83] Doc 92.

> we were giving; like this is something that was done in the past and this is why we never ever do that again.[84]

Similarly, Wood found that "Direct-action activists from New York argued that the repression arising from jail solidarity tactics unfairly targeted the less privileged prisoners and thus damaged alliances between the imprisoned activists and the other prisoners. As a result, New York City activists abandoned the tactic."[85]

Two evolving ideas about solidarity marked the latter half of this era of law collective work. The first shift saw organizers and legal support providers move away from a narrow conception of jail solidarity as non-identification; the concept of jail solidarity itself changed and expanded and would continue to evolve, reflecting concomitant changes in movement and state tactics. Wood argues that "[b]y 2011, jail solidarity that involves refusing to identify oneself had almost completely disappeared in Canada and the United States",[86] but I found that this shift was already evident earlier. After about 2004, mentions of jail solidarity as non-identification are almost entirely absent from activist legal materials produced by law collectives and other radical legal support providers. This created space for a second move toward foregrounding a broader conception of solidarity that included, but was not limited to, tactics of jail and court solidarity. The work of NYC-PLC exemplifies this approach. Citing examples ranging from the Industrial Workers of the World union of the early 1900s to US dock workers striking in support of South African anti-apartheid activists, the collective wrote, "[o]ur power and safety comes from our

[84] Interview of Carol Tyson (6 March 2017). Note, however, that Kris Hermes argues that jailed activists used "solidarity tactics to end the general population lockdown and restore their visiting privileges": "Collective Action Behind Bars: A history of jail solidarity and its importance for today's social movements" (2016) Upping the Anti Interventions Pamphlet Series at 10.
[85] Wood, "Breaking the Wave", *supra* note 42 at 385.
[86] Wood, *Direct Action, supra* note 22 at 38.

collective action. Solidarity can take place anywhere or at anytime, there are no restrictions. Solidarity has occurred on the street, in workplaces, in jail and in court."[87] Common Front Legal built on PLC's materials to make a political claim about the non-exceptionality of the criminalization of dissent:

> Solidarity is taking care of each other and ourselves through group decision making. Solidarity is our power to act collectively and support people at high risk of abuse, harassment or targeting by the state. *Solidarity is recognizing that activists are not unique in facing state oppression and working with other prisoners and detainees*. Through solidarity we draw power from institutions designed to alienate and oppress us. Solidarity is a philosophy and an approach, not a set of tactics.[88]

As Wood argues, "[a]ctivists adapted [the Seattle] tactics to suit the contexts in which they found themselves. ... The meaning of jail solidarity initially became narrower before coming to denote general support for those in jail."[89] In the second era, there would be a much greater emphasis on jail support in this broader sense, as the practices and politics of law collectives and other radical legal support organizers continued to evolve alongside both movement strategies and state tactic.

C. A Law Collective Model and Network Coalesces – For a Time

The 2001 Summit of the Americas may have signalled the demise of some jail solidarity tactics, but it also demonstrated the global justice movement's growing reliance on legal collectives. The Québec City legal team included the Québec Legal Collective, the New York City People's Law Collective, the Midnight Special Law Collective, and volunteers from Philadelphia, Toronto, and other cities in Canada and the US. The FTAA convergence

[87] Doc 80 (2001).
[88] Doc 10, based on doc 80 [emphasis added].
[89] Wood, *Direct Action, supra* note 22 at 39.

was not the only sign that a model of radical legal support was emerging; legal collective members were beginning to champion their work and advocate for its expansion. A 2001 article written for the National Lawyers Guild newsletter by members of MSLC and NYC-PLC argued that despite the increasingly repressive response to anti-corporate globalization mobilization in the US, the global justice movement's continued growth was due at least in part to the resurgence of activist legal collectives.[90] These collectives, they wrote, share "the common goal of protecting the movement, and individuals within it, by pooling collective power and potential."[91] In an interview sixteen years later, one of the authors, long-time radical legal worker Mac Scott, looked back on this period: "going into the global justice or anti-globalization movement – depending on who you talk to – you start developing more of the actual collectives. That was the period of the collectives. And what you had in the legal collectives is you had people who did active organizing *and* were part of the collective."[92] As outlined in the preceding chapter, the emergence of what would become an organized network of activist law collectives signaled a shift in the practices of grassroots organizers in Canada and the US as legal support in and for protest movements moved once more from *ad hoc* to intentional. A 2002 *Earth First! Journal* article written by members of Midnight Special bears out their earlier claim of a resurgence, arguing for the expansion of law collectives into the radical environmental movement and offering assistance to interested activists: "All of the existing law collectives are interested in helping new groups organize themselves".[93] In addition to their own collective, Québec Legal, R2K Legal, Common Front Legal, and NYC-PLC, the authors named a number of

[90] Doc 65 at 14.
[91] *Ibid.*
[92] Interview of Mac Scott (23 April 2017).
[93] Doc 69.

new collectives: Washington DC's Justice & Solidarity, Up Against the Law! in Philadelphia, the Cincinnati Legal Collective, and the Portland [Oregon] People's Law Collective. In hindsight, it is clear that while legal collectives did play a role in growing the global justice movement, the relationship was actually dialectical: the energy, momentum, and political opportunity of those years also catalyzed the development of a distinct model of radical legal support provision.

The law collectives that emerged during this period shared a few key characteristics, some of which arose directly from the broader patterns of global justice organizing. The members of Midnight Special argued that, "[e]very law collective defines itself, but most of the current collectives are organized on the affinity group model and use democratic decision-making processes."[94] Affinity groups, which Wood considers another of the Seattle tactics, are "small groups of activists who make decisions and act as a unit within street protest, sometimes linking their actions to other affinity groups through 'spokescouncil' meetings."[95] The spokescouncil structure, in which representatives of affinity groups, committees, and working groups (such as legal collectives or summit-specific legal teams) make decisions about an action, was the backbone of global justice organizing, and as the Occupy movement would demonstrate,[96] its absence in subsequent waves of grassroots organizing would have a profound impact on the legal collective model. The organizing infrastructure of the global justice movement allowed law collectives to take on two core movement building roles: education (delivering trainings, developing resources materials, and researching and sharing the legal information needed

[94] *Ibid*.
[95] Wood, "Breaking the Wave", *supra* note 42 at 377-78.
[96] See chapter 4, sections C and D.

for strategic and tactical decision-making) and direct legal support for protests and actions. The work of the Midnight Special Law Collective in both areas exemplified the legal collective model of this era.

First, just as with the rise of a particular form of jail solidarity, the widely distributed, emulated, and remarkably influential educational materials produced by MSLC had their roots in earlier social movements. This connection allowed for the rediscovery and transmission of crucial movement knowledge[97] while creating an opportunity for current activists, organizations, and communities to expand and update this expertise. Midnight Special's Dan Tennery-Spalding described this process:

> I wrote up a lot, probably I would even say most of our training material, and a lot of that stuff, especially the early stuff came from the training that Katya [Komisaruk] gave and Katya trained us to give. And she got it from other people too. So there is a long, mostly oral tradition of know your rights trainings that I think Katya probably perfected – she did a phenomenal job with them – that we learned from her and then we wrote down.[98]

Second, Midnight Special's key role during the exemplary events of the global justice movement solidified a blueprint for legal support before, during, and after mass mobilizations, a blueprint they then disseminated widely. By 2001, Midnight Special had produced and distributed a series of guides on setting up an action legal team which covered "how to set up an action legal office, coordinating information, what to research, coordinating with the local legal community, trainings, roles, etc."[99] These resources were

[97] Such knowledge production is discussed in detail in chapter 6, section A.
[98] Interview of Dan Tennery-Spalding (9 April 2017). Komisaruk's influence had extended to the broader San Francisco Bay Area activist community long before Seattle. In our interview (15 March 2017), lawyer and former legal collective member John Viola told me about various Bay Area struggles she had been involved with, noting that "Katya was definitely the old timer in that scene and harkened back to radical legal work for social movements and a more popular style of legal work for social movements."
[99] "Action Legal Team Materials" (undated), online: http://www.midnightspecial.net/materials/actionlegal.html.

made possible by the collective's mobility, which sometimes included having members at more than one action at the same time:

> For example, the protests against the 2001 Free Trade Area of the Americas summit in Quebec City were historic in that they occurred throughout North, Central, and South America. Midnight Special helped provide legal support in Quebec City; Burlington, Vermont, at the border convergence; and at the San Diego/Tijuana southern border action.[100]

But this mobility also gave rise to criticisms of Midnight Special which echoed the "summit hopping" critique made of (and by) the broader global justice movement: a privileging of "transient, large scale action at the expense of grassroots local organizing"[101]. The legal support version of summit hopping is usually termed 'parachuting,' meaning landing in a community lacking both connections and accountability mechanisms. Having already recognized the inherent unsustainability of this approach – "moving from protest to protest was exhausting, physically, emotionally and financially" – Midnight Special also responded to the parachuting critique by shifting their focus to helping "set up a local legal team in advance of the action" and then working together.[102] They argued that "[t]his approach has the dual benefit of leaving a fully functional local legal team able to serve the community when we leave, and allowing us to learn new insights and ideas from each other as well."[103] Looking back at this period, former members of Midnight Special had different perspectives on how well this strategy succeeded. Lindsey Shively noted that although the collective tried to "do a lot of train the trainer sort of stuff and share things … it was really like a parachuting model, you know. Midnight Special came out of Seattle and the WTO

[100] Doc 106.
[101] Chris Hurl, "Anti-Globalization and "Diversity of Tactics"" (2005) 1:1 Upping the Anti: a journal of theory and action 51 at 52.
[102] Doc 106.
[103] *Ibid*.

and like really had that sort of summit hopping DNA."[104] Dan Tennery-Spalding, on the other hand, gave me his "critique of the critique":

> …a criticism I heard of Midnight Special [is] like it's so fucked up that Midnight Special goes around the country doing all this work because it makes other people feel like they can't do the work. And if Midnight Special didn't constantly put its nose out there then there'd be a lot more local law collectives. Which kind of presupposes that the only thing keeping people from forming law collectives is that we're doing it too much when actually a lot of people just don't want to do it or it's hard.[105]

While the critiques of accountability and effective movement building bound up with the parachuting debate point to other questions about professionalization and the work of legal collectives (discussed below in chapter five), there is also some evidence that Midnight Special's mobility did plant the seeds of other collectives. Based on one member's experience in Seattle, the Québec Legal Collective was modeled in part on Midnight Special.[106] Carol Tyson described how Washington DC's Justice & Solidarity Legal Collective came together in the aftermath of protests against the inauguration of President George W. Bush in January 2001:

> And then Midnight Special left – because they don't live here. And the few of us who had been involved... We all decided that we wanted to have something that's here, that's rooted in DC. Instead of people coming and leaving and not being able to provide support over the long term. We decided to start one here. And so we could have ties and relationships with the local activist community and then later on with the community outside of traditional white anarchisty people.[107]

By the fall of that year, Justice & Solidarity was organizing legal support for a convergence against meetings of the World Bank and International Monetary Fund taking place in DC.

[104] Interview of Lindsey Shively (10 March 2017).
[105] Interview of Dan Tennery-Spalding (9 April 2017).
[106] Interview of Participant 10 (5 February 2018).
[107] Interview of Carol Tyson (6 March 2017). See also doc 21.

Although the original plan called for working with Katya Komisaruk's Just Cause, that collective dropped out only a month prior to the convergence and Justice & Solidarity stepped in to take over legal support: doing trainings, running a 24-hour legal hotline, and providing direct support to arrestees.[108] The collective also developed an internal structure founded on democratic practice:

> The Collective operates within a consensus model, always aware of oppressions that exist within the activist community and our own group. We call-out oppressive, socialized behaviors, and support each other in our own personal struggles. We will continue to restructure and adjust our group process, and by-laws as deemed necessary."[109]

This focus on process is a hallmark of the global-justice era legal collectives as much as the broader movement they were a part of. As Tyson makes clear, such structures required commitment: "[w]e operated as a real collective and spent as much time creating our own internal policies as we did the work."[110]

Similarly, the two prominent Canadian legal collectives of this era demonstrate the emergence of a distinct global justice legal support model and its almost simultaneous evolution. From their inception, Québec Legal/Libertas and Common Front Legal were shaped by both the global justice movement and local grassroots organizing. This dual orientation and the collectives' establishment at the tail end of the global justice movement ensured that the work of both groups largely avoided summit hopping and/or parachuting critiques. Formed in the fall of 2000, Libertas had strong existing connections to activist communities and organizations in Montreal and prior to the Summit of the Americas was already involved in providing legal support for local protests, particularly after mass arrests

[108] Doc 21.
[109] *Ibid.*
[110] Interview of Carol Tyson (6 March 2017).

of anti-police brutality protesters.[111] After Québec City, Libertas spent several years working with approximately 150 summit defendants, organizing fundraising, recruiting defence counsel, assisting out-of-town activists with travel and housing, organizing defendant meetings and trainings (including a weekend-long workshop on representing yourself at a criminal trial in the fall of 2002[112]), and most importantly, ensuring that no one would "face the injustice system alone."[113] By November 2013, thirty trials and thirty preliminary inquiries had been completed, along with seventy guilty pleas, but at least thirty more trials remained, some of them before a jury.[114] Nonetheless, Libertas continued doing other legal support work in and around Montreal, working with the organizers of local solidarity protests against the G8 Summit held in Kananaskis, Alberta in June 2002 and as mentioned above, a convergence protesting a WTO Ministerial meeting in Montreal in the summer of 2003. A resolutely English-French bilingual collective throughout its existence, Libertas remained active until approximately 2006.

Toronto's Common Front Legal had similarly organic connections to local activism. Originally a legal working group of the provincial Ontario Common Front coalition, CFLC became a separate, independent collective after successfully organizing legal support for the Toronto protest called as part of the October 2001 province-wide day of action described in chapter one. Like Libertas, we had been inspired by the work of Midnight Special and most of us had participated in the Windsor and/or Québec City protests, some as participants, others as legal support providers. But all of us had local,

[111] Interview of Participant 10 (5 February 2018).
[112] The workshop also involved members of Common Front Legal, Up Against the Law Muthafuckers (Philadelphia), COBP (Citizens Opposed to Police Brutality, Montreal) and a number of activist lawyers from the Montreal area: doc 36.
[113] Doc 36 (Libertas bulletin, Summer 2002).
[114] Doc 112 (2003).

community-based activist experience, primarily in anti-poverty, environmental justice, Indigenous solidarity, immigrants' rights, and student organizing. Some of our members had recent experience as defendants and others as direct support providers from the so-called Queen's Park riot, a demonstration against the provincial government organized by OCAP in June 2000.[115] We would continue to work closely with OCAP throughout the collective's existence and were sometimes even mis-identified as the group's legal wing.[116] Although never as mobile as Midnight Special had been in its early days, Common Front Legal became a key resource for activist groups across Canada. We helped activists in Calgary organize the G8 Legal Collective prior to the Kananaskis summit and worked with the Ottawa organizers of a simultaneous solidarity protest, Take the Capital. The *ad hoc* legal support structure put in place for Take the Capital also turned into a standing law collective, Legal Support Ottawa, which organized legal support for both local protests and major convergences such as the visit of George W. Bush in late 2004 and the Security and Prosperity Partnership (SPP) summit held in Montebello, Québec, in August 2007.[117]

Common Front Legal became best known however, for our focus on supporting 'high risk groups': "people who are at risk of being targeted/singled out/profiled/abused/assaulted/discriminated against by police or other authorities at the action, or after arrest because they are a member of a marginalized group, their political beliefs, or because of how they look."[118] Our 2001 legal guide, *In the Streets and in the*

[115] See e.g. John Clarke, "Social Resistance and the Disturbing of the Peace" (2003) 41 Osgoode Hall Law Journal 491 and Wood, *Direct Action, supra* note 22 at 127-28. The June 15th Defence Committee organized court solidarity and other legal, personal, and logistical support for the more than thirty people charged that day: PJ Lilley, "Justice? Just Us!" in 'Queen's Park Riot' Defendants, eds. *June 13 ½* (Toronto: publisher unknown, 2002).
[116] See e.g. Byron M. Sheldrick, *Perils and Possibilities: Social Activism and the Law* (Winnipeg: Fernwood, 2004) at 37.
[117] Email from Dan Sawyer, February 14, 2017.
[118] Doc 10 at 24.

Courts, We Fight to Win included lengthy sections written for transgender, intersex, genderqueer, and non-binary people, people with visible or invisible physical disabilities, psychiatric survivors, and people with mental health issues.

> We have tried to include resources directed to "high risk" groups for which specific legal information is available and valuable. However, we apologize for any gaps that are in this guide. Also, in several cases, there were no other documents geared towards those groups that we knew of. Because some of these are firsts, we had only our immediate allies' and our own knowledge and experience to draw from which made it difficult for us to be as comprehensive as maybe we would have liked.[119]

Common Front member AJ Withers noted that this was a key component of our work that went beyond the content of our materials:

> We weren't just trying to do legal education, which we were. We were also trying to make a political intervention into the movement around inclusion of marginalized groups. Rather than just saying certain marginalized groups, like non-status, trans, and disabled folks, for example, shouldn't be here, we said… these are the risks, these are the things that you should know to protect yourself. And these are the things other people should know.[120]

Common Front Legal was not unique in bringing analyses of unequal risk, trauma, and the need for support that made a "transition in care from charity to opportunity, from favour to honour".[121] Carol Tyson of Justice & Solidarity recalled that,

> …it felt like that was the space where that was happening was in legal collective world. Like acknowledging how hard many years of being so tense and so freaked out 'cause we were doing this work constantly and being followed and having friends followed and people getting arrested and all these things that are just happening and people starting to really hold it in their bodies,

[119] *Ibid* at 1.
[120] Interview of AJ Withers (25 April 2017).
[121] Doc 10 at 47-8. The risk I refer to here is a heightened risk of criminalization or harm as a result of one's identity (or perceived identity), not risk incurred through participation in higher-risk actions. See section C(ii) below for more on how the latter impacts the provision of activist legal support and chapter 6, section B for more on risk and privilege as subjects of popular legal education.

> suicide, all that stuff…. That was really coming from the legal collective world.[122]

As with many aspects of movement-based legal work, this risk-centered and trauma-focused approach to legal support was adopted by other law collectives and ultimately became a core aspect of the anti-repression organizations that emerged a few years later.

One of the collectives that would borrow from and build on CFLC's 'high risk' approach was the New York City People's Law Collective.[123] Like Libertas and Common Front Legal, the collective was firmly entrenched in both the global justice movement and local activism. An explicitly anarchist legal collective, NYC-PLC was formed after several legal NGOs refused to assist anarchists arrested at a May Day action in 2000. This orientation would remain central to the collective's work:

> NYC-PLC was specifically organized or at least one of the goals and very much for me was to protect the people who were going to take the most risky actions but usually get let the least amount of legal support.[124]

The founding members had all been at A16 and had extensive activist experience, but looking back at PLC's origin, one of them would later argue that "we were forming out of a vacuum. We weren't connected to Midnight Special. We were just like 'oh, we're just doing this ourselves.'"[125] In its first two years of existence, NYC-PLC provided legal support for dozens of local protests, but then became involved with larger convergences such as Québec City, the 2001 Inauguration in Washington, DC, and the World Economic Forum (WEF) meeting in NYC in late January of 2002.[126] It wasn't until Québec City that

[122] Interview of Carol Tyson (6 March 2017).
[123] See e.g. doc 93 (2002).
[124] Interview of Participants 3-5 (26 February 2017).
[125] *Ibid*.
[126] Doc 93.

members of the collective would connect with Midnight Special, at a time when NYC-PLC was struggling with its newfound role:

> Originally, we didn't have any plan to do like mass mobilizations but that was what PLC became kind of known for… I think it was also the time and the people that were in the collective were all big mass mobilization people. So they were going to go anyways. So it would be kind of like, oh well all six of us are going. Let's do it as PLC. And New York always has a big contingent at every mass mobilization… And people felt very comfortable with us so they wanted us to go as PLC… I think PLC became kind of a go-to you know, like oh, these people have experience you know. And so we just we just kind of fell into that trap of just going to mobilizations as legal. Rolling up to try and organize.[127]

Despite this ambivalence, the WEF convergence gave NYC-PLC an opportunity "to design an infrastructure to provide legal support for a large national protest" based on "examining what went right and wrong with legal support the various large actions since Seattle."[128] The resulting approach reflected both NYC-PLC's politics and the evolving global justice law collective model. For example, all of the collective's trainings were 'open-ended,' meaning that they "differed from other legal trainings in that [they] did not promote a single legal strategy (e.g. jail solidarity)."[129] NYC-PLC would continue honing their approach to mass mobilizations in the lead up to the Republican National Convention [RNC] held in NYC in August 2004. In line with the era's tendency toward multi-collective legal teams at large convergences, NYC-PLC outlined their intended role during the RNC but also noted that:

> We do not believe that one collective or group can provide all the legal support at an event like the RNC; furthermore, we believe that the best legal support comes from a number of groups creating

[127] Interview of Participants 3-5 (26 February 2017).
[128] Doc 93.
[129] *Ibid*.

> a mutual web of support that can be flexible and meet the needs of the diverse activist community.[130]

This sort of self-reflexivity is emblematic of the more prominent law collectives of the global justice era and it also shaped a short-lived but generative attempt to institutionalize a cross-border network of radical legal support projects.

i. Conferences and connections

The 2004 RNC was one of the main topics of discussion at that year's Legal Collective Network conference in Austin, Texas, the third in a series of four yearly conferences held between 2002 and 2005.[131] During this time, the network and conferences solidified the existing informal practices of law collectives and their members – sharing and adapting materials, working together at convergences, exchanging information and resources, and simply supporting one another – while building others. I attended three of these conferences: Philadelphia (January 19-20, 2002), Montreal (February 15-16, 2003), and Toronto (February 19-20, 2005), which the Common Front Legal Collective hosted. Neither I nor other members of Common Front Legal were able to attend the Austin conference (March 27 and 28, 2004). The inaugural 2002 conference was hosted by the Philadelphia Legal Collective, aka FYI Philly, soon to be renamed Up Against the Law! Bringing together MSLC, CFLC, Libertas, R2K Legal, Portland People's Law Collective, Cincinnati Law Collective, and DC Justice & Solidarity, the conference largely accomplished its primary goal: "We will build our own network, however informal, of legal collectives that are responding to the increasing need for activist and community

[130] Doc 113.
[131] Docs 91 and 95.

organizations to grasp legal proceedings and radically change the traditional course of defense."[132] While it appears that full minutes were not distributed, the list of proposed workshops reflected both existing concerns and emerging debates:

- Legal support for high risk groups
- Fundraising/bail funds
- Internal security
- Law collectives and the Legal System: relationships with lawyers; power dynamics between lawyers, law students, and normal people; how do we facilitate the role of the state?
- Law collectives and the Communities We Serve: Advocacy work, "Activist" privilege and the dynamics of jail & court solidarity[133]

Although the conference concluded with the formation of a Continental Radical Legal Network Spokescouncil, it does not appear to have ever become fully functional.[134]

By the 2003 Montreal conference a year later, the number of collectives represented had shrunk somewhat to Midnight Special, Common Front Legal, R2K Legal, Up Against the Law!, and NYC-PLC, along with the hosts, Libertas, and two local Montreal groups engaged in activist legal work (Collectif Opposé à la Brutalité Policière [COBP] and Convergence des luttes anticapitalistes [CLAC]). The conference minutes record two intense days of discussions and workshops which continued the conversations that had begun in Philadelphia about the relationships between law collectives, movements, and lawyers and how or whether radical legal support actually enables the work of state actors rather than countering repression. The changing importance of tactical concerns tied to the anti-globalization mass mobilization context was reflected in the complete lack of interest

[132] Doc 56 (Conference agenda).
[133] *Ibid*.
[134] The minutes of the 2003 conference note that a "Spokescouncil was supposed to form to start discussion of the work of legal collectives on listserv, this didn't happen. Network exists so we can provide mutual support for each other… the network isn't very functional right now except to exchange information": Doc 89.

in a break-out group about jail and court solidarity on the second day of the conference[135] Yet a lengthy discussion on the value – practically and politically – of bringing civil suits in the aftermath of summit convergences found most conference participants on the side of ambivalent pragmatism: civil suits could be useful in winning damages and holding police and other government agencies accountable, but they were also expensive, slow, and resource intensive, a form of "damage control" rather than justice.[136] The network conferences themselves became the subject of disagreement, particularly the issue of whether or not to invite groups that did not self-identify as legal collectives. This debate suggests that the legal collective model was already beginning to be understood as somewhat porous, but the minutes indicate that the organizers of the next conference would resolve the issue via agenda setting, perhaps setting aside time for legal collectives to meet separately if other groups were invited (as they had been in Montreal).[137] Full minutes of the 2004 Austin conference were not distributed however, and it is not clear how or if that meeting involved participants other than self-identified legal collectives.

The boundaries of the global justice era legal collective remained an open question, as reflected in the agenda for the last of the network conferences held in Toronto in early 2005. A panel and discussion on "How to move beyond working in activist communities and be grounded in broader communities" featured members of Common Front Legal, OCAP, Philadelphia's Up Against the Law, Toronto Action for Social Change, the Campaign to Stop Secret Trials, and No One Is Illegal.[138] Updates from the cities and collectives represented at the conference were overwhelmingly focused on either local

[135] Working with lawyers, fundraising, and cross-border/immigration issues drew the most interest: Doc 90.
[136] Doc 89.
[137] Doc 89.
[138] Doc 88.

legal support and education efforts or the local impacts of larger convergences. A key topic of discussion, the "professionalization of legal collectives" highlighted both unease with what had become the dominant law collective model and efforts to think and move beyond it. One participant argued that "a collective is a framework to hold people accountable. We need more attention to what community is and how do we build it" while another went even further:

> In the early '90's people got arrested and did ok without legal collectives. Do we need the heavy duty infrastructure we've gotten used to at mass actions? No. We can just split up the roles a bit, you get lawyers, you do bail, and get by. And avoid burnout too.[139]

Yet there is no suggestion, in that discussion or others, that this would be the last legal collective network conference. The conference included updates from Libertas, Midnight Special, Austin People's Law Collective, R2K, and the host collective, Common Front Legal, as well as reports from other participants about legal support projects in Ottawa, New York City, Washington DC, Detroit and Miami.[140] The seemingly annual evaluation of the effectiveness of the network itself included discussions about including "more community stuff – links between legal collectives and other legal work", a recognition of the failure of the planned network spokescouncil, and a renewed commitment to making more use of the network listserv.[141] Reading the minutes more than a dozen years later, my overall impression of the Toronto conference is of a community bound by a two-fold commitment: to a profoundly radical approach to legal support praxis and to an organizing framework we knew was in flux.

[139] Doc 92. Note that these minutes do not include the names of speakers.
[140] Doc 92.
[141] The Legal Collective Network listserv is still in existence although it is only used sporadically.

ii. New models on the horizon

While the lack of subsequent Legal Collective Network conferences[142] may be understood as suggesting a fatal decline in the significance or vitality of activist legal collectives, my view is that the Toronto conference marked the beginning of a decisive shift in radical legal support praxis, one driven by concomitant shifts in social movement organizing in Canada and the US. That 2005 marks a shift rather than a break is underscored by the fact that the two defining elements of the second era – a recalibration of radical legal support as part of a broader commitment to anti-repression organizing and a move away from standing law collectives to more fluid legal support formations – were already becoming visible in the last few years of the first. The move toward a reconfiguration of legal support as anti-repression work may be seen in the response of legal collectives to the consolidation of the 'Miami model' of protest policing at the FTAA Ministerial Meeting held in Miami, Florida in November 2003:

> This style is characterized by the creation of no protest zones, heavy use of less-lethal weaponry, surveillance of protest organizations, negative advance publicity by city officials of protest groups, preemptive arrests, preventative detentions and extensive restrictions on protest timing and locations.[143]

[142] Later that same year, law collective members also participated in the Up Against the Law: Legal Work and Collective Action conference organized in Montreal by local activists (May 27-29, 2005). One of the goals of this conference was "Initiating a collective history of the strengths and limitations of past legal collectives and community organizing experiences in relation to legal work within social movements." Indeed, the email from Libertas (April 20, 2005) inviting members of the Legal Collective Network noted "Don't be alarmed by the absence of law collectives from the speakers lists—it's just that the speakers from the collectives are not confirmed enough yet to add, but we definitely need and want this element." Law collective members were specifically sought for a planned "Non-hierarchical legal organizing structures" panel and some (including myself), also participated in the "Skirting limitations on radical legal practice" panel. See doc 97.

[143] Alex Vitale, "The Command and Control and Miami Models at the 2004 Republican National Convention: New Forms of Policing Protests" (2007) 12:4 Mobilization: An International Quarterly 403 at 406.

Legal support during the Miami FTAA was organized by Miami Activist Defense [MAD], an *ad hoc* coalition of activists, law students, legal workers, attorneys, and members of Up Against the Law! and Midnight Special.[144] Amid an "an almost surreal backdrop that included armored vehicles on the ground and helicopters dotting the skyline above",[145] protesters were met by police armed with plastic and rubber bullets, beanbag projectiles, chemical weapons, and tasers.[146] Police arrested almost 300 people, including 70 participants in a courthouse/jail vigil.[147] The individual elements of such repression were not new, having emerged then coalesced via the policing of previous global justice convergences. Taken together however, the Miami model tactics presented distinct challenges for organizers, activists, and legal supporters, as MAD and others recognized immediately:

> MAD is participating in a broad-based campaign to stop the Miami "homeland security" model of policing in its tracks. We recognize that the best defense of our human rights is community organizing. Courts and governments respond to popular pressure: stay active in your community on this issue![148]

Two years later, at the 2005 Legal Collective Network conference, a member of MAD reported that they were struggling to get more activist voices involved in strategic decision-making around civil suits arising from the FTAA meeting. She noted that the Miami model

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[144] Miami Activist Defense, "Who We Are" (undated), online: https://web.archive.org/web/20041025152446/http://www.stopftaa.org:80/article.php?id=157.
[145] American Civil Liberties Union, News Release, "Police Trampled Civil Rights during 2003 Free Trade Protests in Florida, ACLU Charges" (17 November 2005), online: https://www.aclu.org/news/police-trampled-civil-rights-during-2003-free-trade-protests-florida-aclu-charges.
[146] amory starr, "hunted in miami, 'the model for homeland defense'" (29 November 2003), online: https://amorystarr.com/miami-ftaa-november-2003/.
[147] *Ibid* and American Civil Liberties Union, *supra* note 145.
[148] Doc 114 (MAD Blast #1, 2003).

had started spreading to other cities with large mobilizations, the NYC RNC being a particularly egregious example.[149] Wood's research confirms this analysis:

> From 1999 to 2004, as a wave of global justice protest facilitated the diffusion of disruptive tactics and the refusal to cooperate with authorities, police used the increased confidence of the movement to justify borrowing and adapting militarized tactics and intelligence gathering from other policing, security, and military settings, to re-establish order and reduce the disruptiveness of the protesters.[150]

Second, although there had been convergence-specific legal collectives before (e.g. Calgary's G8 Collective, mentioned above), a harbinger of the more fluid, sometimes issue-specific radical legal support models that would become increasingly common in the second era can be seen in the structure and work of the San Francisco Bay Area's Legal Support to Stop the War collective [LS2SW]. LS2SW was set up to fit within the spokescouncil structure used by the Direct Action to Stop the War [DASW] to coordinate actions and protests against the 2003 invasion of Iraq: "In LS2SW that was part of the design, was that it would be dynamic and participatory and people could join the legal spoke in the spokescouncil".[151] As a result, the collective made a distinction between core and volunteer members. Core members had full decision-making power at LS2SW meetings and were responsible for the primary work of the collective, while volunteer members were generally involved through the legal working group of DASW (known as the legal spoke), and could not block decisions made by core members.[152] The LS2SW core was made up veteran Bay Area legal activists, including the members of Midnight

[149] Doc 92.
[150] Lesley J. Wood, *Crisis and Control: The Militarization of Protest Policing* (London: Pluto Press, 2014) at 48.
[151] Interview of John Viola (15 March 2017).
[152] *Ibid*.

Special and long-time radical lawyer and former NYC-PLC member John Viola, and it was something of an explicit attempt to refine the global justice legal support model while maintaining its solidarity-based politics.[153] Almost 3000 people were arrested during a series of anti-war protests and direct actions, including a shutdown of San Francisco's financial district on the morning of March 20, 2003 that resulted in one of the largest mass arrests in US history.[154] Nearly every single one of these charges was ultimately dismissed after lawyers working with LS2SW were able to establish that "prosecutors had violated due process rules by crossing off misdemeanor charges on arrestees' citations and writing in lesser infractions—like jaywalking—instead of filing new cases."[155] This legal victory would not have been possible without DASW's legal support infrastructure and LS2SW's ability to track and defend several thousand arrestees, but Viola also highlights the collective's commitment to solidarity:

> …we were way better at making sure that there was solidarity and that people stuck together. And because people stuck together… we knew everybody's court date, we had complete control of the situation.[156]

This commitment "to transform the demoralizing experience of arrest and incarceration into one in which power is reclaimed"[157] rested on a technique Viola described as "flipping the script on power":

> You count the number of people going into jail. You count the number of people coming out of jail and you make sure that that's the same number. If it's not the same number, you make sure that the people who are still in have the support that they need. It

[153] Doc 106.
[154] Direct Action to Stop the War, "Legal Updates for March 19 and 20" (2 April 2004), online: https://web.archive.org/web/20040630051656/http://www.actagainstwar.org/article.php?id=393.
[155] Patrick Hoge, "Anti-war protesters likely to be cleared / Technicality affects 2,300 S.F. citations", *San Francisco Chronicle* (13 June 2003), online: https://www.sfgate.com/bayarea/article/Anti-war-protesters-likely-to-be-cleared-2609478.php.
[156] Interview of John Viola (15 March 2017).
[157] Doc 115 (LS2SW, 2005).

> transforms the ordinary moment of arrest. *So an arrest is supposed to split people up, break people apart and alienate people and by sticking together and expressing solidarity with each other you transform that moment into one in which power is built rather than power is taken away from people*. And it is highly effective and very easy. You know it doesn't take much sophistication or really much resources to do it, it just takes the will and desire and the vision to actually do that. And it really is very effective for transforming those moments into one where people feel like yeah, I'm ready to go back out versus moments where people feel very broken and intimidated and traumatized by the system.[158]

As planned, LS2SW did not become a standing collective and disbanded shortly after the wave of anti-war actions in early 2003 subsided. The combination of a more open membership structure and a core of experienced local legal support providers would not always be easy to replicate, but the temporary, movement-embedded LS2SW model would become increasingly widespread in the years to come.

[158] Interview of John Viola (15 March 2017).

CHAPTER 4
CONTEMPORARY RADICAL LEGAL SUPPORT, PART 2: COUNTERING REPRESSION IN THE 'AGE OF AUSTERITY' (2008–2018)

This chapter continues following the evolution of law collectives and other radical legal support structures though the second of two recent political eras. I explore the fate of the activist law collective model that developed during the global justice movement in the wake of that movement and consider why this mode of radical legal support seemingly outlived the political moment it emerged from. Tracing shifts in both state and activist tactics, I make two key arguments. First, that the global justice legal collective template evolved along with both that movement's summit-centered organizing and the evolution in protest policing exemplified by the Miami model. Just as "a connection exists between waves of protest and changes in the protest policing repertoire",[1] both also shape radical legal support approaches. A close look at the legal support structures organized for convergences against the 2008 RNC, the 2010 Vancouver Olympics, and the 2010 Toronto G20 demonstrates that as a militarized, intelligence-based form of protest policing became entrenched, legal collectives began to develop a praxis of legal support as anti-repression, a praxis which would further evolve during the Occupy and racial justice movements to come. A key part of this praxis is the attempt by radical legal support organizers to challenge the criminalization of "protesters through the use of the norms and expectations

[1] Lesley J Wood, *Crisis and Control: The Militarization of Protest Policing* (London: Pluto Press, 2014) at 53 [Wood, *Crisis and Control*].

of negotiation and nondisruption"[2] by developing and sharing tools aimed at negating the incapacitating effects of Miami model style policing.

Second, I argue that the global justice law collective model continued to work reasonably well during summit-like convergences such as the 2008 RNC and the 2010 G20 but has not fared as well in protest movements that are "local and stationary"[3] rather than summit or convergence based. With a focus on the legal support structures that sprang up in defence of the Occupy and Black Lives Matter movements, I examine the growing role of anti-repression organizing and the evolution of alternatives to the previous era's law collective focused legal support model.

This more recent anti-austerity era of activist legal support covers a longer time period and a broader array of mobilizations, protests, and movement formations than the previous one. It is a period of oppositional politics and state repression that was (and arguably, continues to be) inexorably shaped by the 2008 financial crisis. Writing in 2011, David McNally noted that "as neo-liberalism undergoes a sustained economic slowdown, ever more alarming tactics are entering the arsenal of policing for the age of austerity."[4] Although such techniques have deep roots, he argued that courts, governments and police forces were "raising the bar" with respect the deployment of "weapons, mass arrests, kettling of demonstrators, punitive bail conditions, inhumane detention, and intrusive surveillance".[5] Similarly, Lesley Wood's work tracing the militarization of protest policing and the incorporation of less-lethal weapons, pre-emptive arrests and the use of barricades

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[2] Mike King, *When Riot Cops Are Not Enough: The Policing and Repression of Occupy Oakland* (New Brunswick, NJ: Rutgers University Press, 2017) at 24.
[3] *Ibid* at 51.
[4] David McNally, "Social Protest in the Age of Austerity" in Tom Malleson & David Wachsmuth , eds, *Whose Streets? The Toronto G20 and the Challenges of Summit Protest* (Toronto: Between the Lines, 2011) 201 at 204.
[5] *Ibid*.

and riot control units in the US and Canada located such shifts in policing tactics within a broad political context, ultimately concluding that policing of dissent "must be understood as a result of a neoliberal transformation of political, social and economic systems, and their effect on police organizations and decision-making".[6] It is with this backdrop in mind that I begin my analysis of this era with an event that exemplifies both continuities and changes in the strategies and tactics of protest movements, legal support organizers, and state security apparatuses.

A. MIAMI TO MINNESOTA: TRACING EVOLUTIONS IN LEGAL SUPPORT, POLICE TACTICS, AND MASS MOBILIZATIONS

> When you are arrested for protesting, you will spend on average at least 24 hours in jail. No one thinks you pose a particular threat; they keep you because the system takes that long to process your existence. The mere size and impersonal nature of the system dictates this treatment. We have learned to accept this from inflexible institutions, to be cheated of our time and money, to be passive in the face of unresponsiveness. But frankly, it can be embarrassing to be locked up in a metaphor for what you're protesting.
>
> Communiqué #2, *tidal: Occupy Theory, Occupy Strategy*, March 2012

The 2008 Republican National Convention held in early September in St. Paul, Minnesota demonstrates that the Miami model outlived the anti-globalization movement during which it evolved – as have versions of that movement's activist legal collective. The key hallmarks of the Miami model were all too present in St. Paul: pre-emptive, targeted, and mass arrests, severe restrictions on march permits and protest routes, and the extensive use of less-lethal weapons such as tasers, paint and flash-bang grenades, and approximately $2

[6] Wood, *Crisis and Control, supra* note 1 at 3.

million worth of pepper spray.[7] Large protests took place over several days in both of the Twin Cities, St. Paul and Minneapolis, ultimately resulting in the arrest of over 800 people, including two mass arrests: 396 people at an anti-war march and another 134 after a concert, many of them non-protesters.[8] Police raided the RNC Welcoming Committee's convergence space before the convention even began, detaining 60 people and seizing computers, personal belongings, and political literature.[9] Early the next morning, police entered three houses using battering rams, then detained and hand-cuffed all of the occupants. Eight activists associated with the RNC Welcoming Committee were arrested and charged with "conspiracy to riot in furtherance of terrorism" under Minnesota's post-9/11 anti-terrorism statute.[10] Independent media were also the target of pre-event raids and detentions and numerous journalists, along with medics and legal observers, were arrested during the convention.[11]

The Coldsnap Legal Collective was formed in early 2008 in the midst of a concerted local mobilizing effort that had begun two years before the convention.[12] But activists were not the only group to start planning for the RNC so early. On August 31, 2007, a full year before the RNC, visiting activists attending a pre-convention organizing meeting hosted by the RNC Welcoming Committee participated in the monthly Critical Mass[13] bicycle ride.

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[7] Heidi Boghosian, "The Policing of Political Speech: Constraints on Mass Dissent in the U.S.", National Lawyers Guild (2010) at 36.
[8] Doc 70 (2010) and doc 117 (2009).
[9] Doc 70 and Boghosian, *supra* note 7.
[10] Boghosian, *supra* note 7 and Sharon Schmickle, "Meet the RNC Eight: Are they terrorists?", *MinnPost* (6 April 2009), online: https://www.minnpost.com/politics-policy/2009/04/meet-rnc-eight-are-they-terrorists/.
[11] Doc 70, doc 117, and Boghosian, *supra* note 7.
[12] Interview of Jude Ortiz (15 March 2017).
[13] Critical Mass rides are leaderless celebrations of bicycle culture, alternative transportation, and public space. Cyclists meet at a specified location and then ride as a mass, usually without a set route, operating under the slogan "we're not blocking traffic, we are traffic!" Typically held on the last Friday of the month, Critical Mass rides began in San Francisco in 1992 and have since spread to thousands of cities all over the

In what the National Lawyers Guild [NLG] would later describe as a 'police riot', Minneapolis Police Department [MPD] officers drove vehicles into the crowd of cyclists, tackled riders off their bicycles, and deployed chemical weapons, eventually arresting 19 people.[14] Local organizers understood these actions to be "clearly designed, at least in part, to intimidate and harass activists who were organizing resistance to the RNC."[15] The Coldsnap Legal Collective also recognized the strategic significance of such police rehearsals for the upcoming RNC, and seized on the opportunity to begin holding monthly Know Your Rights trainings before Critical Mass rides. Intended to educate activists as well as to show police that "the community was organizing and would not passively accept the repression they wanted to dole out", these trainings laid the groundwork for Coldsnap's broader educational work, much of it informed by the work of previous law collectives:

> Coldsnap also facilitated a series of KYRs throughout August 2008 in conjunction with their volunteer trainings for people interested in working in the office. All the trainings were based on the role-play scenarios developed by Midnight Special Law Collective through their experiences in decentralizing this knowledge since they formed back in the days of the WTO in Seattle. Through this collective knowledge, shared within the community in response to state repression, Coldsnap was able to help educate people in the local community about... your rights![16]

Despite the relative inactivity of the formal Legal Collective Network, Coldsnap's organizing relied on the contributions of more experienced legal support providers who "offered support, resources, and access to pre-existing networks."[17] Coldsnap member Jude

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world. See generally "Critical Mass: Mass Bicycle Rides in Cities Around the World, online: http://www.critical-mass.org/.

[14] Boghosian, *supra* note 7 at 26.

[15] Doc 70 at 8 (CRASS, 2010).

[16] Doc 70 at 9.

[17] Doc 118: CrimethInc. Ex-Workers Collective, "We Are All Legal Workers: Legal Support at the RNC and After" *Rolling Thunder* (5 May 2009), online: https://crimethinc.com/2009/05/05/we-are-all-legal-workers-legal-support-at-the-rnc-and-after.

Ortiz explained: "We had a lot of resources to draw from, from Midnight Special and DC Justice and Solidarity. Nobody [local] had any experience with how to actually do a legal collective or organizing for a legal support office on that scale."[18] Coldsnap's ability to draw on such movement expertise resulted in a legal support structure which incorporated and modified existing approaches (e.g. a street team and jail vigil) and also allowed for their evolution.

In the months before the RNC, activists with the Welcoming Committee and other local groups formed a working group on collective bargaining (defined as "the ability to utilize the power of groups in making demands of the system while people are: a) in the streets, b) in jail, c) in the court system"[19]), intending to make a proposal to protest participants prior to the convention. The emphasis on collective bargaining echoed Coldsnap's RNC Legal Primer, which also contextualized jail and court solidarity tactics within this broader framework:

> Beyond trying to get the least possible charges for people involved in actions and protests, there are larger reasons for using collective bargaining strategies. Those in power seem to have the upper hand in so many arenas: money, resources, weapons, technology, etc. We, however, have something money can't buy: our ability to work together and our numbers... By focusing on the things we have in common and using the real leverage of how many more of us there are than them, we build unity across diverse communities, create examples of positive alternatives to the status quo, and gain ground by winning our demands.[20]

Working with Coldsnap and NLG, the working group circulated a checklist to identify strategic research needs and weigh various negotiation and pressure strategies, including legal solidarity:

[18] Interview of Jude Ortiz (15 March 2017).
[19] Doc 119.
[20] Doc 18 at 29.

> Do the people intending to risk arrest have enough points of unity to make difficult decisions as a unified group? Can we arrange Legal Solidarity trainings for a significant proportion of the activists involved in the action? How long are the majority of people prepared to stay in jail?[21]

Although jail solidarity was only one of the tactics discussed in the proposal, it became the focal point of resulting debates among Coldsnap, the working group, and other organizers, with some arguing that the proposal over-emphasized jail solidarity aimed at reducing charges at the expense of broader "community discussions about the full spectrum of solidarity tactics and demands".[22] Ultimately, the solidarity plan agreed to at a spokescouncil held the weekend before the convention was based on a proposal by the radical queer network Bash Back! With an emphasis on creating gender-neutral tactics aimed at protecting trans people and other vulnerable or targeted groups from abuse, assault, or retaliation in addition to reducing charges, the plan called for arrestees to "give the name Jesse Sparkles rather than their real names and [to] refuse to be separated on account of gender or severity of charge."[23] This first invocation of jail solidarity at a major convergence after a significant pause reflects both the impact of previous critiques as well the influence of a specific anti-oppression politic that diverged significantly from how the tactic was framed during the earlier era. The RNC collective bargaining debate once more called into question both the centrality of non-identification jail solidarity relative to other non-cooperation tactics and the primary purpose of jail solidarity: is the goal to defend the most vulnerable and/or targeted or to achieve better treatment for all detainees? In the end, neither goal was achieved, and the large number of arrests did not fuel successful jail

[21] Doc 120.
[22] Email communication (22 August 2008).
[23] Doc 118.

solidarity: "the police brutalized arrestees rather than meeting their demands, and the separated and demoralized Sparkles eventually gave their real names."[24]

The severe repression of the RNC also strained Coldsnap's support capacities and its relationship with local lawyers, leaving the collective "crumbling under the stress."[25] It was in this context that the first meeting of arrestees and supporters was called two days after the end of the convention. The goal of developing ongoing, arrestee-led legal support led to the formation of the Community RNC Arrestee Support Structure [CRASS], a spokescouncil of working groups dedicated to helping arrestees through the court process.[26] In addition to fundraising for a travel fund, assisting with civil suits, and calling press conferences and protests, CRASS organized a Courtwatch program and devised other court solidarity strategies.[27] This work yielded some victories, including dropped charges and lower than expected sentences, but in the aftermath of the RNC, a number of people charged with felonies were pressured into accepting plea deals, some resulting in significant jail time.[28] These outcomes should not detract from the importance of Coldsnap and CRASS in both maintaining the legal collective model and expanding it. Neither organization was entirely new, in structure or purpose:

> CRASS is not a unique organization. It is part of a history of support for people arrested at mass demonstrations, as seen after other large summits such as the WTO in Seattle in 1999 and the

[24] *Ibid*.
[25] Interview of Jude Ortiz (15 March 2017).
[26] Doc 118 and doc 70 at 5.
[27] Doc 118.
[28] Doc 70 at 6-7. See also doc 117: "The vast majority of prosecutions are of people who live outside the Twin Cities. It is expensive and time consuming for them to return to St. Paul again and again to fight their charges. The prosecutors wear them down until poverty and exhaustion force them to take a plea deal. Most of the people who took plea deals were guilty of nothing whatever; they simply couldn't continue to fight the legal system. Most of the people who fought their charges - often with aid from CRASS funds - won."

> RNC in New York City in 2004, to name just two well-known examples.[29]

But CRASS is significant for several reasons. First, because of its commitment to prefigurative practice:

> The way we worked was just as important as the work we were doing; we had to confront oppressive behaviors and tendencies within ourselves in order to combat them in the world outside of us… we all knew that if we failed working together in ways that further liberation, we could achieve some tactical victories in the courts but remain strictly on the defensive.[30]

Second, because of its focus on recording and analyzing the operation of radical legal support, CRASS must be recognized for its commitment to the production and preservation of movement knowledge.[31] Much of this section draws from CRASS's 99-page zine *Untitled, or What To Do When Everyone Gets Arrested: A CRASS Course in Providing Arrestee Support*, which details the work of Coldsnap and CRASS in an effort to both understand and critique what happened before, during, and after the RNC and to serve as a guide for future legal support efforts. Finally, CRASS's approach to resisting criminalization signaled a shift in the actual, rather than simply aspirational, politics of activist legal support. A Coldsnap member explained: "I was a part of CRASS and the court support. And that ended up even expanding, some of the role and work expanded outside of just the response to the state repression particular to the RNC but also included people who were targeted by the police in the community and supporting them in court and through their trial processes as well."[32] This orientation was part of CRASS from the start:

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[29] Doc 70 at 30. CRASS also had a lot of similarities with R2K Legal: see generally Kris Hermes, *Crashing the Party: Legacies and Lessons from the RNC 2000* (Oakland: PM Press, 2015).
[30] Doc 70 at 29.
[31] See chapter 6, section A.
[32] Interview of Participant 16 (13 March 2017).

> In the wake of violent state repression and hundreds of arrests, many arrestees and their allies came together to figure out how to collectively fight the charges and hold the state accountable. Groups initially involved in organizing this collaborative legal support saw a clear need for it to continue after the action. Further, many hoped it would involve a broad, decentralized spectrum of those affected by state repression, rather than a narrow or particularly vocal subsection of the activist community.[33]

As a defendant-led direct support structure with the political orientation of a community-based anti-repression committee, CRASS represents an evolution in the framing of radical legal support. Similarly, the dissolution of Coldsnap following the RNC reflects both continuity and impending rupture with the previous era of legal support. Although Coldsnap was originally intended to be a permanent legal collective and did continue to work alongside CRASS for some time following the RNC,[34] the collective did not last. As one former member explained:

> There was always an expiration date I guess for Coldsnap, but I think for some of the collective members there was [an expiration date] because the purpose of our work in that moment was so specific to an event and to this particular action.[35]

More than an action-specific legal team, the Coldsnap collective demonstrated the continued relevance of the legal collective model while also signaling the beginning of its adaption to a post-global justice organizing model. The emergence of CRASS from the foundation laid by Coldsnap suggests that the 2008 RNC marked a key shift toward a more fluid yet grounded model of legal support in which the global justice-era law collective, while important, was no longer the only game in town.

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[33] Doc 70 at 5.
[34] "Although we are currently focusing on preparations for the upcoming RNC, we are excited to be working in the long-term to strengthen our community with legal support and resources." Doc 18 at 2 and Doc 118.
[35] Interview of Participant 16 (13 March 2017).

B. INCAPACITATING INCAPACITATION: PROTEST POLICING AND LEGAL SUPPORT

> You can know not to trust the fucking cops in a million other ways. But having someone take care of you when you've been arrested and having someone who will be there when you get out of jail, there is nothing like that.
>
> Dan Tennery-Spalding, 2017[36]

Because evolving forms of state repression catalyzed both the global justice legal collective model and later, the emergence of anti-repression as legal support, fully appreciating the activist response to the 2008 RNC requires an understanding of how the Miami model fits into the recent history of protest policing in Canada and the US. Tracing the evolution of protest policing backwards from the St. Paul RNC demonstrates that the emergence (and entrenchment) of this policing model mirrors the evolution of accompanying legal support tactics. Protest policing scholars generally identify three styles of public order policing in the US and Canada: escalated force (1950s to early 1970s), negotiated management (1970s to the present), and strategic incapacitation (late 1990s to the present).[37] Under the escalated force approach, perhaps best exemplified by police responses to the Civil Rights movement in the US south, police over-enforced the law, disregarded constitutional rights to assembly or expression, and relied on the use of force, including arrests, to control and deter protest activity.[38] In 1998, Clark McPhail, David Schweingruber, and John McCarthy

[36] Interview of Dan Tennery-Spalding (9 April 2017).
[37] John Noakes & Patrick F Gillham. "Aspects of the 'New Penology' in the Police Response to Major Political Protests in the United States, 1999–2000" in Donatella della Porta, Abby Peterson & Herbert Reiter, eds, *The Policing of Transnational Protest* (Abingdon: Ashgate, 2006) 97 at 101. See also Alex S Vitale, *The End of Policing* (New York: Verso, 2017) at 183 and following.
[38] *Ibid* at 99. See also Clark McPhail, David Schweingruber & John McCarthy, "Policing Protest in the United States: 1960-1995" in Donatella della Porta & Herbert Reiter, eds, *Policing Protest: The Control of Mass Demonstrations in Western Democracies* (Minneapolis: University of Minnesota Press, 1998) 49 at 51-54.

argued that by the late 1970s, this style of policing had been largely replaced by negotiated management, an approach predicated on communication between demonstrators, protest organizers, and police, before and during protests. Arrests and force were meant to be used minimally and as a last resort, unless a civil disobedience strategy had been previously arranged or could be negotiated on the spot. Negotiation, pre-planning, and permitting practices normalized protest:

> Under the negotiated management style, an "acceptable level of disruption" is seen by police as an inevitable by-product of demonstrator efforts to produce social change. Police do not try to prevent demonstrations, but attempt to limit the amount of disruption they cause.[39]

The so-called Battle of Seattle changed all that. John Noakes and Patrick Gillham argue that the anti-WTO protests were as significant for police as they were for the nascent global justice movement of the Global North, becoming "a symbol of the worst-case scenario, the kind of situation for which they needed to retrain and retool so that it did not occur in their jurisdiction".[40] But Wood maintains that negotiated management had already been challenged in the early 1990s by radical environmental and other grassroots movements who eschewed negotiation, believing that "prearranging arrests with the police in an orderly fashion was a losing strategy" that constrained their leverage and minimized their claims. For such activists in Canada, the 1997 APEC protests in Vancouver "underscored the threat the police represented".[41] In their study of the Seattle WTO, A16

[39] McPhail, Schweingruber & McCarthy, *supra* note 38 at 52. See also Patrick Rafail, "Asymmetry in Protest Control? Comparing Protest Policing Patterns in Montreal, Toronto, and Vancouver, 1998-2004" (2010) 15:4 Mobilization: An International Quarterly 489 and Willem De Lint & Alan Hall, *Intelligent Control: Developments in Public Order Policing in Canada* (Toronto: University of Toronto Press, 2009) (tracing the development of negotiated management policing in Canada).
[40] Noakes & Gillham, *supra* note 37 at 97-98.
[41] Lesley Wood, "Uncooperative Movements, Militarized Policing, and the Social Movement Society" in Howard Ramos & Kathleen Rodgers, eds, *Protest and Politics: The Promise of Social Movement Societies* (Vancouver: UBC Press, 2015) 138 at 141 [Wood, "Uncooperative Movements"].

in DC, and the 2000 Philadelphia RNC, Noakes and Gillham contrast "transgressive protesters" with the "constrained protesters" who cooperate with the norms and expectations of negotiated management policing. Faced with mass mobilizations of 'transgressive' global justice activists, police in all three cities turned to now-familiar tactics: no-protest zones and access restrictions, aggressive over-enforcement of law aimed at disrupting protests, frequent and strategic use of force, including less than lethal weapons, targeted and mass arrests, and surveillance, particularly of perceived key organizers.[42] In contrast to those who saw these police tactics as a "temporary and situational" return to escalated force, Noakes and Gillham understood global justice protest policing as a third approach, strategic incapacitation, centered on three elements: risk assessment and surveillance, temporary incapacitation, and the 'rearrangement' of offenders, meaning the creation of obstacles to participation in protest, including arrest.[43] It is this last aspect that points to the work of radical legal support providers. Noakes and Gillham contend that given the low rate of prosecutions and subsequent convictions of arrestees, the arrests at all three convergences were intended to incapacitate rather than punish demonstrators.[44] Looking at the work of global justice era legal collectives through this lens reframes jail solidarity and other legal support tactics as attempts to incapacitate incapacitation. The educational and organizational foundation laid by law collectives allowed would-be protesters to recognize and evaluate obstacles to their participation in advance while at the same catalyzing collective responses to state and police repression.

[42] Noakes & Gillham, *supra* note 37 at 108-111.
[43] *Ibid* at 111-112.
[44] *Ibid* at 113.

Training programs spread the strategic incapacitation style of protest policing throughout Canada, the US, and Europe in the early 2000s and it came into frequent use, despite being framed by police as a supplement to, not a replacement for, negotiated management.[45] Consolidated into the Miami model after the 2003 FTAA, it was this mix of strategic incapacitation, intelligence gathering, militarization, and delegitimation of protesters in advance of demonstrations that confronted organizers and legal support providers at the 2008 RNC. The vast majority of protests in the US and Canada however, continue to be policed via negotiated management approaches, and current protest policing should be understood as two-pronged: a mix of 'soft hat' negotiation tactics for cooperative protesters and a 'hard hat' strategic incapacitation approach for the rest.[46] Mike King and David Waddington's study of transnational protest policing in Canada, which included the key global justice convergences discussed in the previous chapter (the Windsor OAS, the Summit of the Americas in Québec City, and the Kananaskis G8 protests held simultaneously in Calgary and Ottawa), concluded that Canadian public order policing displays a complex mix of both approaches.[47] Canadian protest policing operations, they found, are "intelligence-led through risk analysis, consultation plus infiltration of 'non-negotiable' groups, intensive surveillance and pre-emptive removal of targeted leaders and potential 'troublemakers'."[48] Two major mobilizations in 2010 bear out this claim.

[45] Wood, "Uncooperative Movements", *supra* note 41 at 141.
[46] *Ibid* at 143.
[47] Mike King & David Waddington, "The Policing of Transnational Protest in Canada" in Donatella della Porta, Abby Peterson & Herbert Reiter, eds, *The Policing of Transnational Protest* (Abingdon: Ashgate, 2006) 75 at 95.
[48] *Ibid*. See also Willem de Lint, "Public order policing: A tough act to follow?" (2005) 33:4 International Journal of the Sociology of Law 179 at 186.

C. THE VANCOUVER OLYMPICS AND THE TORONTO G20: RESPONDING TO REPRESSION

In February 2009, the Olympic Resistance Network Legal Committee [ORN Legal] circulated a letter to allied movements looking for assistance with legal education and support during "a convergence of awareness, protest, and resistance" planned for the 2010 Winter Olympics in Vancouver, BC.[49] Organizing under the banner of "No Olympics on Stolen Native Land" in recognition that the Games would occur on unceded Indigenous territories, ORN was a network of grassroots activist groups that had joined forces to oppose the Olympics' corporate agenda. ORN members, the legal committee's letter went on to note, "have already received visits from police wanting to discuss the Games and political activities, and security plans for "free-speech zones" (protest pens) and sign restrictions are underway." One of the groups that responded to ORN Legal's request was Toronto's Movement Defence Committee [MDC], "an autonomous working group of the Law Union of Ontario made up of legal workers, law students, activists and lawyers which provides legal support to progressive organizations and activists in Toronto."[50] I was one of the founding members of the MDC, which emerged, somewhat contentiously,[51] from the dissolution of the Common Front Legal Collective in 2008. A closed working group of a larger progressive legal organization rather than an autonomous collective, the MDC is comprised primarily of legal professionals, although it has continued to center Common Front Legal's acknowledgement "that members of oppressed groups are at higher risk when they encounter the law" and works "to provide information and support that is

[49] Doc 77.
[50] Movement Defence Committee, "About the MDC" (undated), online: https://movementdefence.org/about/.
[51] See Chapter 5, section D(i).

specific to these groups."[52] The three members of the MDC who traveled to Vancouver in February 2010 to work with ORN Legal had all been members of Common Front Legal (including myself) and we joined a team that also included a member of Midnight Special, a former member of R2K Legal, and a former member of Libertas, then a criminal defence lawyer in Vancouver.

Arriving a few days before both the Olympic Games and the convergence against them began, my overwhelming impression was of a city under siege. The police presence was extraordinarily heavy, even in areas far removed from Olympic venues. I would soon learn that more than 5600 officers from over one hundred police forces and other agencies had been deployed by the Integrated Security Unit [ISU] established by the RCMP in 2003 to coordinate security and policing during the Games.[53] The ISU had purchased a Long Range Acoustical Device [LRAD], a military-grade "sound cannon" ostensibly intended for less than lethal crowd control.[54] Members of ORN and other anti-Olympics organizations reported repeated questioning by ISU officers and many suspected – correctly, it turned out – that they were being surveilled and/or followed.[55] A municipal

[52] Movement Defence Committee, *supra* note 50.
[53] Darryl Plecas, Martha Dow, Jordan Diplock & John Martin, "The Planning and Execution of Security for the 2010 Winter Olympic Games: 38 Best Practices and Lessons Learned", Centre for Criminal Justice Research, University of the Fraser Valley (2010) at 11, online: https://www.ufv.ca/media/assets/ccjr/reports-and-publications/Olympic_Security.pdf.
[54] Jules Boykoff, "The Anti-Olympics" (2011) 67 New Left Review 41, online: https://newleftreview.org/II/67/jules-boykoff-the-anti-olympics. At 51, Boykoff notes that "because of negative press and intense pressure from activists, VISU promised before the Games to erase the weapon function from its hard drive, essentially reducing it to an expensive megaphone." LRADs had been used against protesters in the US for the first time only a year earlier, at the Pittsburgh G20 summit in September 2009: Matthew Weaver, "G20 protesters blasted by sonic cannon", *The Guardian* (25 September 2009), online: https://www.theguardian.com/world/blog/2009/sep/25/sonic-cannon-g20-pittsburgh.
[55] See CBC News, "Anti-Olympic activist tailed by Mounties, police notes show", *CBC News*, online: https://www.cbc.ca/news/canada/british-columbia/anti-olympic-activist-tailed-by-mounties-police-notes-show-1.1404683 and Tim Groves & Zach Dubinsky, "G20 case reveals 'largest ever' police spy operation", *CBC News*, online: https://www.cbc.ca/news/canada/g20-case-reveals-largest-ever-police-spy-operation-1.1054582.

by-law passed by Vancouver's city council in December 2009 permitted security screenings and searches of persons and their belongings without reasonable cause at key "city live sites" and restricted movement across much of the city via street closures and checkpoints.[56] Against this backdrop the ORN Legal team set up a legal office and phone line (initially working in conjunction with the British Columbia Civil Liberties Association[57]), distributed know your rights flyers, held educational workshops, and organized its own legal observers. In the end, there were only 19 arrests over several heavily policed days of protest, most of them (13) during the most militant of the events, the 2010 Heart Attack action called with the aim of clogging "the arteries of capitalism" by blocking road access to the Whistler skiing venues on the first full day of Olympic competition.[58] The ORN Legal Committee remained active after the conclusion of the Games, transitioning to a defendant-focused group with two goals: organizing criminal defence support and other legal efforts such as potential civil suits and a "campaign side which include[d] education and outreach to raise awareness about police and state repression as well as fundraising."[59] The other members of the MDC and I returned to Toronto suspecting that we had just witnessed something of a dress rehearsal for the sort of policing Toronto G20 summit planned for just four months later. Our hunch turned out to be both quite correct and, at least in terms of scale, very wrong.

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[56] Wes Pue, Robert Diab & Grace Jackson, "The Policing of Major Events in Canada: Lessons from Toronto's G20 and Vancouver's Olympics" (2015) 32:2 Windsor Yearbook of Access to Justice 181 at 206-07.

[57] See section D(ii) below.

[58] Only seven of the 19 arrestees were charged with criminal offences. Five more activists were arrested after the Games had concluded, two of whom were released without charges.

[59] Doc 126 (Meeting minutes, 12 March 2010). Defendants also noted the "need to be aware of the privilege of organizing as well as the threat of organizing" and that "the arrests were for political reasons, but many people face the police and arrests on a daily basis simply for existing".

The MDC had already begun the enormous task of organizing legal support for the planned convergence against the G20 summit[60] but we soon realized that the work would be more than our eleven or so members could take on. With the summit scheduled for the weekend of June 26 and 27, 2010, we decided in March to form the Summit Legal Support Project [SLSP] as a way to include non-members in our work for the next few months. The SLSP would be an umbrella group of MDC members, core summit legal support volunteers, and legal observers, although the latter would not be members of the decision-making body and would not have unsupervised access to the legal office. Decisions would be made by current MDC members and new volunteers who had agreed to the MDC's operating principles and had been vouched for by two current members.[61] By late June, the SLSP had 18 members. Our work was only a small part of a much broader organizing effort catalyzed by the presence of the G8 and G20 in Ontario, including the Toronto Community Mobilization Network [TCMN]. The network was "initially proposed by activists already involved in grassroots organizing in the city (particularly in anti-poverty and migrant justice groups)" who were planning the community-led day of action scheduled for the Friday before the summit, June 25.[62] The TCMN's main purpose was to provide the organizing infrastructure for the grassroots activists planning various "days of actions" during the week leading up to the summit and the large civil society march on Saturday, June 26; it did not organize its own protests.[63] Although lacking a basis of unity or platform,

[60] A meeting of the G8 in Huntsville, Ontario preceded the Toronto summit. There was little protest activity around the Huntsville meeting and the MDC had no involvement at all.
[61] MDC meeting minutes (22 April 2010).
[62] Tom Malleson, "Building a Protest Convergence: The Toronto Community Mobilization Network" in Malleson & Wachsmuth, *supra* note 4, 17 at 18.
[63] *Ibid* and Lesley J Wood et al, "Eventful events: local outcomes of G20 summit protests in Pittsburgh and Toronto" (2017) Social Movement Studies 1 at 9.

the TCMN's orientation was generally anti-capitalist and anti-colonial.[64] These politics were reflected in the "Statement of Solidarity and Respect" adopted by the network. Primarily intended to cement the network's recognition and respect of a diversity of tactics and "political diversity within the struggle for social justice", the statement also highlighted a commitment to centering anti-repression:

> We oppose any state repression of dissent, including surveillance, infiltration, disruption and violence. We agree not to assist law enforcement actions against activists and others. We oppose proposals designed to cage protests into high-restricted "free speech" zones, and we will support all those arrested.[65]

Unlike the global justice era spokescouncil model, TCMN's structure revolved around monthly general network meetings which were open to the public, while decision-making and the actual work of organizing was carried out by working groups (logistics, action, fundraising, communications, etc.).[66] The SLSP, along with medics and an alternative media center, lay outside of this structure, although our members would often be invited to give legal support updates at network meetings and we also collaborated with various working groups as necessary.

The MDC recognized very early on that the G20 and SLSP would require a dramatic scaling up of our usual legal support infrastructure. After a fruitless search for office space, a supporter donated the use of a one-bedroom basement apartment on a quiet residential street in Toronto's west end. We asked for a lease anyway, and one of the MDC's lawyer members signed it as his "satellite office" with the goal of providing some

[64] Malleson, *supra* note 62 at 18-19.
[65] Toronto Community Mobilization Network, "Statement of Solidarity and Respect" (undated).
[66] Malleson, *supra* note 62 at 23 and Wood et al., *supra* note 63 at 9.

measure of protection against a police raid.[67] The apartment was empty and SLSP members had to set up an office from scratch on a tiny budget, including installing telephones and internet and acquiring computers and furniture. A call for volunteers went out over the Law Collective Network listserv, but many US-based legal support organizers were already committed to participating in the US Social Forum taking place in Detroit at the same time as the G20 convergence.[68] Recognizing that we would need as many eyes on the streets as we could get, a sub-committee of the SLSP recruited and trained approximately 100 legal observers, something the MDC had never done before. Existing MDC educational materials were updated and new resources created, including an information sheet for parents[69] and an explanation of Canadian law for US activists.[70] As the summit neared, SLSP members held dozens of legal trainings and know your rights workshops throughout southern Ontario. In late April, we learned that a former movie studio east of Toronto's downtown would likely be used as a makeshift detention center, soon to be known as the Prisoner Processing Center [PPC].[71] This announcement bolstered the MDC's existing approach to jail solidarity. Our main workshop on "Rights and Solidarity for Activists" centered solidarity as a core principle of legal support, but did not discuss specific tactics, while the MDC's 12-page Know Your Rights zine prepared for the G20 did not use the

[67] Fortunately, the location of our "top secret room", as the *Toronto Star* dubbed it, remained known only to SLSP members and other key volunteers and organizers: Denise Balkissoon, "Police problems? Volunteer legal teams spring into action", *The Toronto Star* (25 June 2010), online: https://www.thestar.com/news/gta/g20/2010/06/25/police_problems_volunteer_legal_teams_spring_into_action.html.
[68] According to discussions on the network listserv, a small, informal gathering of legal collective members took place during the Social Forum. Similar informal meetings of US-based members were also held at two annual National Lawyers Guild conventions around this time.
[69] Doc 84.
[70] Docs 40.
[71] CTV Toronto, "Old movie studio to become temporary G20 jail", *CTV News* (22 April 2010), online: https://toronto.ctvnews.ca/old-movie-studio-to-become-temporary-g20-jail-1.505070.

term ‘solidarity’ at all.[72] In fact, the only concrete discussion of jail solidarity was in the backgrounder provided to criminal defence lawyers who had volunteered to conduct bail hearings and advise arrestees during the summit.[73] This is consistent with Wood’s broader findings about the persistence and resonance of the Seattle tactics: “when Toronto activists organized protests against the G20 summit in 2010, although a black bloc formed, radical cheerleaders chanted, and a few puppets were seen, affinity groups, jail solidarity, spokescouncils, and blockading [were] absent.”[74]

A week before the summit, I was one of two MDC members who attended a meeting organized by Legal Aid Ontario to bring together Crown Attorneys, duty counsel, and private bar defence counsel who would be working on cases arising out of the G20.[75] The simple fact that this meeting took place was exceptional but what we learned during it only underscored the unprecedented level of anticipatory law enforcement measures facing protesters and activists. We were told that the RCMP would have jurisdiction inside the perimeter fence surrounding the site of the summit, the Toronto Convention Center, while the Toronto Police Service [TPS] would retain jurisdiction outside the fence. The Eastern Avenue movie studio was confirmed as the location of the PPC. The building was made of cinder block and tin; it was not weatherproof. It would operate from June 23-28 and could hold a maximum of 500 people in fifty 10 by 10 wire fencing cages. There would also be separate ‘count cells’ and booking rooms for processing and ‘opaque’ rooms for strip

[72] Docs 39 and 41.
[73] Doc 121. I suspect that this handout was quickly assembled, as much of the text was cut and pasted from the Common Front Legal zine rather than being updated to describe current radical legal support or activist practices.
[74] Lesley J Wood, *Direct Action, Deliberation, and Diffusion: Collective Action after the WTO Protests in Seattle* (New York: Cambridge University Press, 2012) at 74 [note that the original text reads “weren’t absent”; this is a typo, as confirmed by Wood].
[75] All of the information in this paragraph is from my meeting notes and/or the meeting agenda (18 June 2010).

searches. The details kept coming, each new piece of information adding to my growing sense of dread. Duty counsel would be on-site at the PPC at all times, but the police would not tell detainees about their presence unless they were asked. Phones would be made available to arrestees but it was not clear how private they would be. The provincial courthouse at 2201 Finch Avenue West (the furthest possible Toronto courthouse from the summit location, with the worst public transit access), would be cleared of all other matters from June 23-30. Two bail courts and a plea court would run each day and a youth court would be constituted if necessary. A tiny sliver of good news: all first appearances for those facing charges would be on the same date, likely about six weeks after the summit; a common court date would make organizing court support and solidarity much easier. The police and the Children's Aid Society were setting up so-called "day care centers" in case parents were arrested and not released. These would not be "kiddie jails" it was stressed; parks and libraries would be involved in providing care and activities. Our role at the meeting was to discuss possible bail conditions, particularly protest-related conditions courts had previously disallowed.[76] Police would choose from a list of pre-drafted release conditions, including a judicially-approved "no unlawful demonstrations" clause, we were told; *thousands* of officers had been especially trained with the expectation that most arrestees would be released from the PPC.

I left the legal aid meeting with my head swimming, yet the state's infrastructure for detention and prosecution was only a small part of the overall security apparatus surrounding the G20 summit. While anger about the anticipated $1 billion-dollar cost of

[76] See chapter 6, section C(i).

hosting and securing the G8 and G20 summits dominated media headlines,[77] the MDC was already beginning to feel the impact of what Jeffrey Monaghan and Kevin Walby describe as a "sophisticated effort combining local policing agencies and national-level security intelligence agents that targeted and criminalized persons considered to be insufficiently institutionalized in their protest actions."[78] At the center of this effort was the RCMP-led ISU originally created for the Vancouver Olympics, now operating with the TPS at its core, along with CSIS, the Ontario Provincial Police [OPP], and dozens of other agencies and police forces – 20,000 officers in all.[79] The MDC began tracking police contacts with G20 activists and organizers in February 2010; by early June (three weeks prior to the summit), we had catalogued 28 separate incidents in Toronto, Guelph, and Kitchener.[80] Home visits were the most common mode of contact, although officers visited one organizer at his workplace and also attended meetings, trainings, and demonstrations. Seven of the incidents involved the same TPS ISU officers; other contacts were made by CSIS and RCMP officers.

As the summit neared, police continued to respond to mobilizations against the G20 via a campaign of repression, intimidation and pre-emptive criminalization of dissent against protest participants, organizers, and other people in the area. In May, the TPS announced that it had purchased four LRAD sonic weapons,[81] and by early June, the three

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[77] The final combined cost of the G8 Summit in Huntsville and the G20 Summit in Toronto was actually slightly lower, $857 million dollars: CBC News, "G8/G20 costs top $857M", *CBC News*, online: https://www.cbc.ca/news/politics/g8-g20-costs-top-857m-1.915254.
[78] Jeffrey Monaghan & Kevin Walby, "'They attacked the city': Security intelligence, the sociology of protest policing and the anarchist threat at the 2010 Toronto G20 summit" (2012) 60:5 Current Sociology 653 at 654.
[79] *Ibid* at 656-57.
[80] Doc 127: "Summary Report Police Contacts G20 Activists and Organizers" (6 June 2010).
[81] Jennifer Yang, "Toronto police get 'sound cannons' for G20", *The Toronto Star* (27 May 2010), online: https://www.thestar.com/news/gta/g20/2010/05/27/toronto_police_get_sound_cannons_for_g20.html. The

meter high and 3.5 kilometer long exclusion fence that would surround the summit site was being erected. SLSP members began staffing the legal support office on June 18; we would do so for 24 hours a day until June 30. The TCMN week of action began on June 21, 2010 with an anti-poverty march – and the first two arrests of activists. Between June 21 and the beginning of the summit on June 26, the SLSP received reports of over eighty people being harassed, detained, and/or searched by the police, the vast majority of them young pedestrians targeted for their appearance.[82] On the afternoon of Thursday, June 24, the legal net appeared to expand even further. I took a call at the SLSP office from a man watching his friend Dave Vasey being arrested for violating what turned out to be the now infamous 'secret regulation' under Ontario's *Public Works Protection Act* [*PWPA*], a long dormant war measures statute dating from 1939.[83] The MDC members in the office scrambled to figure out what was going on; neither the ISU nor TPS had made any reference to the *PWPA* in any of their pre-summit communiques and it had not been mentioned by the Crown Attorneys present at the Legal Aid Ontario meeting held less than a week earlier.[84] By 5:00pm, we had managed to post a warning explaining that a regulation criminalizing access to the summit site by declaring it a "public work" had been passed, vastly increasing

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Canadian Civil Liberties Association obtained a court order in late June limiting their use: *Canadian Civil Liberties Association v. Toronto Police Service*, 2010 ONSC 3525. See also Basil S. Alexander, "Demonstrations and the Law: Patterns of Law's Negative Effects on the Ground and the Practical Implications" (2016) 49:3 UBC Law Review 869.

[82] Movement Defence Committee, "Police Violence and State Repression at the Toronto G20: The Facts" in Malleson & Wachsmuth, *supra* note 4, 87 at 89. See also Doc 100: MDC submissions to the Standing Committee on Public Safety and National Security, 40th Parliament, 3rd Session (1 December 2010).

[83] *Public Works Protection Act,* RSO 1990, c P.55. The regulation was voted on by a special five-member meeting of Ontario's Cabinet on June 2 and signed into force by the Lieutenant Governor the next day, TPS was officially informed on June 15. The Regulation was filed with the Registrar on June 14 and published on the E-Laws website on in the Ontario Gazette on July 3rd, when it had already expired (the regulation was only in force from June 21-28, 2010).

[84] The report of André Marin, the Ombudsman of Ontario, about Regulation 233/10 confirmed this complete lack of prior notice: "'Caught in the Act': Investigation into The Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the *Public Works Protection Act*" (December 2010) at 47.

police powers to search, question, detain, and arrest anyone "entering or attempting to enter" the security perimeter.[85] Other legal organizations and the media picked up the MDC's warning, and the 'secret law' quickly became one of the dominant stories about the summit. It would be many months before the members of the MDC had an opportunity to reflect on this incident (or the events of the G20 more generally), but in hindsight, the impact of the *PWPA* regulation on our work and that of protest organizers was mixed. On the one hand, the sudden emergence of seemingly lawful expanded police powers put much of our educational work in question. In the words of André Marin, the Ombudsman of Ontario:

> By changing the legal landscape without fanfare in this way, Regulation 233/10 operated as a trap for those who relied on their ordinary legal rights. Reasonably, protesters were trained by advocacy groups in "know your rights" sessions and advised through websites and brochures that they would not have to identify themselves or submit to search unless they were otherwise arrested. In fact, the inconspicuous Regulation 233/10 made it an offence for protesters to fail to identify themselves when approaching the secured area. Ensuring that protesters know their rights and the limit on those rights is something to be encouraged. Those who attempted to do so set themselves up. They and those they counseled were caught up in the Act's all but invisible web.[86]

On the other hand, if the legality of those expanded police powers was murky (even with no time to do any real research, it was obvious that a 1939 statute would not have been subjected to *Charter* scrutiny), their legitimacy was even shakier. The uncertainty was compounded by deliberately misleading messaging from the TPS about where the regulation applied and how it was being used, but given the wave of arbitrary and likely

[85] MDC, "URGENT: warning re. increased police powers near the security zone" (24 June 2010), online: https://web.archive.org/web/20100628005613/https://movementdefence.org/securityzone. See also Marin, *supra* note 84 at 66.
[86] Marin, *supra* note 84 at 12; see also p 47 for more on 'know your rights' trainings.

unlawful searches and detentions already occurring throughout Toronto's downtown, it was clear that the *PWPA* was only one of the likely unlawful justifications for the exercise of police power against protesters and non-protesters alike.[87] Ultimately, only one other person besides Vasey was charged under the *PWPA* regulation, and Vasey's charges never materialized in court; no record of his arrest could be located when he appeared in court in late July.[88] Not focusing unduly on the regulation may have been a non-decision forced by other events that overwhelmed the SLSP, but the benefit of hindsight suggests that both practically and politically, that approach was correct: as the summit weekend loomed, 'secret laws' would soon be among the least of our worries.

Much has been written about those two days, especially the events of Saturday, June 26, when the largest demonstration against the G20 took place.[89] The "People First!" march attracted somewhere between ten and forty thousand people who marched from Queen's Park, through downtown Toronto toward the summit site, and then returned to Queen's Park. Meanwhile, a contingent of protesters, including a black bloc, broke away from the march near the perimeter fence. Largely unimpeded by the police, this group headed toward the downtown core, smashing store windows and burning several police cruisers that had been left unattended. A few hours later, well after the black bloc had dispersed, the police struck back. By the end of the weekend, over 1100 people had been

[87] In our submissions to the Standing Committee on Public Safety and National Security in December 2010 (doc 100), the MDC described "increased and fictitious" police powers being exercised dozens of blocks away from the summit site, showing "a blatant pattern of bad faith searches on the part of the police and a pattern of proactive targeting of activists on the political left that began well before Saturday, June 26th."
[88] Toronto Community Mobilization Network, "G20 5-metre rule charges against environmental organizer mysteriously "disappear"" (28 July 2010), on-line: https://web.archive.org/web/20111103022221/http://g20.torontomobilize.org/node/433.
[89] See generally Marin, *supra* note 84, Malleson & Wachsmuth, *supra* note 4, and Margaret E Beare, Nathalie Des Rosiers & Abigail C Deshman, eds, *Putting the State on Trial: The Policing of Protest During the G20 Summit* (Vancouver: UBC Press, 2015).

arrested[90] while hundreds more had been detained, 'kettled', beaten, and/or subject to chemical weapons in what Marin would later describe as "a cascade effect of state mischief".[91] Rather than detail these myriad instances of repression, most of which have been extensively documented,[92] I will continue to provide commentary from the vantage point of the SLSP, particularly with respect to incidents and events that have not been the subject of previous inquiries.

To a large degree, this viewpoint is the only one I had for much of the summit and the week prior. I attended only one demonstration, acting as the SLSP's legal observer coordinator for Friday afternoon's "Justice for our Communities" march and rally called by local anti-poverty, migrants' rights, and Indigenous sovereignty organizations. The march began and ended at Allan Gardens, a park in Toronto's downtown, culminating in a block party and overnight tent city. But an air of tension surrounded the entire event, beginning with a ring of police surrounding Allan Gardens demanding to search the bags and belongings of all protest participants pursuant to non-existent powers under the provincial *Trespass to Property Act*.[93] Once on the move, the march was blocked from

[90] The exact number of arrests is not known. "According to the TPS, 1,118 people were arrested. The Prisoner Processing Centre reported a total of 1,112 arrested. The RCMP claimed that a total of 1,115 people were arrested. The OIPRD disclosure indicated that at least 1,140 people were arrested, but, given the lack of paperwork, there is no way to give a precise number": Gerry McNeilly, "Policing the Right to Protest: G20 Systemic Review Report" (Office of the Independent Police Review Director, May, 2012) at xi.

[91] News staff, "G20 Law Resulted In Mass Rights Violation: Ombudsman", *CityNews* (7 December 2010), online: https://toronto.citynews.ca/2010/12/07/g20-law-resulted-in-mass-rights-violation-ombudsman/.

[92] See e.g. McNeilly, *supra* note 90, Marin, *supra* note 84, Toronto Police Service, "G20 Summit: Toronto Police Service After-Action Review" (June 2011), John W. Morden, "Independent Civilian Review into Matters Relating to the G20 Summit (June 2012), and House of Commons, *Issues Surrounding Security at the G8 and G20 Summits: Report of the Standing Committee on Public Safety and National Security* (March 2011) (Chair: Kevin Sorenson).

[93] See McNeilly, *supra* note 90 at 86. In April 2020, the Ontario Court of Appeal ruled that police did not have the power to require that protesters submit to a bag search as a condition of entering the park: *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para. 91 and following.

entering the downtown core despite earlier negotiations with the ISU.[94] During the ensuing stand-off, I watched unnerved as senior TPS and RCMP officers argued loudly and openly about police tactics and who had made the call to detour the march. My impression was that the aggressive and disorganized policing of this pre-negotiated and 'family friendly' march was being driven by the ISU structure and that tactical decisions were not being made on the basis of on-the-ground experience. Somehow, only a few arrests resulted from the march, including a Deaf man who may not have even intended to join the protest and was denied access to both counsel and an ASL interpreter until the next afternoon.[95]

The next morning, on Saturday, June 26, my phone started ringing at 5:00am. I struggled to understand what I was being told, finally understanding that over a dozen anti-G20 organizers had been arrested that morning, most in their homes, some dragged from their beds at gunpoint. One of them, Leah Henderson, was an MDC member as well as a key TCMN organizer. Leah lived close by and I ran the few blocks to her house to find the front door hanging off its hinges and her apartment in disarray. As the day wore on, we learned that 17 community organizers from Southern Ontario and Québec had been charged with conspiracy to commit mischief over $5000 – the mischief being the property damage that took place *after* their pre-emptive arrests – conspiracy to assault police, and conspiracy to obstruct police. The basis for these charges was evidence gleaned from an intelligence operation that had involved years of surveillance and police infiltration of grassroots social movement networks. The Primary Intelligence Investigative Team [PIIT], a team of 12 covert investigators from various police agencies assembled by the ISU's Joint

[94] Wood et al., *supra* note 63 at 9.
[95] Sarah Boesveld & Anna Mehler Paperny, "Deaf man arrested in G20 protest gets bail", *The Globe & Mail* (26 June 2010), online: https://www.theglobeandmail.com/news/world/deaf-man-arrested-in-g20-protest-gets-bail/article1374066/.

Intelligence Group [JIG], had a mandate "not just to monitor potential criminal activity by organizers, but also to 'deter, prevent, investigate and/or disrupt' threats to the G20 summit and the Vancouver Olympics."[96] Two PIIT members, Brenda Carey and Bindo Showan, both OPP officers, had infiltrated activist communities in Guelph and Kitchener and both had been heavily involved in planning anti-G20 protests, including helping to "develop a list of locations for protesters to congregate at or vandalize" as the *Globe and Mail* later reported.[97] A year and half after the G20, in November 2011, their evidence would be used as the basis for a guilty plea by six of the seventeen accused, including Leah Henderson, to lesser charges of counselling others to mischief and counselling others to obstruct police, despite the absence of evidence that anyone they counselled had actually committed any offences.[98] Charges against the 11 others were withdrawn on the same day.[99]

But all of that was yet to come. As the surreal early morning hours of that Saturday gave way to the afternoon's chaos, we had very little time to process the blow Ontario's radical left – and the MDC – had just taken. The makeshift nature of the SLSP's office setup became all to clear as our internet-based phones line repeatedly malfunctioned, often leaving us with a single landline for incoming calls, only to be followed by the failure of our custom electronic database, forcing us to rely on paper filing to track the overwhelming

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[96] Dave Seglins, "G20/G8 summit opponents infiltrated by police", *CBC News* (24 June 2011), on-line: https://www.cbc.ca/news/canada/g20-g8-summit-opponents-infiltrated-by-police-1.1059275

[97] Kim Mackrael, Undercover officers knew of plans for downtown mayhem during G20", *The Globe and Mail* (23 November 2011), on-line: https://www.theglobeandmail.com/news/toronto/undercover-officers-knew-of-plans-for-downtown-mayhem-during-g20/article555130/.

[98] Megan O'Toole, "Six plead guilty to G20 mischief charges; charges against 11 others dropped", *The National Post* (22 November 2011), on-line; https://nationalpost.com/posted-toronto/six-plead-guilty-to-g20-mischief-charges.

[99] The 'G20 Main Conspiracy Group' had risen from 17 to 21 after the initial arrests, but three defendants' charges had been withdrawn earlier and one person had pleaded guilty to counselling mischief over $5000. In the words of the 17 defendants, "[t]his means that out of twenty-one people in the supposed G20 Main Conspiracy Group, only seven were convicted of anything, and none were convicted of conspiracy. The total of fourteen withdrawals demonstrates the tenuous nature of the charges": "Regarding our plea deal" (22 November 2011), online: *conspire to resist*, https://conspiretoresist.wordpress.com/about-2/.

amount of information coming in. By Saturday night, the phones were ringing constantly but we soon realized that they were actually not ringing nearly enough. The SLSP's legal observers had reported dozens and then hundreds of arrests, but very few calls from people actually in custody were coming through and our calls to the PPC either went unanswered or yielded no useful information. We soon learned that those arrested included eight legal observers and an MDC member caught up in one of several 'kettles'.[100] Our carefully crafted office schedule, intended to prevent burnout and the sleepless nights of previous convergences fell apart as the weekend wore on. The SLSP's lone competent French speaker was especially harried as calls from the friends and families of the 100 people arrested while sleeping in a University of Toronto gym early Sunday morning, about half of them from Québec, began pouring in. Later that morning, I called the PPC to ask yet again for an update. An equally exasperated sounding staff person told me point blank what we already suspected: there were no Staff Sergeants or other senior officers available at the PPC to make decisions respecting releases.[101] No one was getting out because no one was calling the shots.[102] In the meantime, a jail solidarity rally outside the PPC had itself become the target of repression as police officers used rubber bullets[103] and chemical weapons to clear about 150 people gathered outside the detention center, making numerous

[100] Five of the Canadian Civil Liberties Association's monitors were also arrested: Abby C Deshman & Nathalie Des Rosiers, "Anatomy of a Breach of the Peace: The CCLA and the G20 Summit" in Beare, Des Rosiers & Deshman, *supra* note 89, 84 at 84.
[101] See doc 100 (MDC parliamentary submissions, 2010)
[102] Almost two years later, the report of the Office of the Independent Police Review Director, Gerry McNeilly, would conclude that the "Prisoner Processing Centre was poorly planned, designed, and operated. This detention facility was not operationally prepared for the mass arrests that took place on the Saturday night and on Sunday, leading to gross violations of prisoner rights, including detaining breach-of-peace arrestees for over 24 hours and with no access to a lawyer or a justice of the peace." McNeilly, *supra* note 90 at x.
[103] The Canadian Press, "Police to probe injury of woman in G20 arrest", *CTV News* (11 February 2011), online: https://toronto.ctvnews.ca/police-to-probe-injury-of-woman-in-g20-arrest-1.606594.

arrests.[104] At 3:00pm the MDC issued the following hastily written plea (grossly underestimating the number of people in custody):

> The MDC's Summit Legal Support Project is appealing to the movements it supports to mobilize a show of political strength and solidarity for the nearly 500 people arrested in the last four days. The Toronto Police and the ISU appear to have lost control of their 'prisoner processing center', denying arrestees meaningful and timely access to counsel while beating and arresting those peacefully protesting their detention outside…
> We need to step it up and build a political response. We need many more voices – especially prominent ones – to say that the abuse and incompetence at 629 Eastern Avenue must stop. We must demand that all levels of government take control of the police forces under their command. We need to ensure that courts and crown attorneys act to enforce constitutional rights rather than collude in their violation.
> Free the Toronto 500![105]

Later we would learn that a handful of organizers not in custody had attempted to coordinate such a response, but "since meeting in any public place would surely have led to more arrests, a telephone conference call was all they could manage."[106]

Phone calls from detainees continued trickling in, many from traumatized people who had already been in custody for over 24 hours and yet had little or no information about the reasons for their arrest or possible release options. They did however, tell disturbing, harrowing stories about the abuses they were experiencing in the PPC: severe overcrowding, repeated strip searches, denial of water and food, verbal and physical abuse, sexual violence, denial of medical treatment, and so on. On Sunday evening, as the G20 summit came to a close, the processing delays at the PPC vanished, and detainees began

[104] Nat Gray, "They Sought to Terrify Us out of the Streets" in Malleson & Wachsmuth, *supra* note 4, 97 at 97 and following.
[105] Doc 124.
[106] Tom Malleson & David Wachsmuth, "Introduction: From the Great Recession to the Streets of Toronto" in Malleson & Wachsmuth, *supra* note 4, 1 at 8.

being released en masse, sometimes lacking any personal belongings, including shoes.[107] Yet the very next afternoon, on Monday, June 28, many of those people – and many thousands more – marched through the streets of Toronto in an impromptu solidarity march demanding the release of those still in custody and a public inquiry into the policing of the G20. More than a year later, we would conclude that:

> The rampant violations of civil, political, and human rights by police and security during the G20 represents not a misstep by police in how they handle large protests, but a systematic targeting of social movements on the left, and a deliberate repression of those who criticize and oppose the policies of this government.[108]

The MDC, now expanded to include several SLSP volunteers who had become full-fledged members, spent almost two years dealing with the fallout of the G20. We continued to track and assist defendants as well as detainees, organizing sessions for people who wished to file a police complaint or civil suit, make a human rights application, or join one of two G20 class action lawsuits.[109] The MDC also worked with a defendants' group formed out of the TCMN to organize a support network for people facing criminal charges and to offer logistical help:

> The 247 Support Committee works to ensure that the political targeting of people for their involvement in the 2010 G20 People's Convergence end and that all charges against the hundreds of individuals facing prosecution be immediately dropped. The 247 committee can help you with trauma support, property retrieval,

[107] Doc 100 and Movement Defence Committee, " detainees are being released from the Eastern Ave detention centre without shoes! #g20report" (27 June 2010 at 22:41), online: *Twitter* https://twitter.com/MDCLegalUpdates/status/17218285175.
[108] Doc 100.
[109] After an unsuccessful appeal to the Supreme Court of Canada (*Toronto Police Services Board v. Sherry Good*, 2016 CanLII 76801 (SCC)), a proposed settlement of both class actions was announced in August of 2020, ten years after the summit. See "Toronto G20 Summit Class Actions Settlement" (2020), online: https://www.g-20classactionsettlement.ca/.

> and assist out of towners with places to stay and rides to the courthouse for set dates.[110]

The number of such defendants began to dwindle almost immediately. Out of the more than 1100 arrests during the summit, only 321 people were criminally charged.[111] Most of them appeared in court for the first time at the end of August, when charges against 75 people were withdrawn by the Crown.[112] Two months later, the unlawful assembly and conspiracy to commit mischief charges laid against the 108 people mass arrested at the University of Toronto gym were also withdrawn.[113] By June 2011, a year after the summit, 187 charges had been stayed, withdrawn, or dismissed and the only convictions were the result of guilty pleas, prompting lawyer and MDC member Mike Leitold to tell the *Globe and Mail*:

> The number of convictions after trial - zero - and the small number of guilty pleas - only 24 - give a clear indication of the repressive focus of the police response to legitimate political protest and dissent. These arrests were unfounded in the first place, and only served to prevent further demonstrations that weekend.[114]

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[110] Movement Defence Committee, "Information for G20 Defendants: first appearances and beyond" (27 July 2010), online: https://web.archive.org/web/20100801170928/https://www.movementdefence.org/defendants. According to organizers, the name 247 Support Committee carried two meanings: "Initially, we heard that 247 people were facing criminal charges following the G20. As time passes, this number keeps changing but the name "247 Support Committee" has stuck to try to support you "24/7." Krystalline Kraus, "G8/G20 Communique: Legal defence, acupuncture, audism, zine and more", *Rabble* (4 August 2010), online: https://rabble.ca/blogs/bloggers/statica/2010/08/g8g20-communiqu%c3%a9-legal-defence-acupuncture-audism-zine-and-more.

[111] Ministry of the Attorney General (Ontario), Case Update, "Update on G20 Prosecutions" (20 June 2014).

[112] CBC News, "Many G20 accused will have charges dropped", *CBC News* (23 August 2010), online: https://www.cbc.ca/news/canada/toronto/many-g20-accused-will-have-charges-dropped-1.875515.

[113] Sunnie Huang, "G20 report finds mass arrest on U of T campus "unlawful"", *The Varsity* (12 June 2012), online: https://thevarsity.ca/2012/06/12/g20-report-finds-mass-arrest-on-u-of-t-campus-unlawful/.

[114] Adrian Morrow, " Majority of 1,105 arrested during G20 released without charges", *The Globe and Mail* (20 June 2011), online: https://www.theglobeandmail.com/news/toronto/majority-of-1105-arrested-during-g20-released-without-charges/article584387/.

The TCMN expressed similar concerns about the number of people who accepted 'direct accountability' or 'diversion' measures, arguing that:

> This was an obvious ploy to allow the police to save face and not explain why the ridiculous charges, long detentions and mental trauma had to take place in the first instance. Many people were told to take the 'deal' or face further repression. Despite this coercion, dozens of people refused to take the 'deal' insisting that they would take their charges to trial to assert their ability to organize in the face of repression.[115]

By 2014, only five cases remained outstanding, 207 people had been acquitted or had seen their charges stayed, withdrawn, or dismissed, and after a handful of trials, 55 people had pleaded guilty or been convicted.[116]

This astonishingly low level of both charges and convictions suggests that the mass arrests were very much in keeping with the Miami model of protest policing. Viewed in the context of that approach, the arrests of hundreds of people under the *Criminal Code's* breach of peace power should be understood as a form of both preventative detention and collective punishment. As with the targeting of the RNC 8 in St. Paul, the pre-emptive arrests of organizers and the use of conspiracy charges reflect the persistence of strategic incapacitation approaches, particularly with respect to protesters, movements, and tactics deemed transgressive or uncooperative – distinctions that were built into the summit's policing framework. The OPP's training for frontline G20 officers specifically differentiated between 'protesters' and 'anarchists.'[117] "Such training sessions", argues

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[115] Toronto Community Mobilization Network, "Community Update by the Community Solidarity Network Post G20" (30 August 2010), on-line: https://web.archive.org/web/20110723001930/http://g20.torontomobilize.org/node/475.

[116] Ministry of the Attorney General (Ontario), *supra* note 111. A previous update issued by the Ministry, dated June 20, 2012, indicates 44 guilty pleas and no post-trial convictions. These numbers include a number of people arrested after the conclusion of the summit, including several accused extradited from the US to face charges.

[117] Wood, "Uncooperative Movements", *supra* note 41 at 147.

Wood, "encourage standardized, militarized responses to triggers like the presence of anarchists or a refusal to negotiate, as distinct from the behaviour of activists at any particular protest event."[118] The criminalization of dissent on the basis of perceived ideology and/or disruptive – although not necessarily unlawful – tactics requires activist legal support organizers to maintain a commitment to challenging the norms of negotiated management. As with the policing of the Vancouver Olympics and the 2008 RNC, the Toronto G20 pushed both radical legal support providers and the movements they work with to cultivate a praxis of legal support centered on recognizing, challenging, and to the extent possible, defending against state repression. The global justice legal collective model had largely evolved during the evolution of strategic incapacitation and had laid a foundation – politically and practically – for operating in a legal space that does not conform to what King describes as the "normative expectation of cooperation with police and city officials".[119] The work of Coldsnap, CRASS, the MDC, and others can be understand as an extension of that model, an attempt to disrupt the role and efficacy of "criminalization in legitimating modern protest repression tactics."[120]

This work is especially crucial given the delegitimation and demonization of both protesters and legal support organizing. On Tuesday, June 29, the TPS held a press conference to display weapons allegedly seized during the G20 and defend the actions of the police against protesters: "They came to attack our city. They came to attack the summit," said then TPS Chief Bill Blair (now the federal Minister of Public Safety).[121] He

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[118] *Ibid*. See also Monaghan & Walby, *supra* note 78 at 661 and following.
[119] King, *supra* note 2 at 38.
[120] *Ibid* at 41.
[121] Jesse McLean, "Police show weapons seized during G20", *The Toronto Star* (29 June 2010), online: https://www.thestar.com/news/gta/g20/2010/06/29/police_show_weapons_seized_during_g20.html. Only a

went on to denounce the TCMN specifically, citing "their complicity in the criminal activist [sic] demonstrated in this city this weekend."[122] Along with materials from the Toronto Media Co-op and a copy of the journal *Upping the Anti,* among the items on display for reporters was the MDC's quarter-page 'Know Your Rights' flyer that had been distributed by the thousands during the summit. This "criminalization of 'knowing your rights'" as the MDC would later describe it in our submissions to the Parliamentary Standing Committee on Public Safety and National Security, echoed the findings of Ontario's Ombudsman in relation to the *PWPA*. Intending to exercise the right to counsel by engaging in the common practice of writing the legal hotline number on your body was also seen as evidence of intended noncompliance. The report of the Office of the Independent Police Review Director, Gerry McNeilly, confirmed what we had heard from dozens of protesters during the summit: officers issued threats like, "you could be charged with a criminal conspiracy and an attempt toward terrorism," after finding a legal support number written on an arrestee's arm.[123]

In the seemingly endless aftermath of the G20, our work was increasingly impacted by the machinations of the same repression we sought to fight. In 2012, still reeling from the revelations of long-term infiltration of the movements the MDC was a part of, an article in Toronto's alternative weekly, *NOW Magazine*, wrongly alleged that we had also been infiltrated:

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day later, journalists revealed that several of the key 'weapons' police had displayed had nothing to do with the summit or were actually replica weapons used in role-playing games: Jill Mahoney, "'Weapons' seized in G20 arrests not what they seem", *The Globe and Mail* (29 June 2010), online: https://www.theglobeandmail.com/news/toronto/weapons-seized-in-g20-arrests-not-what-they-seem/article4349839/ and The Canadian Press, "Police accused of displaying fake G20 weapons", *CBC News* (30 June 2010), online: https://www.cbc.ca/news/canada/toronto/police-accused-of-displaying-fake-g20-weapons-1.935853.

[122] McLean, *supra* note 121.

[123] McNeilly, *supra* note 90 at 92.

> JIG officers, it appears, infiltrated a wide array of groups, including the Toronto Community Mobilization Network, Guelph and Kitchener/Waterloo anarchist orgs, the Movement Defence Committee (MDC), which provided legal observers and lawyers for protesters, and the Alternative Media Centre.[124]

We asked for a retraction, or at least a correction, explaining that legal observers had not had any access to confidential information and had not been part of any legal decision-making, but the disclosure provided to MDC member and conspiracy defendant Leah Henderson suggested that our work had caught the eye of the state. The know your rights trainings Leah had conducted as part of the MDC she told us, were "an important part of the crown's narrative about me, and my alleged 'role' in the conspiracy."[125] We were not alone in grappling with the impact of such repression on our work. A recent study of the repercussions of the Pittsburgh and Toronto G20 summits for local activists and movements in those two cities found that the majority of the activists researchers interviewed spoke about emotional impacts, including trauma, fear, and burnout, but that experiences of repression also pushed some to prioritize activism on police and prisons and to form "a politics around emotional justice work and prison abolition work and radical support work".[126]

[124] Jesse Rosenfeld, "G20 Civil wrongs", *NOW Magazine* (22 March 2012), online: https://nowtoronto.com/news/g20-civil-wrongs/.
[125] Letter from Leah Henderson (25 January 2012).
[126] Wood et al., *supra* note 63 at 11. See also chapter 6, section C(ii).

D. NEW MOBILIZATIONS, NEW LEGAL SUPPORT FRAMEWORKS

> Solidarity is the best anti-repression activity… Giving solidarity to those who the state criminalizes the most is a basic and practical assault on white supremacy, both within our movements and in society in general.
>
> Bay Area Anti-Repression Committee, 2014[127]

In July 2010, after "months of discussion and critical analysis about the role of law collectives, both amongst [themselves] and with other members of the law collective movement", the Midnight Special Law Collective circulated an open letter announcing their dissolution:

> While we are honored that the work we do is appreciated, we have found that other collectives and people doing similar work are overlooked, and their opinions are not heard. We recognized back in the year 2000 that it was crucial for us to spread our knowledge. Unfortunately, we were always better at supporting others than in organizing others to support themselves.[128]

In his book about R2K Legal and the 2000 RNC, Kris Hermes argues that having "trained legal support activists and legal workers across the U.S.", Midnight Special's break-up "created a vacuum".[129] Legal collectives in Canada however, had always been more independent of Midnight Special; the role of Common Front Legal and later the MDC as both legal support providers and 'consultants' to other Canadian organizers is just one example. More importantly, the training materials and legal support structures Midnight Special developed and diffused continue to shape the work of radical legal support providers across Canada and the US. The evolution and decentering of the global justice legal collective model has been driven not by the absence of one key collective, but rather by shifts in organizing away from summit convergences toward locally rooted protest

[127] Doc 6, "Repress This! Ways to be your own Anti-Repression Committee"
[128] Doc 94.
[129] Hermes, *supra* note 29 at 277.

movements shaped by national or international movement networks. These shifts catalyzed the anti-repression focused legal support structures – including a new spate of legal collectives – which developed alongside the Occupy and Black Lives Matter movements.

Beginning in September 2011, an international Occupy movement grew out of Occupy Wall Street's encampment in New York City's Zuccotti Park. As occupations of public and private space mushroomed, so did various forms of state regulation, criminalization, and repression aimed at evicting encampments and disrupting the momentum of the burgeoning movement. Rather than attempt a comprehensive cataloging of the Occupy movement's response to such state action, I briefly canvass the legal support structures that defended Occupy encampments in three cities: Toronto, the San Francisco Bay Area, and New York City. Occupy Toronto's encampment in a downtown park began in mid-October and lasted 40 days. Arrest-related legal support was provided by the MDC, which revived the legal observer program originally set up for the G20, ultimately training and fielding approximately 30 legal observers.[130] MDC members recalled the challenges of planning legal support strategies with Occupy Toronto, which included many participants new to activism. Niiti Simmonds explained that "Occupy may have been a bit of a different situation because it was a one-off uprising that didn't have a long history of certain people making a commitment to organize around particular issues. So, there weren't as many obvious leaders."[131] Another MDC member, Ryan White, described something like a generational shift between occupiers and the legal support organizers whose

[130]MDC, "Legal Support for Occupy Toronto" (14 October 2011), online: https://web.archive.org/web/20121216010002/https://movementdefence.org/node/35. Note: I was on leave from the MDC as I was not living in Toronto during this time and I did not participate in legal support for Occupy Toronto.
[131] Interview of Niiti Simmonds (23 April 2017).

formative activist experience was the global justice movement: "For a long time actually the political affinity we had was assumed because we all came out of the same struggles and Occupy was a sudden influx of people."[132] Nonetheless, the MDC's legal observers became a fixture at the park, serving as a source of both legal information and logistical continuity. After an unsuccessful attempt by Occupy Toronto activists to obtain an injunction preventing the eviction of the encampment,[133] police cleared the park in late November. Eleven people arrested during the eviction were charged under the provincial *Trespass to Property Act*.[134]

Legal support for the Bay Area Occupy movement, which included encampments in San Francisco, Oakland, and Berkeley, was provided by Occupy Legal. Formed with the same "spirit and idea" as the Bay Area's 2003 anti-war legal collective LS2SW, Occupy Legal involved many of the same activists, lawyers, and legal workers.[135] In cooperation with the local NLG chapter, Occupy Legal staffed a legal hotline, acted as a clearinghouse for legal information, did popular education, and tracked cases after arrest.[136] After the first eviction of Occupy Oakland in late October, the Bay Area Anti-Repression Committee [ARC] began taking on other legal support work, including education and the organizing of an anti-repression bail fund: "We are a first resort for education and information on solidarity and a last resort for financial support."[137] ARC emerged in part out of the Oakland 100 Support Committee (O100), which had provided "legal, material, emotional,

[132] Interview of Ryan White (23 April 2017).
[133] *Batty v. City of Toronto*, 2011 ONSC 6862.
[134] Tu Thanh Ha, "Police clear out Occupy Toronto protesters as a few remain defiant", *The Globe and Mail* (23 November 2011), online: https://www.theglobeandmail.com/news/toronto/police-clear-out-occupy-toronto-protesters-as-a-few-remain-defiant/article4201047/.
[135] Interview of John Viola (15 March 2017).
[136] Doc 128 (2012).
[137] Bay Area Anti-Repression Committee, "About the Anti Repression Committee" (undated), online: https://antirepressionbayarea.com/about-2/.

and court support for arrestees of Oscar Grant rebellions and their families" in the aftermath of protests sparked by the death of Grant, a 22 year old Black man who was shot and killed by transit police in Oakland in January 2009.[138]

The distinction between an anti-repression group like ARC and an activist legal collective is not a clear cut one. The operation of the Bay Area's legal hotline remained the domain of Occupy Legal and the NLG, but other tasks overlapped, and meeting notes show that defining the responsibilities of Occupy Legal and ARC was difficult at times.[139] ARC's guide to anti-repression work, *Repress This! Ways to Be Your Own Anti-Repression Committee*, includes a section on planning legal support and detailed instructions on navigating the Bay Area's criminal justice system, echoing the sort of information often disseminated by legal collectives.[140] Reflecting the array of radical legal support structures active in the Occupy movement, the guide specifically noted the need for a "deeper and more diffuse practice of solidarity":

> It is important that the bulk of the anti-repression activity and organizing does not fall solely on "support people" such as the ARC, Occupy Legal, Oakland 100 Support Committee, and the great number of people and collectives on which we've come to rely. We should all strive to take on some of the less sexy anti-repression and legal work that is so crucial to our movements. Everyone's well-being should be everyone's priority.[141]

The depth of the Bay Area's activist networks is somewhat unique; as former Coldsnap member Jude Ortiz notes, a separate anti-repression committee is "something that can exist here because it's such a big community and that's not true in a lot of other places."[142] But

[138] Oakland 100 Support Committee, "Who we are" (undated), online: https://supporttheoakland100.wordpress.com/about/.
[139] Doc 128.
[140] Doc 6 (2014).
[141] *Ibid* at 4.
[142] Interview of Jude Ortiz (15 March 2017).

ARC's holistic view of solidarity as an intrinsic part of anti-repression praxis rather than a set of tactics reflects an orientation evident beyond both Occupy and the Bay Area. Maintaining the shift away from reliance on non-identification jail solidarity tactics, anti-repression-focused legal support centers on-going jail and court support instead of collective bargaining-focused solidarity. Lawyer and Occupy Legal member John Viola put it this way:

> So the legal support role – and this was true for most of the law collectives I've ever been part of – it really is most active between sort of planning the action, doing popular education before the action, at the action. You know operating a hotline and then all the way up until really the arraignment date. And so traditional legal collectives that kind of formed after Midnight Special and after Seattle WTO, kind of that was their main operating space and mode. Anti-repression by comparison… spend a lot more time doing court support.[143]

Similarly, Mike King's study of Occupy Oakland highlights the work of ARC in drawing connections between the differential risks faced by protesters on the basis of race, class, previous police contact, and the like and the common mechanisms of protest and 'everyday' policing in marginalized communities (e.g. the use of gang injunctions).[144] In examining why "the story of Occupy Oakland deviated from a linear narrative of protest-repression-demobilization",[145] King develops an analysis of social control as the "symbiotic relationship" of hard (police practices of preemptive and other arrests, surveillance, riot police, prosecution, and incarceration) and soft ("efforts by various state and nonstate actors that have the intent or effect of politically delegitimating, dividing,

[143] Interview of John Viola (15 March 2017).
[144] King, *supra* note 2 at 115.
[145] *Ibid* at 44.

coopting, or intimidating movement actors or movements") repression.[146] A former member of Coldsnap now living in Oakland noted that:

> …in the Bay Area anti-rep committee the emphasis [is] on understanding that this isn't particular to the radical community. There are communities who have been doing this for a really long time in a multitude of ways and who are very specifically targeted.[147]

Former Midnight Special member Lindsey Shively agreed with this view:

> …I think there's a lot of more interesting stuff that's happening around legal collectives right now. Like I really like what the anti-repression project is doing although I don't totally agree with them about everything. And I think it's like much more mixed race, mixed class... I think it is actually more rooted in community social movements, community led grassroots social movements as opposed to the anarchist subcultural whatever scene.[148]

These activists' observations suggest that the framing of legal support as anti-repression operates as both an extension and rejection of global justice style solidarity. Anti-repression work is also more rooted in existing geographic and activist communities, tending towards a de-exceptionalizing of activist repression that draws connections to other struggles, particularly those of racialized and poor communities.

The legal support structures that emerged from New York City's Occupy Wall Street [OWS] reflect both of these tendencies. Unlike the Occupy assemblies in Toronto or the Bay Area, the OWS General Assembly initially included an Activist Legal working group known as OWSAL. It was a large, open, and semi-autonomous group that organized legal strategy, know your rights trainings, media, meetings with lawyers and the NLG, bail fundraising (in conjunction with the finance working group of OWS), jail support, and

[146] *Ibid* at 8.
[147] Interview with Participant 16 (13 March 2017).
[148] Interview of Lindsey Shively (10 March 2017).

court support.[149] Jail support would later become a separate working group and in early 2012, OWSAL transformed into the OWS Anti-Repression Committee. One of the committee's main projects was the production of the *OWS Dissident Survival Guide*, which combined know your rights information for occupiers with a broader understanding of repression both historically ("Though the recent revelations of our government and law enforcement agencies spying on, infiltrating and entrapping social justice activists and movements are alarming, they are nothing new.") and politically ("Recently, it has also been uncovered that the NYPD, emboldened by the PATRIOT Act's lax warrant and surveillance standards, has worked with the FBI to infiltrate, monitor, and entrap members of New York's Muslim communities through informants and predatory policing.").[150] More changes to the legal support framework came in the spring of 2012, when the OWS Jail Support working group went on strike and the Anti-Repression Committee shifted into a permanent legal collective. After providing jail support for seven months, the overwhelmingly female-bodied jail support working group withdrew their labour to call attention to "the constant undermining and devaluing of the work of women" and to make a broader intervention:

> We were on strike for a massive rethinking of how to approach a movement for social justice. We felt that our work—that of cleaning up and caring for activists—was seriously undervalued and disregarded.[151]

At the same time, the OWS Anti-Repression Committee "mutated" away from a service provision model toward becoming a standing collective focused on popular education:

[149] Interview of Moira Meltzer-Cohen (25 February 2017).
[150] Doc 54 (March 2012).
[151] Elena Cohen, Rose Regina Lawrence & Moira Meltzer-Cohen, "Reflections on Legal Support and Occupy Wall Street" (2013) 41:3 WSQ: Women's Studies Quarterly 299 at 301.

Mutant Legal.[152] Reflecting the OWS Jail Support critique, Mutant organizes "within a framework of radical care and anti-oppression" that looks beyond activist culture:

> Our projects involve collaboration and education with and in support of peoples' movements and marginalized communities traditionally excluded from access to meaningful justice.[153]

As with the Bay Area's ARC, Mutant Legal may be thought of as a hybrid of the global justice style legal collective and the more locally rooted anti-repression committees that have arisen from Occupy and similar uprisings. One member describes how the collective's work has contributed to a shift in local organizing:

> …it's part capacity and skills sharing and also a culture shift. I've seen it during Occupy, it was… jail support was often an afterthought and … it wasn't always built into the action planning and in the last few months I've seen it become more built into action planning ahead of time so it's not just like the end of the action, people are in jail, we need people to go to jail support.[154]

This diversity of legal support approaches during the Occupy movement (standing and temporary collectives, working groups, anti-repression committees, etc.), is just one example of how different kinds of mass mobilizations have given rise to different kinds of legal support. The complimentary evolution of protest policing and associated legal support demonstrated by the response of legal collectives and others to the repression accompanying summit-based organizing revolved around the role of the state, while the Occupy-era shifts in legal support structures centered the role of movement tactics. The different organizing styles of post-global justice protest movements, particularly the lack of a spokescouncil structure, have allowed for and even necessitated the development of other models, with varying degrees of success.

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[152] Interview of Moira Meltzer-Cohen (25 February 2017).
[153] Doc 125.
[154] Interview with Participant 19 (31 March 2017).

As with the work of the Oakland 100 Support Committee after the Oscar Grant rebellions, the uprisings in Ferguson, Missouri and Baltimore, Maryland, and the emergence of the Black Lives Matter movement more generally fomented specifically racial justice focused legal support projects. A short-lived legal collective, Fists Up! was formed to support the "tremendous outpouring of activism" in the Bay Area in response to the death of Mike Brown in Ferguson.[155] An "independent collective of lawyers, law students, legal workers, and activists who are working closely with the National Lawyers Guild to provide legal support for the Black Lives Matter actions in the Bay Area", Fists Up! wound up tracking and supporting more than 800 arrestees during a short period of intense mobilization:

> It was actually faster and furious and turned more fast and furious in terms of mass arrests than I think, other than the war in 2003, than just about any other scene. You know there were as many arrests as there were over the whole Occupy four month period or five month period within a two month period. And it was it was very taxing and very challenging and led to a lot of internal conflict.[156]

A very different response to the same political moment can be seen in the Black Movement Law Project [BMLP], which arose out of the "need to intentionally try to build Black leadership in the response to the kind of Black uprisings" happening in Ferguson, Baltimore, and other cities.[157] Founded by three Black activists with legal support experience, two of them lawyers, BMLP travelled throughout the US aiming to create local,

[155] Interview of John Viola (15 March 2017). The name references the "Hoodies up!" slogan used in protests against the shooting death of 17-year-old Trayvon Martin in Florida in 2012.
[156] Interview of John Viola (15 March 2017).
[157] Interview of Abi Hassen (27 February 2017). See also Scott L Cummings, "Movement Lawyering" (2017) 5 University of Illinois Law Review 1645 at 1684.

sustainable legal support structures out of rapid response legal crises. Abi Hassen described the goals of the group:

> We were more interested in, we're not trying to go somewhere and do something and have ourselves be the key in the cog, whatever that is. We're obviously available because we have particular experience to help people figure things out and consult and do trainings and whatever but it was not our goal to be the centralized repository of knowledge and skills. Very much our goal was to go and work with people.[158]

BMLP's commitment to accountability and local capacity building suggests an internalization of the parachuting critique of global justice era legal support, but more importantly, it also reflects the group's positionality, its shared identity and affinity with the communities it works in: "part of our explicit mission was to make sure that in this Black Lives Matter writ large movement, that there were actually… that Black people, Black lawyers, Black legal workers who wanted to be involved in legal support had the space."[159] As a result, BMLP's work enabled the inclusion of activist legal support tactics into on-going community organizing:

> …the core of it is jail support, having a hotline, understanding how the jail system works… tracking people through the system, providing that kind of comfort type stuff to people. And just introducing that as a concept which most people who aren't twenty-year long activists or who aren't working in the Bay or New York – that's not a thing. Just on that note, a tangent, what's really awesome is that people in Baltimore, some of them just started doing that at the jail on a regular basis, absent an action. Just like, 'hey, here's an idea, it sucks for people who go to jail even when there's not a political action. We can just do this.'[160]

Reflecting on his work with Fists Up!, Viola noted the failure of that collective to make such "organic" connections to impacted communities:

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[158] Interview of Abi Hassen (27 February 2017).
[159] *Ibid*.
[160] *Ibid*.

> With Fists Up! in particular, with Occupy Legal, what I really saw [was] the failure of it, not that it was a total failure, but the shortcoming of it that to me was most alarming and made me feel like this is not the model we should pursue, was not actually meaningfully bringing people in from the street and not incorporating people who were part of the movements to actually be longstanding members.[161]

i. Can the collective hold?

The perceived failure of Fists Up! to align legal support with movement building also points to a broader concern. In my interviews with radical legal support organizers active in post-global justice protest movements, several raised doubts about the continuing relevance of the legal collective model. Outside of convergence or summit-based mass mobilizations premised on the presence of spokescouncils and affinity groups, where can – and should – legal collectives fit? Reflecting on NYC-PLC, Viola raised the issue this way:

> I think this was the beauty of law collectives during the heyday of the anti-globalization period, the global justice movement is that they fit really well into the organizing style people were using. They fit very neatly into that in that they were they worked very well with the spokescouncil model because a legal affinity group can be its own affinity group and could be its own spoke.[162]

For long-time legal support providers, especially those with roots in the global justice movement, shifts in organizing models have prompted a rethinking of their commitment to the legal collective model. Ryan White of the Movement Defence Committee told me "I think a lot of people got into it [legal support] in the wake of kind of anti-globalization work they'd done in undergrad and anti-poverty work that was associated with [Mike] Harris… I think there's definitely been a lot of anxiety in the MDC as that's no longer the

[161] Interview of John Viola (15 March 2017).
[162] *Ibid*.

organizing model."[163] Former Midnight Special member Dan Spalding-Tennery echoed these concerns:

> …maybe the era of mass mobilization is kind of totally wound down for now. And you know my coming of age in the law collective movement was inextricably tied up in mass mobilization. I was radicalized by the WTO... and so at least at that time the role of law collectives in social movements was basically the role of law collectives in mass protests.[164]

The challenge of working within the Occupy movement's General Assembly structure exemplifies the structural problems facing the global justice law collective model seeking to operate outside of that movement. As a radically democratic space operating by consensus,[165] participation in the General Assemblies required an enormous time commitment that could not be shared amongst the members of a collective. Similarly, a working group structure, such as that originally taken by legal support providers in NYC, precludes the adoption of the closed membership structure adopted by most law collectives for reasons of both security and competence. John Viola:

> Occupy Legal was really to me where it really started to show a strain, the law collective model and I could really see that the impulse of organizing law collectives was very much related to the anti-globalization, the global justice moment in time. And I kept saying with Occupy Legal that the shoe didn't fit. And we did good work with Occupy Legal, that was more than 800 cases... But the model that we built really didn't fit the scene in the streets. Primarily because there was no spokescouncil and because the General Assembly model was very different than a spokescouncil. I would say that that's the biggest reason and because none of us had time to sit through general assemblies and that's true of most of the people who were involved. You know really if you really wanted to be connected to the scene you had to get a tent and go there. Which I considered doing but if I'd done that I don't know

[163] Interview of Ryan White (23 April 2017). Mike Harris was the conservative Premier of Ontario from 1995-2001.
[164] Interview of Dan Tennery-Spalding (9 April 2017).
[165] See generally: LA Kauffman, "The Theology of Consensus", *Berkeley Journal of Sociology* (26 May 2015), online: http://berkeleyjournal.org/2015/05/the-theology-of-consensus/.

> that I would have done that in a legal capacity. You know because they really needed organizers. I mean everybody in the Occupy scene was so green.[166]

Others pushed back against this critique. Reflecting on her experience with radical legal support that began in the late 1980s, former NYC-PLC member Sarah Hogarth called the centrality of the global justice era into question:

> I think that [debate] might be tied to a more limited definition of law collective. You know if you think of law collective as something from that era then yes, those law collectives – that would that would be an analysis that would probably apply… I think that it's true that there's models and maybe that particular incarnation is over, unless something similar arises in the future but that doesn't matter. Legal solidarity is not dead and it is not over. And there's so many different incarnations of it, as there should be, depending on what the needs are.[167]

Mac Scott, of the MDC and Common Front Legal took a similarly long view:

> I think you build the models as you go. There's also the one-off collectives that we had for a whole pile of time where you just formed a collective for an action and then it fell apart. There's been collectives that don't even do movement work, they just mainly bring legal information in communities.[168]

ii. The shape of radical legal support today

The current state of the law collective and radical legal support movement supports Hogarth and Scott's perspectives. Although they are fewer in number than at the peak of the global justice movement, a number of legal collectives remain active, including Mutant Legal in NYC, Toronto's Movement Defence Committee, and Up Against the Law! in Philadelphia. New radical legal support projects and groups continue to spring up, some initiated by former law collective members. Two founding members of NYC's People's

[166] Interview of John Viola (15 March 2017).
[167] Interview of Sarah Hogarth (12 May 2017).
[168] Interview of Mac Scott (23 April 2017).

Law Collective are now involved in the Legal Support Committee of the NYC Metropolitan Anarchist Coordinating Council [MACC], a closed group which provides "support in the form of fundraising, emotional and physical health care, political defense, propaganda, and coordinating legal support" to members of MACC and anyone arrested at MACC supported actions.[169] As a working group of a larger organization, MACC Legal members described it to me as a "slightly different model" than the global justice era legal collectives, but also noted that the narrower mandate of the committee aimed to avoid the burnout that NYC-PLC members had experienced.[170]

MACC Legal Support was initially formed "out of the state repression faced by NYC comrades who were kettled and arrested, and forced to face brutal conditions of detention" during protests against the inauguration of Donald Trump in Washington, DC on January 20, 2017 (often referred to as J20).[171] More than 230 people were arrested on J20, including journalists, legal observers, and bystanders caught up in a mass arrest after being kettled in an intersection for up to eleven hours. The vast majority of arrestees were charged with felony rioting, based on an unprecedented prosecutorial theory of 'joint responsibility' for property damage.[172] MACC Legal Support was only one of several regional defendants' committees (many with accompanying legal defence funds), that sprung up across the northeastern US in the wake of J20. Among the largest of these was Defend J20 Resistance, "a large group of felony defendants arrested on January 20, 2017 in Washington, DC and their supporters who have all agreed not to testify against each

[169] Doc 122.
[170] Interview of Participants 3-5 (26 February 2017).
[171] Doc 122.
[172] Sam Adler-Bell, "J20 Defendants Await Verdict in First Test Of Government Attempt to Criminalize Protest Group as a Whole", *The Intercept* (17 December 2017), online: https://theintercept.com/2017/12/17/j20-inauguration-protest-trump-riot-first-amendment/.

other and are working together to collectively defend themselves."[173] Defend J20 Resistance also acted as something of an umbrella group for the various defence committees, embracing a collective approach to their organizing: "We see overwhelming support for political resistance and we can best sustain this momentum by working together. If we coordinate with our lawyers and legal defense to embrace solidarity, the authorities will fail in their repressive efforts, as they have in the past."[174] Similar politics are evident in the work of the Dead City Legal Posse [DCLP], another J20 legal support project:

> We are community members, with differing degrees of legal work experience, from in and around the DMV [DC, Maryland, Virginia]. We come out of different activist traditions and bring diverse political ideologies and/or philosophies with us to the group. We came together with a shared commitment to mutual aid under the banner of the DCLP in order to mobilize a rapid emergency response to the grossly malicious over charging, by the U.S. Attorney's Office, of counter-inaugural protesters, who now face felony charges.[175]

The number of defendants' groups and the relative inexperience of many of the arrested activists posed a distinct challenge for J20 legal support organizers, but Defend J20 Resistance and others were able to successfully marshal both direct support for defendants and narrative-shifting media coverage, particularly after the emergence of evidence that the prosecution had withheld exculpatory evidence. [176] The six defendants tried as a group in the first trial were acquitted and charges against another 129 accused were withdrawn a

[173] Defend J20 Resistance, "Points of Unity" (2017), online: https://web.archive.org/web/20170610004444/http://defendj20resistance.org/defendants.
[174] *Ibid.*
[175] Dead City Legal Posse, "About" (2017), online: https://web.archive.org/web/20170610195943/http://www.dclegalposse.org/dead-city-legal-posse/.
[176] Interview of Participants 3-5 (26 February 2017) and Interview with Kris Hermes (9 February 2017).

month later.[177] After a second trial resulted in a hung jury due to the revelations of prosecutorial misconduct all remaining charges were dismissed in July 2018.[178] The only convictions of inauguration protesters resulted from 21 guilty pleas.[179]

Defend J20 Resistance argued that the J20 arrests and prosecution ought to be understood as an attempt to set "a repressive precedent for political expression under the administration of Donald Trump with [then] Attorney General Jeff Sessions", highlighting the similarities between their cases and the arrest of over 800 water protectors in the struggle against the Dakota Access Pipeline [DAPL] in Standing Rock, North Dakota.[180] As with J20, several legal support organizations have been active in supporting the NoDAPL movement. Formed in 2016, the Water Protector Legal Collective [WPLC, formerly known as the Red Owl Legal Collective], has been coordinating criminal defence and civil litigation efforts as well organizing legal observing, court support, and fundraising for legal expenses.[181] Despite its name, WPLC operates as an incorporated non-profit organization and intends to continue providing "movement legal support in other contexts when [their] work in North Dakota winds down."[182] Working in close partnership with the WPLC is the Freshet Collective, which organizes jail and court support, criminal defence assistance, and education on "legal rights, anti-repression, security, and strategies and

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[177] Sam Adler-Bell, "Jury Acquits First Six J20 Defendants, Rebuking Government's Push for Collective Punishment", *The Intercept* (21 December 2017), online: https://theintercept.com/2017/12/21/j20-trial-acquitted-inauguration-day-protest/.
[178] Sam Adler-Bell, "With Last Charges Against J20 Protesters Dropped, Defendants Seek Accountability for Prosecutors", *The Intercept* (13 July 2018), online: https://theintercept.com/2018/07/13/j20-charges-dropped-prosecutorial-misconduct/.
[179] *Ibid.*
[180] Defend J20 Resistance, "On January 20th…" (2017), online: https://web.archive.org/web/20170706005230/https://defendj20resistance.org/.
[181] Water Protector Legal Collective, "About" (undated), online: https://waterprotectorlegal.org/.
[182] Water Protector Legal Collective, "WPLC: The Struggle Continues at Standing Rock and Beyond" (17 April 2018), online: https://waterprotectorlegal.org/wplc-continuing-the-struggle-at-standing-rock-and-beyond/.

practices of solidarity."[183] The collective's work was deliberately low profile at the outset, but after it became clear that "[m]any arrestees were confused about who was providing which aspects of legal support, what types of expenses were eligible for assistance from the legal defense fund, and how to access those funds", Freshet's work became more public.[184] Yet another part of the NoDAPL legal support structure is the Water Protector Anti-Repression Crew, primarily focused on facilitating trainings on movement defence. During an extensive tour in 2017, the Crew developed a zine to accompany their workshop, covering some of the core work of legal collectives:

> Other areas of movement defense include jail support, court support and prisoner support. Helping to run a jail support hotline when actions are happening, fundraising for bail, offering to be present in the courtroom for people's hearings or trials are all a part of making our movements stronger. When people know that others have their backs they are more willing and able to take the risks that are necessary in the struggle for liberation. These support tasks cannot be left to lawyers or "experts" in legal work. The best support comes from the people you know and trust, like your relatives or comrades. Lawyers and professional legal workers can be very helpful in our efforts, but it is best when they are integrated with the movement itself and not separate from it or trying to control it.[185]

Several of my interviewees noted that the J20 and NoDAPL legal support structures were complex and contentious, particularly with respect to the disbursement of funds raised for legal defence. Such controversies are certainly not new, but they have been exacerbated by the ubiquity of online, crowdfunded legal support fundraising.

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[183] Freshet Collective, "About the Freshet Collective" (2017), online: https://web.archive.org/web/20170227181415/https://freshetcollective.org/.
[184] *Ibid*.
[185] Water Protector Anti-Repression Crew, "Tour Zine" (2017), online: http://antirepressioncrew.org/2016/01/27/movement-defense/.

Taken as a whole, these three snapshots of the current moment in the US[186] suggest increased fragmentation in radical legal support as well as some continuities. The term law (or legal) collective has always been a porous one, and as with Katya Komisaruk's Just Cause Legal Collective, the WPLC's name may be seen as either a recognition of the demise of the global justice era legal collective or as a good faith attempt to expand the definition. Similarly, both J20 and NoDAPL reflect the continuing resonance of the language and praxis of anti-repression. These trends, along with the key themes of the preceding chapter, provide the narrative and historical foundation for the analyses I develop in the rest of the dissertation. In the next chapter, I draw on the radical legal support praxes – internal and outward-facing – of both eras to shed light on the politics and practices of movement lawyering. Chapter six frames the popular legal education and direct support work documented thus far as an example of social movement knowledge production and then builds on it to envision a model of counter-hegemonic lawyering from below.

[186] The Canadian framework has seen less evolution in legal support models during this same period of time, due at least in part to the lack of large scale mobilizations like J20 or NoDAPL. Although there were a large number of arrests at protests against the expansion of the Trans Mountain pipeline in Burnaby, BC, in 2014 and 2018, these have largely occurred in the context of pre-planned civil disobedience mediated by large environmental non-profits.

CHAPTER 5
MOVEMENT BUILDING, MOVEMENT LAWYERING: KEY DEBATES IN LEGAL SUPPORT PRAXIS

This chapter puts the central debates of radical legal support praxis into conversation with the literatures on movement lawyering[1] and law and social movements. Relying on dilemmas identified in my interview and archival data, I explore two areas of contention: how the work of radical legal support organizers engages both the political possibilities and pitfalls of movement lawyering and how the political and ethical commitments of non-lawyer activists providing legal support to other activists illuminate and challenge the relationships between lawyers and social movements set out in scholarly research. In doing so, I depart from much of the law and social movements canon, particularly in its US form. I am not asking broad questions about how (or if) litigation can drive progressive social change nor am I looking specifically at the work of movement lawyers. The legal literature on social movements and progressive or even radical lawyering does not generally address the issues that mostly non-lawyer legal collectives deal with – protest policing, the criminalization of dissent, and state repression – and it tends to devote little attention to protest movements, although there are some glimpses of these issues in some movement lawyering and clinical legal education scholarship. Scott L. Cummings argues that the

[1] Throughout this dissertation, but particularly in this chapter, I use 'movement lawyering' as an umbrella term, recognizing that many other terms, with potentially different parameters, are widely used. Shin Imai notes that the sort of community-based lawyering he practiced in northern Ontario has also been called rebellious, community, critical, activist, and long-haul lawyering: "A Counter-pedagogy for Social Justice: Core Skills for Community Lawyering" (2002) 9 Clinical Law Review 195 at 197. In his study of client activism, Eduardo RC Capulong adds people's, movement, poverty, public interest, political, three-dimensional, facilitative, collaborative, cause, empowerment, social justice, grassroots, democratic, and revolutionary lawyering, as well practitioners of law and organizing and mobilization lawyering to the mix: "Client Activism in Progressive Lawyering Theory" (2009) 16 Clinical Law Review 109 at 118-19.

"language and practice of movement lawyering" in the US is undergoing a "a new phase of progressive legal development in a distinctively pragmatic age".[2] He lists Black Lives Matter, the Occupy movement, and other recent social movements as the backdrop for this wave and notes that such movement-embedded lawyering models combine "defensive legal tactics (representing protestors and workers prosecuted for legal violations) with street-level politics, affirmative lawsuits, and policy development to assert and enact new legal norms."[3] This new movement lawyering (defined by Cummings as the "mobilization of law through deliberately planned and interconnected advocacy strategies, inside and outside of formal law-making spaces"[4]), is accountable to the "politically marginalized constituencies"[5] who are its mobilized clients and deploys law "flexibly as part of problem-solving repertoires" which include "advising and defending protestors".[6] Sameer M. Ashar's study of workers' centers and student run legal clinics sets out three areas of public interest lawyering work: claims (individual legal advocacy), policy advocacy, and organizing (legal and extra-legal advocacy in promotion and defence of organizing, including "the tactical use of direct action protests against target employers").[7] He cites partnering with non-profits and private law firms to defend the constitutional rights of worker centers to demonstrate publicly as one example of the latter.[8] Similarly, Amna

[2] Scott L Cummings, "Movement Lawyering" (2017) 5 University of Illinois Law Review 1645 at 1652 [Cummings, "Movement Lawyering"].
[3] *Ibid* at 1683-4.
[4] *Ibid* at 1690.
[5] *Ibid*.
[6] *Ibid* at 1691. Such defensive litigation, which includes "defending protestors criminally charged with breaking the law" as well as providing additional forms of legal defence is one of the tactical tools of this "integrated advocacy" model: at 1703 and 1706.
[7] Sameer M Ashar, "Public Interest Lawyers and Resistance Movements" (2007) 95 California Law Review 1879 at 1895-6.
[8] *Ibid* at 1896. Ashar makes a similar point in "Law Clinics and Collective Mobilization" (2008) 14 Clinical Law Review 355 at 398, stating that his law school clinic at CUNY provides "limited ongoing legal guidance to organizational clients, including advice on their first amendment rights during direct action protests".

Akbar's research on the legal academy and the Black Lives Matter movement examines how law school legal clinics "can take on a wide array of projects in support of local movement formations", including jail support and legal observing.[9] Previously, influential discussions of law and organizing models had borrowed from the pathbreaking work of Frances Fox Piven and Richard A. Cloward[10] to draw a distinction between mobilization and organizing in an effort to identify different roles for law and organizing practitioners.[11] In this framework, activist legal support is part of mobilizing. Lawyers in the mobilization context might spur short-term action by, for example, advising activists on the legality of different tactics and the constitutional right to protest or by acting as "legal observers at pickets and protests."[12]

Such gestures reinforce my assertion that ultimately, the story of law collectives and radical legal support *is* a law and social movements story and ought to be considered through that framing. While their inclusion within this scholarly literature is likely not a concern of radical support organizers, my contention, as an activist-scholar, is that their political praxes highlight the limitations of research which does not make adequate space for movement-derived knowledges. As detailed in the final section of this chapter, divergent views on the appropriate role of lawyers and professional ethics norms in law collective practice reflect long-standing contradictions within movement and community-based lawyering. Drawing on the stories told in chapters two and three, I demonstrate that

[9] Amna Akbar, "Law's Exposure: The Movement and the Legal Academy" (2015) 65:2 Journal of Legal Education 352 at 371-2.
[10] Frances Fox Piven & Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Vintage Books, 1979).
[11] Scott L Cummings & Ingrid V Eagly, "A Critical Reflection on Law and Organizing" (2001) 48 UCLA Law Review 443 at 481.
[12] *Ibid.* The organization-building context, by comparison, might ask lawyers to consult on the formation or incorporation of membership associations.

radical legal support organizers' commitments to internal and external accountability, the demystification and decentralization of legal expertise, and a rejection of legal support work as service provision map onto the arguments which have been at the heart of evolving approaches to progressive lawyering since the 1970s. Although the majority of radical legal support organizers are not lawyers and law collectives do not represent individual clients, and in fact often facilitate representation of defendants by lawyers, they do take on some of the other key tasks of movement lawyers, especially advising,[13] educating, and organizing (or engaging in extra-legal advocacy, in Ashar's terms). Many of the critiques of movement lawyering set out in the literature are critiques shared by law collectives and their work is often guided by a desire to avoid or mitigate the same problems faced by progressive lawyers. Debates about the relationships between lawyers, communities, and/or movements in the movement lawyering, law and organizing, and clinical legal education literature parallel debates among and within law collective networks. Accordingly, I argue that the legal work and unique expertise of movement-based non-lawyers addresses key questions and illuminates central debates about lawyering in and for grassroots protest movements.

This chapter opens with an overview of recent developments in the scholarly field of law and social movements, in both Canada and the US. My goal is to briefly canvas the current literature in preparation for the analyses I develop in this chapter (on movement lawyering as a tool for movement building) and the next (on the role of legal support and popular legal education in mobilization). I then turn to three key debates among radical legal support providers: first, the role of law collectives and legal teams in movement

[13] See section D(iii) below for a discussion of the distinctions between legal information and legal advice.

decision-making as a problem of accountability, second, the tension between movement-based radical legal support and service provider models, and finally, the place of lawyers in radical legal support, particularly as members of law collectives.[14] I conclude by returning to the literature to trace the emergence and development of movement lawyering approaches and argue that radical legal support praxes speak to – and cast new light on – movement lawyering dilemmas about client activism, role confusion, and the politics of comradeship.

A. RADICAL LEGAL SUPPORT AND THE "SOCIAL MOVEMENT TURN" IN LAW

Scott L. Cummings' recent work on what he calls the "Social Movement Turn in Law" provides an entry point into the current state of the scholarly field. In a series of six overlapping articles,[15] Cummings outlines the rise of law and social movements scholarship and argues that since the 1990s, social movements have become central to US legal scholarship because they serve as a "response to the fundamental problem of progressive legal thought over the past century: how to harness law as a force for progressive social change within US democracy while still maintaining a distinction between law and politics."[16] He calls this new scholarship 'movement liberalism', claiming

[14] These are somewhat arbitrary classifications as these debates are overlapping, intertwined by one underlying goal: movement-building.
[15] Cummings, "Movement Lawyering," *supra* note 2, Scott L Cummings, "The Social Movement Turn in Law" (2018) 43:2 Law & Social Inquiry 360 [Cummings, "Social Movement Turn"], Scott L Cummings, "Rethinking the Foundational Critiques of Lawyers in Social Movements" (2017) 85:5 Fordham Law Review 1987 [Cummings, "Foundational Critiques"], Scott L Cummings, "The Puzzle of Social Movements in American Legal Theory" (2017) 64 UCLA Law Review 1554, Scott L Cummings, "Law and Social Movements: An Interdisciplinary Analysis" in Conny Roggeband & Bert Klandermans, eds, *Handbook of Social Movements Across Disciplines, Handbooks of Sociology and Social Research* (New York: Springer International Publishing, 2017) 233, and Susan D Carle & Scott L Cummings, "A Reflection on the Ethics of Movement Lawyering" (2018) 31 Georgetown Journal of Legal Ethics 447.
[16] Cummings, "Social Movement Turn", *supra* note 15 at 361.

that it "assigns leadership of transformative legal change to social movements in order to preserve traditional roles for courts and lawyers".[17] The genesis of movement liberalism lies in the critiques of legal liberalism[18] that emerged in the wake of the US Supreme Court's 1954 decision in *Brown v. Board of Education*. "[P]rogressive disenchantment with law", exemplified by the Critical Legal Studies school, became organized around two foundational critiques: efficacy (the perceived disconnect between legal liberalism and transformative social change) and accountability ("the perceived disconnect between legal liberalism and professional neutrality—framed in terms of the lack of accountability of activist lawyers to autonomous clients").[19] Cummings locates his movement liberal model in two key conversations in the US legal literature – on majoritarian courts and movement lawyering – both of which, he argues, aim (and largely fail) to reconcile law and progressive politics.[20] Ultimately, he concludes that "movement liberalism ends up reproducing the very law-politics debate it seeks to transcend" and thus restates rather than resolves the foundational critiques of legal liberalism: "in the professional literature by emphasizing lawyer deference to nonlawyer movement actors (to promote accountability) and in the constitutional literature by emphasizing judicial deference to movement political challenges (to promote efficacy)."[21]

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[17] *Ibid* at 382.
[18] Cummings' definition of legal liberalism is narrow: "The concept of legal liberalism", he writes, "came to be identified with faith in law generally, and courts in particular, to correct defects in pluralism; reliance on lawyers in advancing social reform, particularly through impact litigation; and emphasis on the enforcement of individual rights, with special priority given to civil and political over economic and social rights [citations omitted]. Legal liberalism thus rested *on an alliance of activist courts and activist lawyers* in the pursuit of progressive reform": "Social Movement Turn" at 362-2, emphasis in original. For a broader view, see Karl Klare, "Law-making as Praxis" (1970) 40 Telos 123 at 132.
[19] *Ibid* at 368. See part B(iii) below for the same foundational critiques as applied to movement lawyering.
[20] *Ibid* at 382.
[21] *Ibid* at 391 and 404.

For Cummings, the origin of the empirical development of movement liberalism lies in the post-*Brown v. Board of Education* moment, starting with court impact studies in the political science literature, including Gerald Rosenberg's "defining impact study of the civil rights era"[22] *The Hollow Hope: Can Courts Bring About Social Change?* which concluded that "courts can matter, but only sometimes, and under limited conditions".[23] A related strand of sociolegal literature, Cummings argues, built from Stuart A. Scheingold's *The Politics of Rights: Lawyers, Public Policy, and Political Change* (centered on an assessment of the myth of rights: "an oversimplified approach to a complex social process—an approach that grossly exaggerates the role that lawyers and litigation can play in a strategy for change."[24]), Marc Galanter's "Why the "Haves" Come Out Ahead",[25] organizational analyses of public interest lawyering (such as Joel F. Handler's *Social Movements and the Legal System*[26]), and studies of disputing, which culminated in Felstiner, Abel, and Sarat's "naming, blaming, and claiming" model.[27] As a result of this view of "lawyers and the legal system as a source of constraint", Cummings describes how some sociolegal scholars then turned towards studies of law outside of legal institutions, leading to the literatures on legal consciousness and legal mobilization, particularly Michael McCann's "field-defining" *Rights at Work: Pay Equity Reform and the Politics of*

[22] *Ibid* at 373.
[23] Gerald N Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed (Chicago: University of Chicago Press, 2008) at 106 (originally published in 1991).
[24] Stuart A Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change*, 2nd ed (Ann Arbor: University of Michigan Press, 2004) at 5 (originally published in 1974).
[25] Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change" (1974) 9:1 Law & Society Review 95.
[26] Joel F Handler, *Social Movements and the Legal System: Theory of Law Reform and Social Change* (New York: Academic Press Inc, 1978).
[27] William Felstiner, Richard Abel & Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming" (1980) 15 Law & Society Review 631.

Legal Mobilization.[28] Cummings attributes the subsequent "flowering of law and social movement scholarship"—and the rise of movement liberalism—to McCann's emphasis on law's indirect effects on mobilization and the concomitant de-centering of lawyers and judges.[29] McCann's own assessments of the law and social movements field also describe the development of a "productive dialogue… that connects previously separate modes of analysis regarding law and social movements."[30] Like Cummings, he argues that the new field is full of old debates: "much of the new literature echoes old position-taking between those scholars who insist on complementary relationships between legal tactics and social movements and those who see mostly counterproductive tensions."[31] McCann's emphasis on the legal mobilization approach to law and social movements is baldly evangelical (legal mobilization is "least committed to a simple view about the role of law in social movements, adopting instead a tragic view about law's considerable constraints and limited opportunities that vary with context"[32]) while Cummings' conclusion is more ambivalent (the "central promise of the new movement moment" is that "a smart, savvy legal liberalism *might* be reclaimed as integral to movements for progressive change"[33]).

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[28] Cummings, "Social Movement Turn", *supra* note 15 at 376. Legal consciousness and legal mobilization are discussed in detail in the next chapter.
[29] *Ibid* at 379-80.
[30] Michael McCann, "Law and Social Movements: Contemporary Perspectives" (2006) 2:1 Annual Review of Law and Social Science 17 at 18 [McCann, "Contemporary Perspectives"]. McCann traces a similar path to the current focus on social movements in legal literature, outlining seven key areas of scholarly inquiry that have indirectly contributed to the legal mobilization approach to law and social movements: the sociolegal literature of the 1970s and 1980s (including Scheingold and Holder); studies of disputing; the Critical Legal Studies movement and its challengers, Critical Race Theory and feminist legal theory; legal consciousness; cause lawyering; political science scholarship on human rights advocacy, judicial impact, and the like; and the social movement and contentious politics literature in sociology: "Introduction" in Michael W McCann, ed, *Law and Social Movements* (Aldershot: Ashgate, 2006) xi at xv-xvi.
[31] McCann, "Contemporary Perspectives", *supra* note 30 at 18.
[32] *Ibid* at 20.
[33] Cummings, "Social Movement Turn", *supra* note 15 at 405 [emphasis added].

I return to both Cummings (in section E below) and McCann (in chapter six), but the central thrust of their work – the emergence of law and social movements as a distinct scholarly field – raises two preliminary questions for my research: first, is this dissertation part of the "social movement turn" (or more specifically, (how) does it engage with movement liberalism?), and second, has there been a corresponding "social movement turn" in Canadian legal scholarship? In this chapter and the next, I respond to the first question, examining the work, self-critiques, and political practices of radical support organizers using research on movement lawyering, state repression, and legal consciousness. The resulting analysis departs from Cummings' movement liberal moment and bumps up against the limits of McCann's legal mobilization framework by foregrounding a distinctly radical movement-derived legality that does not set out to reunite law and progressive politics in the service of transformative social change. Ultimately, I demonstrate that in the context of the movements this dissertation flows from, Cummings' social movement turn is at best partial, and that assigning leadership to movement actors when they become entangled within the law does not signal an embrace of legal liberalism.

The confines of Cummings' explicitly US-centered model also emerge in response to the second question. Throughout this dissertation, I examine activist legal work in both the US and Canada while attempting to center locally relevant scholarship and in doing so, reveal that the empirical basis for a Cummings style 'social movement turn' in Canada does not appear to be present in terms of either quantity or political purpose.[34] Three

[34] In addition to the work on law and social movements in Canada by scholars, activists, and commentators specifically cited throughout this dissertation, other relatively recent Canadian studies of interest include: Jorge Frozzini & Alexandra Law, *Immigrant and Migrant Workers Organizing in Canada and the United States: Casework and Campaigns in a Neoliberal Era* (Lanham, MD: Lexington Books, 2017), Miriam Smith, *A Civil Society? Collective Actors in Canadian Political Life*, 2nd ed (Toronto: University of

divergences demonstrate the latter. First, the growing body of work on how Indigenous activism encounters and resists the settler law of the Canadian state should be understood as a cornerstone of the shifting terrain of law and social change on these territories, one that lies entirely out of the frame of Cummings' movement liberalism.[35] Second, as in the US, the literature on clinical lawyering and clinical legal education in Canada, where both scholars and practitioners often embrace a social change lens and drawn on "critical theory, feminist theory, and critical race theory to ground their critique of dominant approaches to legal practice and their calls for critical and politicized approaches to legal practice in clinical contexts" is neither new nor committed to maintaining a border between law and politics.[36] Finally, while the zenith of 'rights skepticism' as a preoccupation of progressive legal scholars has likely come and gone, studies of the politics and impact of the *Charter of Rights and Freedoms* remain the most cogent and systematic examinations of law and social change in the Canadian context, and as discussed below in chapter six, the relationship between rights claims and social movements is no less fraught today.[37] Yet the

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Toronto Press, 2018), Lisa Vanhala, "Social movements lashing back: Law, social change and intra-social movement backlash in Canada" in Austin Sarat, ed, *Special Issue Social Movements/Legal Possibilities, Studies in Law, Politics and Society 54* (Emerald Group Publishing Limited, 2011) 113, Cindy Blackstock, "Social Movements and the Law: Addressing Engrained Government-Based Racial Discrimination Against Indigenous Children" (2015) 19:1 Australian Indigenous Law Review 6, Alex Law & Jared Will, "Some Comments on Law and Organizing" in Aziz Choudry, Jill Hanley & Eric Shragge, eds, *Organize!: Building from the Local for Global Justice* (Oakland: PM Press, 2012) 56, Basil S Alexander, "Demonstrations and the Law: Patterns of Law's Negative Effects on the Ground and the Practical Implications" (2016) 49:3 UBC Law Review 869, and Yutaka Dirks, "Community Campaigns for the Right to Housing: Lessons from the R2H Coalition of Ontario" (2015) 24:1 Journal of Law & Social Policy 135.

[35] See generally Arthur Manuel & Grand Chief Ronald M Derrickson*, Unsettling Canada: A National Wake-up Canada* (Toronto: Between the Lines, 2015) and Hayden King & Shiri Pasternak, *Land Back: A Yellowhead Institute Red Paper* (October 2019).

[36] Sarah M Buhler, "Clinical Legal Education in Canada: A Survey of the Scholarship" (2015) Canadian Legal Education Annual Review 1 at 10.

[37] See e.g. Judy Fudge & Harry Glasbeek, "The Politics of Rights: A Politics with Little Class" (1992) 1 Social and Legal Studies 45, Allan C Hutchinson & Andrew Petter, "Private Rights/Private Wrongs: The Liberal Lie of the *Charter*" (1988) 38 University of Toronto Law Journal 278, Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada*, 2nd ed (Toronto: Thompson Education Publishing, 1994), Jo-Anne Pickel, "Wedding Toasts and Unmannerly Wedding Gossip: Same-Sex

historical trajectory of the *Charter* does not contain a Canadian equivalent of *Brown v. Board of Education,* nor do practices of public interest or movement lawyering coalesce around a similar touchstone and there is little other evidence for a recent and quantifiable Canadian turn. In one of the few comprehensive studies of activism and the law in Canada, Byron M. Sheldrick identified some continuities in the literature on law and social movements, noting that in both Canada and the US, the "successes and failures of public interest litigation" have dominated the study of law and social movements and that "there has been little attempt to question the law from the perspective of the social action group."[38] Sheldrick concludes that these court-focused analyses conceptualize law and politics in an "either/or" fashion, producing a static and limited view of law and activism that fails to capture the dynamic nature of social movements.[39] Building on the movement histories set out in chapters two and three above, the remainder of this chapter explores debates at the heart of such dynamism, starting with a key conundrum: identifying and setting the boundaries of the relationships between organizers, activists, and legal support providers.

Marriage and the *Charter's* Paradoxes for Equality-Seeking Groups" (2004) 3 Journal of Law & Equality 111, Margot Young, "Why Rights Now? Law and Desperation" in Margot Young et al, eds. *Poverty: Rights, Social Citizenship and Legal Activism* (Vancouver: UBC Press, 2007) 317.

[38] Byron M Sheldrick, *Perils and Possibilities: Social Activism and the Law* (Winnipeg: Fernwood, 2004) at 12.

[39] *Ibid*. at 14. Similarly, Joel Bakan's exploration of the "reality" of constitutional rights concluded that the "emancipatory and egalitarian potential of the Charter ultimately depends on the social and historical circumstances surrounding its use": Joel Bakan, *Just Words: Constitutional Wrongs and Social Rights* (Toronto: University of Toronto Press, 1997) at 9.

B. MOVEMENT BUILDING AND LEGAL SUPPORT PRAXIS

> The ability to monkeywrench the legal system is a valuable tool that belongs in the hands of everyone facing it. By understanding the points of intervention in the legal system we can and have effectively turned the machine on itself, with stunning results.
>
> Phaedra Travis, Sarah Coffey & Paul Marini, *Earth First! Journal,* 2000

i. Strategy, tactics, and the role of radical legal support

Law collectives and other radical legal support organizers insist that they are "part of" movements, but what is—or should be—the role of legal support when tactical or strategic decisions about an action are being made?[40] How much instruction should legal teams take from movements and action organizers? Who decides what tasks legal support will and will not do? The work of the New York City People's Law Collective [NYC-PLC] prior to and during the World Economic Forum [WEF] meeting in NYC in late January of 2002 and the Republican National Convention [RNC] held in NYC in August 2004,[41] highlights these key questions about how law collectives and other radical legal support organizers relate to movements. Having been invited to coordinate legal support by the major organizing coalitions of the anti-WEF mobilization, NYC-PLC was "careful to continue [its] relationships with these bodies" in the lead up to the meeting, describing their relationship to the organizing process as follows:

> We consciously limited our involvement in the preparations for the overall action. We decided to limit our roles at spokes-councils to providing information and not trying to develop a legal plan or tactic for the events. This decision was left to the organizers and spokes-councils.[42]

[40] See especially Robert Knox, "Strategy and Tactics" (2010) 21 Finnish Yearbook of International Law 193.
[41] See Chapter 2, Part C above.
[42] Doc 93.

But when it came to the parameters of legal support, NYC-PLC, as "a standing collective (not simply a legal working group) that existed before the protests," decided that it would "take responsibility for decision-making in collaboration with the organizers." The collective introduced a new, "decentralized" legal support structure at the WEF, modelled after the approach of global justice street medics. Although NYC-PLC invited non-members to participate in the provision of legal support, implementing a structure similar to the Summit Legal Support Project organized by the Movement Defence Committee [MDC] during the 2010 G20 summit in Toronto, "[a]ll decisions were made by NYC-PLC regarding legal support and accountable to the NYC activist community."[43]

By late December of 2003, when NYC-PLC began sharing its plans for the 2004 RNC, this approach was made even clearer:

> We feel it is crucial for us to let people know exactly what they can expect from us during the RNC and encourage the other legal groups providing mutual aid during the protests to present what they will do and not do. That way everyone attending the RNC will be able to make informed decisions about their actions.[44]

Based on the collective's "experiences in Québec City, WEF, AntiWar protests and [its] involvement with other collectives doing similar mass demonstration type of things",[45] the widely-distributed RNC legal support planning document underscored two key principles: first, NYC-PLC would coordinate with "other allies in the NYC legal community" but its decision-making process would remain autonomous and second, the collective would be "working as partners with activists and organizations and not as "service providers" to activists".[46] The level of detail devoted to the WEF and RNC models stands in contrast to

[43] *Ibid*.
[44] Email to Law Collective Network listserv (27 December 2003).
[45] *Ibid*.
[46] Doc 113 ("NYC-PLC's Role in providing Legal Support during the RNC").

NYC-PLC's "Legal Support for Demonstrations and Actions" guide distributed just two years earlier which simply stated, "Find out what role activists would like legal to play. The less that is left to assumptions the better. Clearly communicate what legal is able to do."[47]

In March 2002, NYC-PLC had circulated a self-assessment of their anti-WEF legal support model and invited feedback from the Legal Collective Network. A member of the Midnight Special Law Collective who had worked on legal support during the anti-WEF mobilization wrote:

> I agree with PLC that our role is not to dictate legal strategy to people. How can we do that while making sure that there is some kind of strategy? If mobilizations or groups that we're working with are only coming up with legal strategies after there have been mass arrests, then there's a big problem.[48]

A member of Philadelphia's Up Against the Law! Collective responded, "I disagree with some of what has been said about 'strategizing.' I think legal kids should play a 'leadership' role in that, and I think we can do that without 'dictating' anything. We're not only there to support folks, but to get them out…"[49] These statements represent the two poles of one of the most persistent debates within radical legal support circles: should legal support organizers participate in movement decision-making, and if so, how?

Minutes of the Law Collective Network conferences held in the early 2000s record consistent concern about how the provision of legal information and support impacts organizing decisions. One participant at the 2005 conference reflected that "[i]n the old days, setting strategy by dictating it was oppressive but effective, although we weren't

[47] Doc 47.
[48] Email to Law Collective Network listserv (1 March 2002).
[49] Email to Law Collective Network listserv (4 March 2002).

accountable to people when we did it. How do we spread the power we have strategically to other people?"[50] Presumably referencing earlier debates around solidarity tactics, this comment also reflects two key undercurrents to these debates: the power imbalances resulting from the acquisition of legal knowledge and the potential role of that knowledge in shaping movement strategy. A 2003 conference attendee put it this way:

> The role of legal collectives is not to develop strategy but to explain the [legal] consequences. The philosophy is we don't know what you did and we don't care, we are here to support you. But the role of the legal collective, it's more of a support for mass action stuff, I don't see my role is to guide or strategize the action of a group.[51]

More than a decade later, Mac Scott of NYC-PLC, MDC, and other collectives explained the core problem in relation to the capacity of movements and organizers:

> We can carry a lot of weight in terms of how we deliver information or advice. And I think we should avoid advice with movements, by and large… We can weigh what our own political biases are, our own privileges, in the name of advice, instead of just realizing that these groups can actually make smart, strategic choices with the right information. And often have more information than we do. So I shy away from giving tactical advice.[52]

Abi Hassen of the Black Movement Law Project [BMLP] voiced a similar approach: "we played an advisory role with groups that were trying to plan different kinds of actions but I think we were pretty explicitly not trying to like direct… even if we had strong disagreements about tactics or strategies."[53] Minnesota's Coldsnap set out the problem as one of 'informed consent': "We don't tell you these things [legal information] to discourage you from running risks, if that's what you want and need to do. We respect

[50] Doc 92.
[51] Doc 89.
[52] Interview of Mac Scott (23 April 2017).
[53] Interview of Abi Hassen (27 February 2017).

everyone's right to choose the ways in which they work to change the world. We do believe in informed consent, though. Know what you're getting into, and good luck!"[54]

Despite a general consensus that legal strategies and broader, especially tactical, organizing decisions should be kept at arm's length, long-time law collective members have struggled with finding the correct balance in practice. Former Midnight Special Law Collective [MSLC] member Dan Tennery-Spalding was particularly nuanced in reflecting on this problem:

> I think there is a space for the law collective movement to be part of the conversation in a way that actually is quite useful and helpful. And it would be useful, with the caveat that we don't make our support contingent on people doing what we tell them to do. And also on a practical level [there's] that thing *where if the principled people don't participate then only the non-principled people will*. So if law collectives don't participate in the conversation and some random lawyer who might not even be a criminal lawyer, might not be a local lawyer, will jump in and act like an authority and that's worse than the law collective movement using its own process to engage in the conversation.[55]

Tennnery-Spalding raises two crucial issues. The first is that mass mobilizations present opportunities for publicity and potential career advancement that can be exploited by unscrupulous lawyers (as well journalists, activists, organizations, and others), and that in those cases, participation in decision-making by legal support organizers with pre-existing relationships to movements may be both politically principled and more likely to be effective in terms of advancing movement goals. Secondly, in spite of the importance of these questions within law collective circles, it is not clear how much movements and activists have actually shared these concerns. Tennery-Spalding went on to tell me:

> I feel like all the handwringing that was done around that issue seems to be more internal than external. I can't remember other

[54] Doc 18 at 17.
[55] Interview of Dan Tennery-Spalding (9 April 2017) [emphasis added].

> people being like oh you're so fucked up for being part of that conversation. Usually people are happy for you to be there. And I think it's also like we've been well-behaved – to make a generalization.[56]

This has generally been my experience as well; every conversation I have had with other law collective members about whether we are overstepping our perceived role can be contrasted with interactions with activists and organizers where the opinion of legal support providers is specifically sought out. AJ Withers of Toronto's Common Front Legal Collective [CFLC] discussed this dynamic in action, differentiating between direct participation by legal support organizers and their collective expertise:

> For the organizing that I do, law collectives in a formal sense aren't a part of tactical decision-making but *legal collective knowledge is*. Like me and Mac [Scott] are there in OCAP [Ontario Coalition Against Poverty] and we'll be like, 'ok guys, this is outrageous.' Or 'of these two things, they seem equivalent, but this one is far sketchier legally speaking and so if we think they're equivalent tactically, maybe we should do the other one'. Stuff like that. It depends on the relationship with the collectives. Ideally law collective members are parts of movements, but not interfering, but are there as a resource if people need it.[57]

Asked what interference would look like, Withers described a direct intervention in tactical decision-making: "'If you guys do this action there's no way you're getting legal support. You have to do this instead.'"[58]

Former R2K Legal member Kris Hermes takes a different approach to the role of legal support in his diagnosis of the reasons for the demise of jail solidarity as a core concern of radical legal support organizers, highlighting a "sense of ambiguity" about the tactic which persists among activists:

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[56] Interview of Dan Tennery-Spalding (9 April 2017).
[57] Interview of AJ Withers (25 April 2017).
[58] *Ibid*.

> Adding to the ambiguity, the legal support community has also been split on this issue. Legal support fatigue and a lack of "faith" in jail solidarity has diminished its use in recent years, but the split *has less to do with whether solidarity tactics might work* and more to do with how the legal community should engage with the broader movements it supports.[59]

As reflected in my analysis of the evolution of legal support practices and tactics over the last two decades, the near abandonment of jail solidarity as non-identification was a result of a growing reliance on localized approaches grounded in changing understandings of solidarity, themselves arising from shifts in both movement and state practices. Any "splits" among legal support organizers about whether or not to proactively teach jail solidarity tactics followed rather than led this process. Hermes suggests that legal teams' other option is to "remain neutral and only support whatever decisions political organizers make",[60] thereby potentially ceding the very expertise that makes them useful. A 2003 conference participant framed the contradiction as follows:

> It would be impossible for a collective to not engage in strategizing, an example is when a group comes up and asks should I carry an ID when [I] engage in this action. The consequences of carrying an ID during an action will come out, however, it's an indirect way of strategizing when explaining the consequences of carrying an ID and poses the question of what kind of support is needed from the law collective.[61]

Similarly, NYC-PLC's RNC planning document emphasized the need to embed and share responsibility for legal support decision-making: "We believe that effective legal support can only be achieved when the entire activist community takes an active role in its implementation and follow through."[62] Former Coldsnap Legal Collective member Jude

[59] Kris Hermes, *Crashing the Party: Legacies and Lessons from the RNC 2000* (Oakland: PM Press, 2015) at 232.
[60] *Ibid*.
[61] Doc 89.
[62] Doc 113.

Ortiz underscored the connection between legal support strategizing and broader movement capacity building:

> …legal support should be something that people are doing and thinking of and conversant with in the same ways that they are with other organizing skills and techniques. Running meetings, figuring out a target for a pressure campaign, a target for a lockdown or some kind of CD [civil disobedience], media, public speaking at rallies, dealing with the police, you know that kind of… all those different skills. It should be part of that and for the most part it's not.[63]

At the heart of this debate is the question of accountability; concerns around participation in strategic or tactical decision-making, like commitments to on-going skill development, cannot be separated from the need to maintain lines of accountability between radical support organizers and movements.

ii. Accountability v. autonomy

Accountability was a central goal of NYC-PLC's anti-WEF infrastructure: "our status as an active partner and participant in the activist community provided much needed support and "cred" on the street."[64] A sense of answerability was actively sought out and communicated. For example, members of street legal teams wore NYC-PLC armbands to "make the collective more accountable to the activist community" rather than relying on the hats or other identifiers usually worn by National Lawyers Guild [NLG] legal observers: "Our DIY armbands with black stars clearly show who are affinity is with and [that] we part of the anarchist/activist community not outside it."[65] The central importance of accountability and trust arose again and again during my interviews. Niiti Simmonds of

[63] Interview of Jude Ortiz (15 March 2017).
[64] Doc 93.
[65] Doc 93.

the MDC stated that "the relationship should be where the legal collectives… when they're part of the movements they are hopefully more accountable to the movements. That it's not like this white knight syndrome where you're going to rescue activists who are arrested."[66] Others shared specific methods of enacting accountability. Mac Scott tied accountability to involvement by law collective members in activism beyond the provision of legal support: "There's just less accountability or dialogue when… your only activism is in the law world."[67] He described the accountability mechanisms stemming from membership in social movement organizations:

> If we did legal support last night and someone got arrested and I've seen it happen and we didn't follow them up through the system then I get called up on the carpet at OCAP. There are other ways to maintain that accountability. But I just also think, I think it's different when you're embedded—when you're actually going to meetings, you're doing movement work—but you're also doing legal work.[68]

Echoing Scott and NYC-PLC's invocation of credibility, Ryan White of the MDC made a similar argument: "What I think actually pulls you into the MDC is the work you do with social movements themselves… I think we always kind of saw this idea that we need to be integrated in both as a way of proving our legitimacy or ensuring our legitimacy."[69] Former members of NYC-PLC now involved in the NYC Metropolitan Anarchist Coordinating Council legal working group [MACC Legal] tied all of these ideas together, arguing against a siloed approach to legal support, particularly by groups who "parachute" in from elsewhere:

> They have realistically no accountability to anyone in this community. So that's I think always the biggest problem, that you

[66] Interview of Niiti Simmonds (23 April 2017).
[67] Interview of Mac Scott (23 April 2017).
[68] Interview of Mac Scott (23 April 2017).
[69] Interview of Ryan White (23 April 2017).

> have these groups that become hyper specialized and it's like we're medics! We're legal! And we have special needs and desires and we're not accountable to anyone. So I think as long as there is an organic connection and real accountability, it's probably a very wise thing to have the legal collective be part of the tactical decision-making.[70]

They went on, however, to note that accountability can be in tension with autonomy, contrasting the organizational role of MACC Legal, a working group of a larger organization, with the "radical autonomy" of NYC-PLC, an independent law collective:

> [NYC-PLC] would have ideological struggles at big mobilizations because we would always roll in like 'we're our own thing'. And the organizers would be like no, you need to go through the spokescouncil and we'd be like no. Because originally we came out of this idea that we felt that anarchists were often marginalized and left behind... and they also suffered the greatest. Often the people that received the biggest charges and that did stuff that wed themselves to charges [laughs] were anarchists and a lot of these organizations were kind of more liberally and lefty and you know focused more on the large number of arrests. And we always really wanted to focus on the folks that were looking at like more serious time and were more militant, that was always our interests. And so we also didn't trust larger organizations.[71]

Similarly, another former member of NYC-PLC, John Viola, recalled that the collective had been "rooted in making the legal response a part of the strategy from the activists on the ground in the first place".[72] Connecting accountability and authenticity, he described NYC-PLC as "authorized by people who were organizing the protest in the first place. And so more authentic in that way."[73]

[70] Interview of Participants 3-5 (26 February 2017).
[71] *Ibid*.
[72] Interview of John Viola (15 March 2017).
[73] *Ibid*.

More specific critiques of unaccountability that speak to the challenges of movement building were also identified. BMLP's Hassen discussed the challenge of working in cities and communities that are not one's own:

> We worked through a lot of informal networks and people who know people. We were very clear that we weren't just gonna show up somewhere. We would kind of talk to people but we weren't just gonna show up unless someone wanted us there. Which is… I think a good litmus test. We weren't gonna show up uninvited. And we also would try not to be… not to insert ourselves into the middle and [be] the broker. You show up with resources and you make yourself the center of it all. You manage all the relationships… which is a thing that can happen if you take on too much.[74]

Also looking back on working in unfamiliar communities, former MSLC member Lindsey Shively explained how her perspective had changed since becoming an organizer and the missed opportunities she now recognizes:

> As activists we sort of assumed that our good work would speak for itself and draw people in, as opposed to an organizer mindset where we were strategically trying to bring people in, share power, share resources and share knowledge. And that was not our perspective… the fundamental dynamics were always parachuting.[75]

Shively went on to tie "activist culture" in global justice era legal support to broader critiques of that movement's whiteness,[76] stating "we worked with our friends and worked with the friends of our friends … which is why we worked predominantly supporting white young anarchists and didn't actually make substantive contributions to people of colour led

[74] Interview of Abi Hassen (27 February 2017).
[75] Interview of Lindsey Shively (10 March 2017).
[76] See especially Elizabeth Betita Martinez, "Where Was the Color in Seattle? Looking for reasons why the Great Battle was so white", *Colorlines* (2000), online: https://www.colorlines.com/articles/where-was-color-seattlelooking-reasons-why-great-battle-was-so-white.

grassroots movements."[77] Carol Tyson of Washington DC's Justice & Solidarity echoed Shively's reflections:

> Our big turning moment in thinking about race was like 'we need to stop just doing support for white anarchists'. … We must have turned people down because it got really exhausting. And being much more intentional about doing work in the communities, working with activists of the community organizations that were primarily of colour, not the sexy anarchist people.[78]

Such concerns about the lack of involvement by activist law collectives in people of colour led organizations and movements was not limited to the global justice movement. A member of the MDC told me:

> What I don't want to see is like our friends' organizations get legal support and then the people that we don't know don't. And oh, our legal collective is mostly white middle-class people. Like Black Lives Matter isn't gonna get adequate support that is realistic to their needs and what's going on in that community… how do you build relationships in that way?[79]

But activists of colour who are members of collectives noted that their participation can give rise to contradictions. For example, Ame Hayashi of Mutant Legal explained that "we didn't want to send white members to train folks in Ferguson. So there's always that dilemma… that kind of sometimes leads to a weird pressure for us members of colour to step up. In some sense like this is sort of like making the people of color do the work. But I still believe that it shouldn't be people of colour doing that work."[80] Hayashi's comments point to much broader debates about allyship and the place of white people in anti-racist

[77] Interview of Lindsey Shively (10 March 2017).
[78] Interview of Carol Tyson (6 March 2017).
[79] Interview of Participant 20 (26 April 2017).
[80] Interview of Ame Hayashi (1 March 2017).

politics,[81] as well as one crucial aspect of the legal support as service provision debate discussed below: the gender and race dimensions of legal support as labour.[82]

C. Legal Support as Service Provision

> In the old days we used to do our own legal support and fight with the lawyers for knowledge. Then there were legal collectives and I was excited to see that there was this role model for learning about the legal system and beating it without having to be lawyers or cede power to them. But instead of them being role models for the rest of us, we just... make them do that work for us. What went wrong?
>
> Participant, 2005 Legal Collective Network Conference

i. Professionalization, service, and movement building

One of the self-proclaimed core premises of law collective work is that legal support is not a form of service provision. When MSLC announced its dissolution in 2010, the first paragraph of the collective's open letter stated:

> We have reached various conclusions: *that we have been unable to break out of the service provider model*; that we are dissatisfied with jumping from action to action and leaving little infrastructure behind; that we often emulate the oppressive structures we seek to change; and that these problems are much harder to solve than we had believed.[83]

In a 2004 newsletter, CFLC succinctly set out the then prevailing position on law collectives as service providers:

> While some of us are now lawyers and paralegals, other members have no formal legal training and we have a commitment to making our legal work part of our broader activist work. We are activists and organizers ourselves – *we are not a service organization*. Common Front Legal does not look to the law as a

[81] See e.g. M, "A critique of ally politics" in Cindy Milstein, ed, *Taking Sides: Revolutionary Solidarity and the Poverty of Liberalism* (Chico, CA: AK Press, 2015) and Standing Up for Racial Justice, "Why SURJ" (undated), online: http://www.showingupforracialjustice.org/why-surj.html.
[82] See section C(ii) below.
[83] Doc 94 [emphasis added].

> vehicle for social change. We view the law, police and courts as repressive institutions which serve to uphold the property, interests and privilege of the rich and powerful.[84]

Several key ideas are summarized in this statement: an ambivalent orientation toward the legal professions, a reinvocation of the movement embeddedness set out above, and a specific political orientation toward the law and legal institutions. A member of MDC underscored the relationship between the legal work of non-lawyers and the concept of service: "The thing that I'm most interested in doing in legal support is not providing a service. I want people to be thinking critically about law and legal support and from a non-lawyer perspective."[85] Others have emphasized the dangers of professionalization and institutionalization of legal support at the movement level. Members of MACC Legal noted the impacts of "hyper professionalizing" and the connection to accountability:

> I think a really particularly egregious example of that is the stuff that came out of Occupy and there's a couple cadres of like super professional legal support people and they come in to do trainings or whatever and then just start talking down to people and ordering them around as if... they've adopted the power dynamic of being lawyers without being lawyers. And it's like, it's not they don't do good work. I mean you know they've sat at precincts for a billion hours just like many of us have sat at precincts for a billion hours... But I mean it's just kind of the danger of this specialization and like professionalization of what should be just like an inherent or innate part of radical politics rather than trying to like, *this is this is the thing that I do to the exclusion of you being able to participate in it*.[86]

Lawyer John Viola echoed this concern, telling me that the "entire milieu can be over professionalized", even when legal support providers are not "necessarily bar card holders." He noted the potentially exclusionary nature of such organizers: "they're veterans

[84] Doc 11 [emphasis added].
[85] Interview of Participant 20 (26 April 2017).
[86] Interview of Participants 3-5 (26 February 2017) [emphasis added].

from these scenes that have been doing this work for a long time [and] they might as well for all intents and purposes be a professional."[87] Jude Ortiz argued that a "destructive and false separation" arises when people who are organizing do not think about or plan for legal support:

> The service provider model of legal support… also really replicates the lawyer model of dealing with the criminal legal system. I think that we really need to subvert that, like turn it on its head in a lot of ways because it makes us only approach the criminal legal system on the state's terms… And if we only play like on their terms then the logical consequence is that like we have to rely on experts to figure out how to handle everything to do with that system or we have to become those experts ourselves. And so then we go down the route of becoming like radical attorneys or like radicals or anarchists or whoever who specialize as legal workers and then they provide these services and do those roles but it still keeps a separation and so it's still… leaves these vulnerabilities within our organizing that the state's able to exploit because this crucial function of resistance is being compartmentalized into something separate.[88]

Mac Scott, a trained paralegal and registered Immigration Consultant, highlighted the long-term impacts of professionalized, service-like legal support on capacity and movement building, particularly when lawyers or other professionals are involved:

> When it's actually embedded in movements, I don't think it's service provision. But I think it can become service provision and then that becomes detrimental to both parties. Because the lawyer, or legal professional in my case, gets resentful of the movements. The movement thinks of the lawyer as being a snotty so-and-so. And the relationship breaks down. To be fair, sometimes it's in bad ways from the movements. Like movements are like we deserve free legal representation on every case, not realizing that that's actually a very privileged thing to ask for.[89]

[87] Interview of John Viola (15 March 2017).
[88] Interview of Jude Ortiz (15 March 2017).
[89] Interview of Mac Scott (23 April 2017).

Especially for long-standing collectives, the question of how to manage their complex relationships with both local activists and lawyers without lapsing into a service role is a crucial one. At the 2003 law collective network conference, a member of Philadelphia's Up Against the Law! also brought the broader profession into this discussion, noting that the collective was "exploring alternative legal support [beyond] public interest law firms" and asked "[h]ow are we actually bringing down the system in non-legal service provider setting."[90]

A concrete example of the complexity of the service provision question for law collectives is the perceived neutrality and professionalism of legal observers. NYC-PLC's anti-WEF legal support model specifically noted that their approach to legal observing is different from that of the NLG, a comparison made by several US-based legal collectives.[91] The NLG's Legal Observer Training Manual notes that legal observers "are typically, but not exclusively, law students, legal workers and lawyers who may or may not be licensed locally" and the organization asks that they "commit themselves to act as Legal Observers and not protestors, and avoid blurring of lines between Legal Observer and activist."[92] Unlike the NLG's legal observer program, law collectives have generally undertaken this role in a manner which underscores that legal observing is not a neutral, professional service offered to (some) movements and organizations. At the 2004 law collective network conference, a participated noted that "Guild legal observers are often NOT encouraged to follow breakaway marches or unpermitted marches, so the PLC [People's

[90] Doc 89.
[91] See section B(ii) above.
[92] National Lawyers Guild, *Legal Observer Training Manual* (New York: National Lawyers Guild, 2003) at 8. See also National Lawyers Guild, "NLG Legal Observer® Program", online: https://www.nlg.org/legalobservers/. Having completed the NLG's legal observer training program at least twice and served as a legal observer for both the NLG and various law collectives, my experiences support the observations in this section.

Law Collective] street team will be filling in those gaps. PLUS some groups prefer to work with PLC rather than the Guild. Also, PLC groups are usually more mobile."[93] A few years later, the Coldsnap Legal Collective's street teams used a similarly autonomous model:

> [Street teams] differed from the NLG, from the green hats, because we had the agency to be in in the streets or in action to whatever degree the person who was wearing the armband felt comfortable versus wearing a green hat where there are limitations to how you can be involved and what you can do and where you stand in the greater spectacle. Our ideas of it are that we're out there and each person has their own autonomy and can choose to whatever extent they desire to engage in the spectacle.[94]

The question of whether or not to even field legal observers was a factor in the formation of NYC's Mutant Legal. Moira Meltzer-Cohen explained that one of the group's goals was "mutating away from a service model" and becoming a popular education group.[95] As a result of the NYC NLG chapter's policy of only training lawyers, legal workers, and law students as legal observers however, Mutant Legal was called upon to both provide and train observers despite the fact that, in Meltzer-Cohen's words, "the reason for our existence had been to get away from that [service] model and we were just perpetually being asked to come back to it."[96] But the stance of at least one law collective was closer to the NLG model. Katya Komisaruk's Just Cause Law Collective instructed legal observers that even in "an emergency situation in which they felt ethically obliged to intervene" and did so "as an act of conscience", they must "abandon the observer's role" before taking any action.[97]

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[93] Doc 91.
[94] Interview with Participant 16 (13 March 2017).
[95] Interview of Moira Meltzer-Cohen (25 February 2017).
[96] *Ibid*.
[97] Doc 26.

Mutant Legal's reluctant return to legal observing also demonstrates that law collectives can be pushed into service provision by movements and organizations. Former members of NYC-PLC described the frustration of holding numerous workshops on how to create a legal working group for community organizations that regularly called actions where arrests were common: "We would do these trainings – and not a single one ever did it."[98] They noted that in other parts of the world, "there isn't some specialized legal collective" that provides support, "[i]t's just part of the culture. But the US is terrible at it."[99] In fact, one former NYC-PLC member argued that:

> [W]hat burned the PLC out was that we became this blanket service provider… if you don't have a clear definition of who you're working with it seems it's very easy to just become a support or a service cluster and that's what PLC became, a service collective. The people that go into this stuff, especially if they're new, and they're not going into it because they want to become lawyers or paralegals or anything like that, the assumption is people that want to help and provide and give and support. Obviously you want those tendencies but they can, it can create situations where defendants become dependent. And as anarchists that's always something we're not actually interested in replicating, this kind of service model… Basically we ended up becoming just like paralegals for leftists. And we were always good at not being pushed around by lawyers and the NLG and spokecouncils. We just weren't good about being pushed around by the defendants themselves.[100]

Carol Tyson also described the difficulty of escaping the service model:

> In the beginning we saw ourselves as [service providers]. As we grew we were much intentional about actually this isn't the role, the role is to empower people... That was a tension. That actually we're not here to do everything for you, we're here to help you. And we did more later of telling people we're not going to do support for that but we'll teach you how to do it. Talking through know your rights trainings, talking people through how to have a phone line if they wanted to have a phone line. Legal observing.

[98] Interview of Participants 3-5 (26 February 2017).
[99] *Ibid*.
[100] Interview of Participants 3-5 (26 February 2017).

> Talking through how the court system works here and what the processes were and this is what you need to do for each other and this is how you do it. There was a lot of pushback after a while of like yeah, we are not your caretakers, we are not our service providers.[101]

Ame Hayashi echoed Justice & Solidarity's approach, explaining that especially with Occupy Wall Street [OWS] activists, Mutant Legal didn't want to be a "dial a know your rights group" but rather "dial a training so you can do your own stuff" group.[102] Scott made a similar observation while suggesting a potential movement and capacity building oriented route out of service provision:

> The problem is if you only do what the community wants, and this is also a classic paradigm in community organizing, then you become service providers. So if you follow the [Saul] Alinsky[103] model in community organizing you can become a radical service provider. And I've seen that in movements. I've seen movements do casework where we basically did unfunded, poor social work with a radical analysis. So I think it also has to be geared towards building campaigns on the ground. So having a grassroots group or a group of some sort that's got an on-going campaign, with goals in mind, and where your legal information workshops, your know your rights, are either bringing people into that movement or supporting the goals of that movement or both.[104]

Yet opposition to service provision as a central goal of radical legal support is not a universally held position. Meltzer-Cohen noted that for activist law collectives with relative privilege, deliberately providing legal support as a service can be a political act:

> One of the things that's happened and one of the tensions is we don't want to provide this service model. On the other hand, nor do we want to have a situation where people in communities of colour are like 'I already have enough shit to do, please do not

[101] Interview of Carol Tyson (6 March 2017).
[102] Interview of Ame Hayashi (1 March 2017).
[103] Saul Alinsky was a Chicago-based community organizer. His 1971 book *Rules for Radicals: A Pragmatic Primer for Realistic Radicals* (New York: Random House, 1971) remains widely read by organizers and activists.
[104] Interview of Mac Scott (23 April 2017).

> make me do my own jail support.' And so informally to a certain extent we will show up.[105]

AJ Withers of Toronto's CFLC placed legal work within broader conceptions of both movement service and accessibility:

> I saw Common Front Legal as doing a really essential part of movement work… a whole bunch of different kinds of work that need to be done, from childcare to going out to the demo to cooking the food and that was one of them. For me, I oftentimes couldn't go to the demo because I had [bail] conditions for a while and couldn't always walk or whatever and it was a meaningful role that I could play that wasn't on the street. Yeah… it's a piece of the movement. So if you want to call marching on the street service provision, then Common Front Legal did service provision.[106]

Sarah Hogarth of NYC-PLC and other legal support projects also questioned the political premise of the service provision critique: "It's not service, it's solidarity. It's just what you do for your people… over time some of us have certain expertise or experience in various things. I get calls about electrical problems all the time too!"[107] Tennery-Spalding also highlighted the underlying political complexity, noting that MLSC had a "love-hate relationship with that label", but that moving beyond it meant continuously grappling with the debate about legal support and tactical or strategic decision-making. He argued that the service provision question is "incomplete":

> [O]bviously we even in terms of how we decide to focus our time on like giving trainings or making know your rights comic books or whatever, we were engaging in our own form of strategy and strategic engagement with the left. It might not have been in terms of like what's our big picture view of how you want to change the world but it certainly was in accordance with our values… our idea in terms of the process, in terms of outcome. So I don't think we were strictly service providers.[108]

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[105] Interview of Moira Meltzer-Cohen (25 February 2017).
[106] Interview of AJ Withers (25 April 2017).
[107] Interview of Sarah Hogarth (12 May 2017).
[108] Interview of Dan Tennery-Spalding (9 April 2017).

ii. Legal support as gendered labour

Service or not, the actual work of legal support – staffing a legal hotline, doing jail support, recruiting lawyers, legal observing, giving workshops, etc. etc. etc. – often remains unrecognized and unseen, even when it is performed in public. The preceding pages have illustrated the enormous amount of labour that goes into providing legal support for a mass mobilization (or maintaining a standing law collective, year after year, protest after protest), while also gesturing toward the nuance of who gets the job(s) done. "It is often gender non-conforming and cis women who do this work and it's not super glamorous or visible", said one member of Mutant Legal, summing up the view of most of my interviewees as well as my own experience.[109] Coldsnap's Jude Ortiz provided a more detailed account of the gendered nature of legal support and noted that longer term legal support may be dismissed as lying outside of core organizing work:

> A lot of times when people have been targeted over the last decade or so it tends to be a lot of like young white men and then it's often young female-identified people of various races who step up into support roles. Or sometimes it will be like family members who are also female identified. Regardless, things like often kind of like stop there… that's no longer considered to be part of the movement, like organizers and stuff.[110]

Another former member of Coldsnap discussed legal support work within the context of gendered care work more broadly:

> It's not sexy… it's not what people are going to be noted for necessarily. No one's talking about like the revolutionary work of a legal worker back in the day. That's not what people think of when they think of the revolution. And I think that it gets gendered that way. I think part of what contributes to the gendering of that work is the fact that socially... there are people who are

[109] Interview of Participant 19 (31 March 2017).
[110] Interview of Jude Ortiz (15 March 2017).

> conditioned to do that kind of work anyway… that's not necessarily going to be appreciated in the same way.[111]

Connecting feminized labour and the problem of movement dependency discussed above, Carol Tyson noted the difficulty of challenging these patterns:

> The feminization of all of this… it was really tiring. We worked really hard to be respected and for people to think of us and include us and we got it but then it turned into people taking the work for granted and thinking that they would never have to worry about it. And we were like, actually no, we'll help you and we'll either train you how to do it or you have to at least give us so many people.[112]

The invisibility of the labour of legal support is attenuated by gendered norms of street protest, particularly when black bloc actions or property destruction are involved. Several interviewees mentioned the disproportionate amount of legal support resources devoted to defending young men accused of what are often seen by other activists as unstrategic or unnecessarily risky acts. One member of Mutant Legal put it this way: "I would appreciate if people maybe considered the amount of time and energy that it takes to do the legal support, which is also a lot of emotional support.[113] If their one like hyper-masculine act of aggression gets them arrested now we're spending time supporting them and not supporting other people."[114] Another member of the same collective, Moira Meltzer-Cohen, drew connections between this problem and the service provision dilemma more generally:

> The issue is that there was all this weird expectation on the part of mostly white boys that jail support, which was mostly women, was gonna show up and be there for them and they expected it so much… So we wanted to take it away from this service model…

[111] Interview of Participant 16 (13 March 2017).
[112] Interview of Carol Tyson (6 March 2017).
[113] Chris Dixon argues that the idea of "affective organizing" speaks to spaces in which activists try to move beyond the "macho revolutionary standard" and recognize overlooked care labour: *Another Politics: Talking Across Today's Transformative Movements* (Berkeley: University of California Press, 2014) at 91.
[114] Interview of Participant 19 (31 March 2017).

> and we wanted people to be more self-sufficient because it's just not an appropriate model. People need to understand. The other thing was that people were not understanding that it was labour and so they were not thinking about… they weren't absorbing the costs. And so they were taking unnecessary legal risks because there was a discourse that seemed to develop that the more often you got arrested the more legit you were, which is a really troubling, toxic, and masculine discourse in the first place. It is insulting, it's white supremacist, I mean there's some serious, serious problems. So we also wanted them to have to confront what the real costs were.[115]

Sharing the work of legal support, however, raises other problems. For example, Niiti Simmonds observed how bringing in volunteer legal observers created opportunities for unaccountable exercises of authority: "I saw that dynamic with especially like young white men around the G20 and Occupy where… it was almost like they were interested in the authority that came with being a legal observer or just some weird status thing and not a commitment to the movement itself."[116] Shively discussed the same problem with respect to legal support work as a whole:

> I think there was a way that legal work gave people a certain amount of like credibility in the scene that they wouldn't necessarily access through other avenues. And I think it attracted people who were interested in being in positions of power. I mean you're not at the center of the action right. You're not locking down most of the time… but also you have this very particular role and responsibility and like people are looking to you and you always get to speak at the meeting.[117]

She went on to note that while women were doing much of the unseen work ("Women were running the hotlines. We were the ones putting in the overnights, we were the ones coordinating, we were the ones doing the emotional labor"), men tended to take on "more high profile" tasks such as public speaking or interacting with other legal organizations.

[115] Interview of Moira Meltzer-Cohen (25 February 2017).
[116] Interview of Niiti Simmonds (23 April 2017).
[117] Interview of Lindsey Shively (10 March 2017).

"In my experience… the gender dynamic was replicated across all the legal work that I saw and participated in," Shively concluded.

Shively's experience is underscored by her former collective's statement announcing its dissolution:

> [W]e have created an internal collective dynamic that validates macho behavior and has been unable to seriously address issues of gender and power within the collective. After many months of trying, we have not made meaningful progress in resolving these dynamics. *That failure is what ultimately led to the demise of our collective*. We state it here to encourage other political groups to take anti-oppression issues seriously.[118]

Midnight Special was certainly not the only law collective to grapple with internal accountability issues, but its members' very public reckoning with gender dynamics was a significant acknowledgement that resonated amongst the radical legal support community as well as wider activist networks. Law collectives, like other activist formations, have long struggled (and often failed) to enact aspirational commitments to anti-oppressive praxis into their own accountability and conflict-resolution processes.[119] A former member of the Québec Legal Collective viewed this as something of an intractable puzzle, saying "[t]here's the role of law collectives and there's the role of law in collectives... how do you actually have governance within collectives?"[120]

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[118] Doc 94 [emphasis added].
[119] See the discussion of CRASS in chapter 4, section A above. See generally Punch Up Collective (Ottawa), "Conflict Resolution & Accountability Framework and Process" (January 2016), on-line: http://punchupcollective.tumblr.com/framework and Julia Downes, Karis Hanson & Rebecca Hudson, *Salvage: Gendered Violence in Activist Communities* (Leeds: Footprinters Workers Co-op, 2016).
[120] Interview of Participant 10 (5 February 2018).

D. LAWYERS, NON-LAWYERS, AND THE CONTRADICTIONS OF PROFESSIONALISM

> We do not operate as lawyers. We do not give out legal advice. We do want to change the world.
>
> D.C. Justice and Solidarity Collective, 2008

i. Law collectives and the lawyer question

If there is a core existential question for law collective organizers it is whether to allow lawyers[121] as members. For some collectives, the exclusion of lawyers was a hard and fast rule. Midnight Special (after the departure of Katya Komisaruk), best exemplifies this approach. A 2002 article written by three of its members states that most law collectives "are comprised entirely of activists and legal workers; in fact, due to power dynamic issues, most collectives purposely exclude lawyers from membership.[122] A year earlier, MSLC's Phaedra Travis and two members of NYC-PLC (one of them a law student), had published an article taking a more equivocal approach:

> There is an inherent power imbalance between "professionals," such as attorneys, and their clients. In radical movements for social change, it is important to try and break down these barriers and empower people to make their own informed decisions. One way to do this is by having law collectives led by community activists who work with lawyers but *who may not be lawyers themselves*. Through networking and collaboration, activist law collectives can provide a valuable bridge between the progressive legal and activist communities.[123]

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[121] Although never explicitly defined in any materials I reviewed, 'lawyers' in this context refers to members of the bar in the jurisdiction where the collective is located or working, whether actively practicing or not. Some collectives which did not allow lawyers did permit law students to join, although their longer-term status remained unclear. The minutes of the 2003 Legal Collective Network conference record the following discussion: "Midnight Special [does] not have lawyers involved in legal collectives because lawyers may lose their bar cards if they engage in specific things. This may be effective, but the question is where will law students who are in law collectives go when they graduate from law school?" (doc 89).

[122] Doc 69.

[123] Doc 65 [emphasis added]. They went on to say, "Because of the structure and function of law collectives, it is not necessary—and in many cases not even beneficial—to have lawyers as full members. Law collectives without lawyers are giving law to the people, helping to educate and inform, and empowering them to make their own decisions."

Others tied the 'lawyer question' to issues of trust and accountability, noting that non-lawyer collectives are more like to have an inherent political affinity with movements, particularly youth-based formations. Former MSLC member Shively:

> I think we had more credibility as not lawyers. Some of it is class stuff for sure. Some of it is just like sub-cultural capital, age, reputation. I mean we were anarchists, we didn't have to sign a document pledging to uphold the US Constitution. We could talk about how we wanted to overthrow the government.[124]

Mutant Legal's Moira Meltzer-Cohen identified the flipside of this dynamic, suggesting that the "field of law is so dominated by white men that I think that to some extent… legal collectives may shorthand lawyers as being untrustworthy people."[125] A former Québec Legal member who went on to practice law also noted how the presence of lawyers impacts activists' perceptions of the political potential of movement-based legal support:

> Legal collectives are able to bridge some things in a different way and the perception from the movements themselves can be different … than their engagement directly with lawyers because there is already a perception, and quite justifiably so, that lawyers are bound by a series of rules that are designed to reinforce and maintain a system that is, may well be the very system that is being challenged.[126]

A number of law collectives do include lawyers as members however, as did some global justice era collectives. Writing in 2001, Washington DC's Justice and Solidarity stated that the collective was "open in membership to activists, lawyers, legal workers, students, and community members who represent a broad range of political ideologies."[127] More recently, several non-lawyer members of Mutant Legal also spoke positively of lawyers in law collectives. One told me that "having a mixture of lawyers and nonlawyers,

[124] Interview of Lindsey Shively (10 March 2017).
[125] Interview of Moira Meltzer-Cohen (25 February 2017).
[126] Interview of Participant 10 (5 February 2018).
[127] Doc 21.

it can empower what the legal collective is able to do. And I guess I've been lucky that… in my experience, I haven't felt overpowered by the lawyers."[128] Although noting that there may be an "unfair load" on the one lawyer in Mutant Legal, Hayashi agreed: "I think it's indispensable to have a lawyer."[129] Also citing the practical benefits of the activist version of in-house counsel, lawyer Abi Hassen of BMLP argued that "[i]t helps to be a lawyer to recruit lawyers. You need local lawyers... And you need to understand how the legal system works and how lawyers think to be able to work with them effectively. If you don't understand how the law works and how lawyers think about things it's very hard to communicate with them".[130] A non-lawyer member of the MDC, which includes both lawyers and paralegals, agreed:

> I think that lawyers can bring a lot and I think that when you have people who are part of a collective who are a lawyer … versus needing to have outside relationships with lawyers to go to for help, being part of an organization gives people that ownership and that sense of like this is my thing, I need to hold it or it's going to... If we all don't hold it, the parachute will fall. So there is more willingness to commit to things I think than if we saw it as like these are all non-lawyers and we need to go to lawyers and find lawyers who are willing to help us.[131]

This focus on the need to build organizational sustainability was also articulated by a non-lawyer member of Common Front Legal, which had counted several lawyers among its ranks. Withers argued that lawyers in law collectives should have "long term political organizing and organizing experience outside of law and… continue to be tied to movements."[132] Lawyers should "step back" and not "use their knowledge and training as

[128] Interview of Participant 19 (31 March 2017).
[129] Interview of Ame Hayashi (1 March 2017).
[130] Interview of Abi Hassen (27 February 2017).
[131] Interview of Participant 20 (26 April 2017).
[132] Interview of AJ Withers (25 April 2017).

a way of manipulating the group or as a site of power."[133] Similar criteria guided the participation of lawyers in the Legal Collective Network conferences. In early 2002, the organizing committee of the first network conference in Philadelphia sought input on whether lawyers should be invited. The responses indicated that "[p]eople mostly felt lawyers… who are involved with l.c.s [law collectives] are fine to come", a consensus that would remain in place for subsequent conferences.[134]

As invoked by MSLC and NYC-PLC at the beginning of this section, the most consistent argument against lawyer participation in radical legal support organizations is the inherent power imbalance between lawyers and non-lawyers. Tennery-Spalding expanded on Midnight Special's no-lawyer stance: "our analysis was basically that lawyers would be too conservative and too domineering to be able to participate as equal collective members in a collective like ours."[135] Megan Books, also a former member of MSLC, suggested that horizontal decision-making suffers when lawyers are involved: "if there's a collective where everybody has an equal voice and there's somebody [a lawyer] saying we can't say this thing then it's probably not going to happen." Members of NYC-PLC and MACC Legal argued that organic connections and accountability to movements are compromised by the participation of lawyers:

> That's one of the reasons why we don't want lawyers in the collective, right. Cause we know that there is different obligations and the rules of the game are different. And the power is different but also honestly with very few exceptions, a lot of the even the good lawyers that we've been working with and people who come from the anarchist or radical milieu and become lawyers start seeing things very differently once they become a lawyer.[136]

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[133] *Ibid*.
[134] Email to Law Collective Network listserv (10 December 2001).
[135] Interview of Dan Tennery-Spalding (9 April 2017).
[136] Interview of Participants 3-5 (26 February 2017).

Perhaps not surprisingly, lawyers involved in law collectives tended to view power as a more negotiable terrain. Niiti Simmonds of the MDC reasoned that "if you train people who are not legally trained to do legal observing or to have a legal committee within a movement, I think you sometimes avoid those weird power dynamics. And hopefully, in theory, empower people with legal knowledge to make their own decisions, especially when they're not legally trained."[137] Reflecting on his membership in various law collectives, lawyer John Viola outlined the thought process behind his work with Legal Support to Stop the War [LS2SW]:

> I might have been one of the only lawyers involved and I think we were very clear that there was definitely a goal not to have too many bar cards because it's hard to share power. I bring a certain temperament and a certain very horizontal approach to the work that I do; I'm very critical of power relationships within collectives I think, and most the people involved knew that.[138]

Similarly, Meltzer-Cohen highlighted the on-going dialogue about her participation in Mutant Legal: "I was a non-lawyer who was involved in Mutant before I was a lawyer… It's something that I check in with them about."[139] Viola and Meltzer-Cohen's experiences mirror my own. As discussed in chapter one above, I also brought pre-law school activist and organizing experience into law collective work but perhaps more importantly, I share their commitment to openly questioning my place (and that of other lawyers) in radical legal support on an on-going basis.

Regardless of the political pedigrees of individual members, questions of lawyer participation in legal collectives and power cannot be separated from the race and gender dynamics of legal support work as a whole. Withers recalled that CFLC was made up of

[137] Interview of Niiti Simmonds (23 April 2017).
[138] Interview of John Viola (15 March 2017).
[139] Interview of Moira Meltzer-Cohen (25 February 2017).

"a range of folks with no legal experience, folks who had charges—so had that kind of legal experience—and then formal legal training" and described the collective's shift in internal practice over time, as members without formal legal education increasingly took on the education roles previously handled by lawyers.[140] I asked why this process had worked so well in that collective. With a laugh, Withers replied "Uh, gender? There was only women and trans people. It was small. I think that the people who had the formal legal training, I think you and Jackie Esmonde, the other lawyer member early on, were really committed to democratic practice and to consensus."[141] Other collectives foreground representation more explicitly. In response to a question about whether Mutant Legal has a specific policy about lawyer membership, Meltzer-Cohen said, "No. I think our policy is we really want to make sure that we don't have any more white people."[142]

While not entirely separate from the problem of power, the potentially depoliticizing impact of lawyers' participation in radical legal support is also consistently invoked. Often the risk is seen as inherent and all encompassing. At the 2003 Legal Collective Network conference, a participant stated that "a collective's role is to make the trials political, when lawyers are involved, they are de-politicized."[143] Law school and other aspects of lawyers' professional training are commonly cited as the root of lawyer's depoliticizing impact. MSLC's Shively:

> The training that lawyers go through necessitates that they're going to have different objectives than their clients might and I think I appreciate the work that non-lawyers do in the legal field, that legal workers do to sort of like help people figure out how to pursue their political objectives through their cases.[144]

[140] Interview of AJ Withers (25 April 2017).
[141] *Ibid*.
[142] Interview of Moira Meltzer-Cohen (25 February 2017).
[143] Doc 89.
[144] Interview of Lindsey Shively (10 March 2017).

Mac Scott of the MDC, a paralegal, made a similar claim, arguing that legal training results in an inability to participate effectively in long-term movement building:

> I think it's very difficult to build anything that's lawyer led. For better and for worse, when we work in the legal field… when you go through law school, it's very hard not to adopt a certain mentality. And that beyond even the privilege, the mentality is difficult for movement work.[145]

Another member of the MDC pointed out that lawyers, especially criminal defence counsel, tend to have little or no familiarity with activist tactics: "the politics of mutual support and solidarity is missing from that mainstream fancy lawyer's perspective."[146] But for Sarah Hogarth, the question of political orientation has less to do with professional credentials than with connections to movements and communities:

> Radical and legal support needs to be about autonomy and self direction and agency… whoever's most impacted, the people needing the support. I really think that's the core of the idea right. And that's the utility of the law collectives. *The point is not actually whether or not people are lawyers*. It's a question of whether or not people are accountable to what their community is, where they're coming to that work from. Is it self-defence? *If it's self-defence that's really different than like a professional role, regardless of how people make a living*… But there's a lot of benefit to having people with more legal experience and information, to be able to access them.[147]

Hogarth's perspective backgrounds professional credentials and emphasizes the central issue at the heart of the service provider debate: the need for accountable and embedded relationships between legal support providers and activist communities.

The dissolution of the Common Front Legal Collective and our resulting transformation into the Movement Defence Committee bears out this analysis. Withers

[145] Interview of Mac Scott (23 April 2017).
[146] Interview of Participant 20 (26 April 2017).
[147] Interview of Sarah Hogarth (12 May 2017).

described the thinking behind the shift to a more professionalized legal support committee with fewer activists and more lawyers and paralegals:

> We had this kind of ongoing discussion... how do we get lefty legal workers to do legal work for us? And should organizers not be doing legal work, should they just be doing the organizing? So we decided that it would be better to transition, like get rid of Common Front Legal and start a more professional group so that we could involve the professional body and get them doing more legal work. And have a good relationship with activists but not have the activists carrying the legal side... And I think that that was a mistake.[148]

Asked why, they replied:

> The emotional labour that CFL did, that was so valuable, got lost. It's lost now. So one of the jobs we had in CFL was the lawyer follower-around. So the lawyer would go talk to the family, devastate the family, and the person would go in and be like 'here's why your kid is not going to jail'. And like hold their hand, explain what was going on. With the new professional group they refused to do that basically because they were like 'well we're the good guys. And we don't do that'.[149]

Several facets of loss are evident here. Movements lose the bridging and 'translation' function of a less professionalized collective. Abandoning this role – dubbed "lawyer handling" by NYC-PLC in 2001[150] – normalizes a service model and eliminates prospects for empowerment and capacity-building. Opportunities to reduce the collective costs of repression may also be wasted. Withers went on to note the importance of on-going emotional support for defendants:

> In Common Front Legal we used to match personalities with lawyers and that was really important. And now people just get assigned lawyers because… they're like we're professionals and we can do this. That makes sense from that perspective but from the perspective of the person that I'm talking to and who's crying and I know what lawyer's going to be best for the person that's

[148] Interview of AJ Withers (25 April 2017).
[149] *Ibid*.
[150] Doc 47.

> crying and what lawyer is not going to be that good, it doesn't make that much sense."[151]

I do not want to suggest that only non-lawyer law collective members are capable of this kind of work but rather to continuously reaffirm the crucial importance of accountability and solidarity in radical legal support work. A non-lawyer member of the MDC specifically called for abandoning the legal/emotional division of labour:

> The more that nonlawyer people can do in collectives the better. And building those relationships that are more than just like the lawyers provide the services and the non-lawyer people do the emotional labour I think is a way that I can see it working out really easily, and figuring out ways to balance that and build the skills of non lawyers and just break those power dynamics that exist in society in general and reproduce in a legal collective.[152]

There are also very practical impacts of an evolution like the one from the CFLC to the MDC. Lawyer Ryan White observed that "the MDC now is very different than it was when the majority of people were not full time legal workers or professionals" and noted the challenge of sustaining long-term activism as members' professional and personal commitments change.[153] A non-lawyer member of the collective was more emphatic:

> I think that there's value in having access to lawyers and I think that lawyers being a part of an organization helps. I think that *a lawyer dominated organization has proved very frustrating and hard*. Our meeting got cancelled last night because not enough people could come. The schedules are always changing and it's really hard.[154]

[151] Interview of AJ Withers (25 April 2017).
[152] Interview of Participant 20 (26 April 2017).
[153] Interview of Ryan White (23 April 2017).
[154] Interview of Participant 20 (26 April 2017) [emphasis added].

ii. Legal ethics: theirs and ours

Lurking behind critiques of lawyers as depoliticizing, demobilizing, and disproportionately powerful are both the perceived and actual limits imposed by professional ethics and regulation. The most pervasive such allegation – that lawyers working in and with legal collectives 'play it safe' – sits at the very confluence of assumed and real ethical restraints. Two sets of scenarios are evident in the materials produced by law collectives and were repeatedly mentioned during my interviews. The first set of issues, discussed below, involves defendants facing criminal charges and their supporters and generally revolves around lawyers' reluctance to make room for non-traditional solicitor-client relationships. The second and more common concern is held by organizers of protests or actions who encounter the tendency of lawyers to advise activists of (only) the most serious potential consequences of proposed activities or to avoid engaging in discussions of future or hypothetical actions at all. In tandem with the power dynamics arising out of the participation of lawyers, this tendency has the "possibility of chilling organizing", as a non-lawyer member of MDC explained:

> In my experience, lawyers tend to play it safe because their role is to get people out of trouble and protect people from getting in more trouble and versus an activist… who maybe thinks of the long-term impacts of that and whether or not that tactical choice is what is needed regardless of the outcome. So making a tactical choice could come from a different place for each of those two people, and people tend to put lawyers on pedestals and listen to what they have to say over non legally trained people.[155]

Former members of NYC-PLC who had left the Occupy Wall Street [OWS] Legal Working Group over the issue of lawyer involvement also referred to the "chilling effect" of lawyers' well-meaning but conservative advice: "From a legal perspective it's not a helpful – and

[155] Interview of Participant 20 (26 April 2017).

certainly not a politically wise and tactically helpful way of making decisions. It might be legally correct but politically it's toxic."[156] Both lawyers and non-lawyers questioned where the boundaries of professional responsibility actually lie. Common Front Legal's AJ Withers said, "I think a lot of lawyers… are looking for reasons to not speak out or take action."[157] Lawyer John Viola agreed:

> What do I need to do to make sure that my bar card is not going to be taken away? But you have a lot of room to maneuver there and I think a lot of attorneys use it as an excuse to water down other people's politics, they're politically uncomfortable with people asking them to step up to a radical demand in the street. And so… they invent reasons, ethical reasons.[158]

Jude Ortiz suggested that lawyers' attachment to their professional designations mean "they tend to be way too guarded in that regard."[159] MDC's Macdonald Scott, a paralegal, reflected on his own experience in navigating professional responsibility frameworks:

> We're so constrained by our professional codes. And I think sometimes to be fair also we're a little more serious about that than we need to be. Instead of looking at – like we're trained as legal people to look at the worst possible scenario – so instead of looking at what's realistic in terms of getting in trouble with our professional body, we look at what is possible, what the worst outcome is. So I've seen lawyers all the time give very conservative advice to movements because they're worried, they're worried that if they don't do it "the right way" they're going to get in trouble with the Law Society.[160]

A non-lawyer member of the MDC also cited lawyers' predisposition to focus on the worst-case scenario but went on to explicitly recognize the risks faced by lawyers working with protest movements: "we don't have a lot of radical lawyers who are willing to defend

[156] Interview of Participants 3-5 (26 February 2017).
[157] Interview of AJ Withers (25 April 2017).
[158] Interview of John Viola (15 March 2017).
[159] Interview of Jude Ortiz (15 March 2017).
[160] Interview of Mac Scott (23 April 2017).

people for protest stuff. I don't want to see somebody get disbarred. I don't want to put anybody in that situation or risk that situation. And people get burned out."[161] Sarah Hogarth, a non-lawyer, placed lawyer's risk exposure within a broader political context of varying risk:

> When we ask people to help us on… political projects, one of the things that we remember is risk. And if you ask, make a request of somebody and you're aware that they have a different level of risk than you do – that's a factor. So that's true with our lawyer friends for some things… It's a big ask when there is additional risk there especially if that's a risk that I don't have.[162]

Non-lawyers involved in radical legal support do not contend with legal ethics only in their relationships with lawyers. Implicit within activists' frustration with lawyers' perceived conservatism is a frustration with what is seen as an overly formal distinction between legal information and legal advice. At the 2003 Legal Collective Network Conference, a representative of Québec's Libertas collective described one aspect of this orientation:

> [T]here is a difference between giving 'information' and giving 'advice.' It's interesting to see how advice can be given through information. Examples would be, how do we describe a plea bargain, this is how a criminal case works, etc. We do give advice and I think we need to be conscious of how we give it.[163]

In an interview, a former member of Libertas who had gone on to become a lawyer elaborated on this claim and tied it to the question of lawyer participation in law collectives:

> There's no reason for a lawyer to be involved in providing the kind of advice that somebody who's a non-lawyer might be able to provide... A lot of the advice that a legal collective might give would be… more of a discussion around tactics or around actions or around planning and things like that, the practicalities of doing political actions. There's not any reason for a lawyer to be involved

[161] Interview of Participant 20 (26 April 2017).
[162] Interview of Sarah Hogarth (12 May 2017).
[163] Doc 89.

> in that and you jeopardize the lawyers – like on both sides. One is that the lawyer by definition is somebody who has an interest in maintaining their status within the legal system and therefore will engage in discussions from a certain perspective. And also, law school changes your way of thinking about the world.[164]

Withers approached the issue from their perspective as a former tenant hotline operator, arguing that some lawyers needlessly avoid informing people of the consequences of violating the law: "Lawyers can do that too and not tell them to do it but be like, this is what some people do and this is what the consequence is. And that's not counselling. These are potential actions and potential consequences."[165] Noting the importance of local context in such conversations, Scott also dismissed the specter of counselling an offence in his description of law collective practice:

> What a legal collective can do is go down the middle and say, 'look, doing this action – painting this bank's window – can be charged with mischief. But for the last ten years, we have not had a single person charged with mischief and had that charge successfully prosecuted.' And I just don't think a lawyer, or most lawyers, will feel comfortable saying that. They're gonna be like 'oh my god, I'm counseling mischief.' Whereas an activist has the legal knowledge that this is a mischief charge, but that we've fought twenty billion of these and we've beat all of them.[166]

Withers and Scott's comments suggest the operation of an implicit, parallel set of (non)professional ethics, a contention that will be explored more fully in the next chapter. But some aspects of a radical legal support ethic are explicit, particularly those which inform activists and organizers' relationships with lawyers, as clients, as colleagues, and even as comrades.

[164] Interview of Participant 10 (5 February 2018).
[165] Interview of AJ Withers (25 April 2017).
[166] Interview of Mac Scott (23 April 2017).

Solidarity, as both a set of tactics and a unifying praxis, lies at the heart of such an ethic but neither form is easy to reconcile with the professional practices of the vast majority of lawyers. Legal collectives have long sought to address this problem by bridging the gap between the collective, solidarity-based approach of activists and the profession's individualizing, client-focused advocacy model. In 1999, the Direct Action Network [DAN] Legal Team advised anti-WTO protesters that "[i]n a mass civil resistance setting, your best protection is in solidarity, not in attorneys… Lawyers can be helpful in negotiating plea agreements – though it's important to have direct dialogue with the judges and prosecutors yourselves."[167] Midnight Special's solidarity handbook stated that "[m]any times lawyers have concerns about Legal Solidarity. Share written materials on consensus process and Legal Solidarity with the lawyers, including this handbook. Urge the attorneys to consult with colleagues who are experienced in Solidarity-based criminal defense, such as the legal team for the action."[168] A list of "typical lawyer concerns and suggestions on how to *neutralize* them" follows, all of which aim to assuage lawyers' apprehensions about solidarity tactics which focus on collective outcomes rather than the release or defence of any one individual.[169] In a guide to organizing legal support for a protest, Common Front Legal made a similar practical suggestion: "Try to meet with… lawyers beforehand to explain the special needs of activists arrestees – for example activists are less likely to accept oppressive bail conditions, and are highly unlikely to plead guilty."[170] But Scott noted that "even when our lawyers 'get' solidarity – because they come out of movements – they're still worried about that one person", their own client. While well-meaning, this

[167] Doc 19.
[168] Docs 42 and 76 (two versions of the same handbook).
[169] *Ibid* [emphasis added].
[170] Doc 9.

"client focus", he added, makes it hard for lawyers to look at a bigger picture of the impacts of an action overall.[171]

A related and equally long-standing facet of radical legal ethics is a principled 'leave no one behind' position grounded in respect for a diversity of tactics in movement strategy generally and street protest in particular. A member of Mutant Legal articulated this principle in the context of gendered legal support labour:

> There are actions that occur during protests that… could be labelled as like hyper masculine or toxic masculine actions that generally get, often get cis white dudes arrested and then us gender nonconforming and cis white women who always come and do jail support and legal support *because we're not gonna leave anyone behind*. But now our time and energy is being used on this one person that's taking away from our time and energy being used for other people.[172]

Withers discussed this approach as an issue of explicit law collective intervention into the actions of local activists:

> In Common Front Legal we had a bit of a joke and a bit of a serious loose cannon list for a while... It was like 'Dude, we're taking you aside because your behaviour is putting everyone around you at risk,' but that was about particular individuals, not about organizations. With Common Front Legal, there were times where we were like 'we're not ok with this person's behaviour, but we will like… we're gonna get them out of jail'.[173]

CFLC's 'loose cannon list' underscores the Withers' comment in section B(i) above about the boundaries of legal collective involvement in strategic or tactical decision-making. If, as they argued, impermissible interference is the withdrawal of legal support, individual interventions coupled with a broader leave no one behind ethic remain well within the accountable, movement-embedded model of law collective work. At the 2005 Legal

[171] Interview of Mac Scott (23 April 2017).
[172] Interview of Participant 19 (31 March 2017) [emphasis added].
[173] Interview of AJ Withers (25 April 2017).

Collective Network conference, one participant summed up the model this way: "we commit to defending everyone involved, whether serious charge or not, whether activist or passer-by, whether during the action or before/after. *We share this ethic*."[174] This ethic is not an activist equivalent of the criminal defence lawyer's pledge to 'defend the indefensible' but rather an orientation founded on a commitment to intra-movement accountability and solidarity. This distinction became all too relevant during the 2010 Vancouver Olympics. After initially working in concert with the lawyer-led British Columbia Civil Liberties Association [BCCLA] to provide legal support for anti-Olympics protesters, the Olympic Resistance Network Legal Committee [ORN Legal] set up a separate arrest hotline and legal support office only a few days after the start of the Games.[175] The split was caused by the BCCLA's public comments denouncing the actions of protesters during the militant Heart Attack action and praising the police for their "light touch" during the demonstration.[176] The BCCLA had not sent its legal observers to the protest, as requested by ORN, and there was considerable anger among ORN Legal members and volunteers about the BCCLA's decision to comment on the actions of protesters.[177] The visiting members of the MDC continued working with ORN Legal and helped them set up an *ad hoc* legal support office. After returning to Toronto, we sent a statement of support on behalf of the MDC to ORN and other anti-Olympics organizers which read in part:

> The MDC is dismayed by the decision of the BC Civil Liberties Association to appoint itself the watchdog of the anti-Olympic

[174] Doc 92 [emphasis added].
[175] See chapter 4, section C.
[176] Darcy Wintonyk, "Watchdogs skip protest after request from anti-2010 group", *CTV News* (16 February 2010), online: https://bc.ctvnews.ca/watchdogs-skip-protest-after-request-from-anti-2010-group-1.483959.
[177] See e.g. Vancouver Media Co-op, "The NLG vs BC Civil Liberties" (15 February 2010), online: *YouTube* https://www.youtube.com/watch?v=6Wd7vUOCE8M.

> movement and to harshly condemn protesters in the mainstream press. We believe in supporting a diversity of tactics and that discussions regarding tactics and strategy ought to happen in honest face to face discussions rather than in the corporate media.[178]

A radical legal support ethic can encompass the creative or strategic use of professional ethics or rules of conduct. In the US, the wider scope of attorney work product privilege is regularly invoked by law collectives and legal observers with respect to notes, legal forms, and other materials created by non-lawyer radical legal support providers when working 'under the supervision' of a lawyer.[179] The presence of counsel can also be helpful in other circumstances. While observing that "sometimes it's useful to have an environment" where "the power thing that's real and unavoidable and always there when you've got an attorney and non-attorneys" is not present, Sarah Hogarth explained that "I do think sometimes there's a value to having spaces where… legal support and solidarity are being discussed, hopefully with people that are very aware of privilege issues".[180] Similarly, Meltzer-Cohen said of her membership in Mutant Legal that "there is some benefit to privilege extension. There's some benefits to them having a lawyer attached. Maybe a strengthened 4th Amendment protection with respect to our meeting places."[181] But at the same time Hogarth noted that "[p]eople have this really distorted… they have this idea that attorney client privilege, for example, is this magic bullet that it is not."[182]

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[178] Email from the Movement Defence Committee (18 February 2010).
[179] See the NLG Legal Observer Manual, *supra* note 92 and Doc 70 (CRASS) at 18: "In all your planning, don't forget to think about what to do in case the worst-case scenario happens and the legal support office gets raided. It's a good idea to have a plan for quickly removing and destroying all sensitive data in the event of a police raid. For example, if you get raided and have the opportunity to do anything about it, turn off all the power strips that the computers are plugged into so the cops can't get to your data and have the lawyers grab the intake forms as attorney work product to help protect them."
[180] Interview of Sarah Hogarth (12 May 2017).
[181] Interview of Moira Meltzer-Cohen (25 February 2017).
[182] Interview of Sarah Hogarth (12 May 2017).

Along with confronting questions of power and influence, Meltzer-Cohen and other lawyers with deep roots in movement-based legal support work are adept at navigating across and between both sets of ethical frameworks. Niiti Simmonds said of her work in the MDC:

> I still feel comfortable as a lawyer saying there's a big gap between law in theory and law in practice and having a discussion about your privileges and how they affect how you interact with cops in protests. I feel really proud to be connected to hopefully a tradition of radical lawyers providing support for social movements... Of course I'm going to say critical things about the state and police.[183]

The clear positionality of Simmonds' approach is echoed by John Viola's reflections on his work in various collectives and as a movement-based defence lawyer. Discussing the "ethical red flags" potentially raised by doing legal workshops with organizers planning an action, he explained:

> I think about [it] in terms of corporate counsel telling people how to stash their money in the Cayman Islands. I think of the work that I do… which is to say that I don't tell people what to do, but I can tell them what the consequences of certain behaviors might be. I'm not advocating those behaviors and saying they should engage in those behaviors. And I think that's very different than how a more liberal attorney is going to look at it. And of course for years and years I've thought about things like conspiracy charges, whether or not you'd be charged with conspiracy. I think I've just learned how to walk that tightrope without feeling uncomfortable about it, so it doesn't come across to the people I'm working with – because it's not this unresolved tension in how I approach something.[184]

Viola's perspective can be viewed as an exception to the 'lawyers play it too safe' critique and a reminder that a radical legal support ethic is not necessarily bounded by the presence or absence of professional credentials. But as non-lawyer Jude Ortiz pointed out, it also

[183] Interview of Niiti Simmonds (23 April 2017).
[184] Interview of John Viola (15 March 2017).

reflects skills learned over years of movement work and a particular orientation to one's professional status:

> It's a hard thing for lawyers to figure out how to be both activists and lawyers in those different ways. And some have figured that out and it would be rad to see them explain how they do that. And I think in large part that's just actually not being super tied to their role of lawyer and seeing that's a skill that they can offer and even if they do it's not the only way they can be involved.[185]

Noting that it can be difficult for lawyers to do the sort of legal trainings Viola describes without creating a conflict of interest that would preclude representation if those activists were to be criminally charged in the future, Ortiz went on to suggest a broader role for radical lawyers working with law collectives:

> I don't think it would be such a bad thing if we had radical attorneys, anarchist attorneys who constantly got themselves conflicted out but were involved with lawyers, legal teams, in ways that legal workers or activists who aren't attorneys aren't gonna have access to. So even if they're not on the record representing people, there's still a lot of like really valuable roles that they can play.[186]

Grounded in the goal of long-haul movement building, the radical legal support ethic evoked by Ortiz, Viola, and others catalyzes contradictions and opportunities for lawyers and non-lawyers alike, highlighting the potentially generative correlations between movement and professional legalities.

[185] Interview of Jude Ortiz (15 March 2017).
[186] *Ibid*.

E. MOVEMENT LAWYERING AND RADICAL LEGAL SUPPORT: CONNECTIONS AND DISJUNCTURES

> The agent of change is not the lawyer, is not the legal professional, the agent of change is the people who are organized to resist and fight back against oppressive conditions.
>
> John Viola, 2017[187]

This section maps the work of law collectives and other radical legal support providers onto the literature on movement lawyering with the aim of demonstrating that the activist legal support work carried out by (mostly) non-lawyers contributes to central and long-standing questions within that literature. The debates set out above – on the role of legal expertise in movements for social change and the connections between legal work and accountability, service, legal ethics and above all, movement building – have long been the subject of legal scholars' work on movement lawyering as well. I begin by situating the debates of radical legal support organizers, as well as the changes in radical legal support practice detailed in chapters three and four, within the broader historical trajectory of movement lawyering practice and scholarship, revealing corresponding shifts in approaches to movement-based legal work during key moments by both lawyers and radical legal support providers.

A review of the literature discloses at least three competing timelines of the emergence and development of movement lawyering in the US. In his study of client activism and progressive legal work, Eduardo R.C. Capulong details five phases of progressive lawyering in the US. His timeline historicizes various lawyering approaches to

[187] Interview of John Viola (15 March 2017).

client activism in order to trace the evolution of progressive lawyering theory in both professional practice and the legal academy:

> [P]eople's, movement and poverty lawyering in the 1960s and early '70s (collectively, "movement" lawyering); public interest lawyering in the 1970s and beyond; critical lawyering "on the margins" in the 1980s; community or "rebellious" lawyering in the 1990s; and "social justice" lawyering or "law and organizing" in the millennium.[188]

Published in 2009, Capulong's analysis concludes with the global justice movement, which he cites as one example of "greater popular activism animated by reascendant left-liberal politics" in the first decade of the 2000s. Capulong describes analogous developments in progressive lawyering theory, including the rise of law and organizing approaches and the return of "revolutionary" goals to progressive lawyering lexicon – if not practice.[189] He concludes that progressive lawyering has come "full circle", from "the revolutionary project of the movement lawyers of the 1960s to the nascent radical if not revolutionary project of social justice and "law and organizing" lawyers of the millennium."[190]

Building on Scott Cummings' movement liberalism analysis, he and Susan D. Carle look at the law and social science literature to map out a similar timeline, arguing that the 1990s saw the emergence of two "alternative concepts of activist lawyering".[191] These lawyering models responded to the two key critiques of movement lawyering discussed at the beginning of this chapter, efficacy and accountability,[192] critiques which reflect "ongoing anxieties over the accountability of lawyers and the efficacy of legal strategies in

[188] Capulong, *supra* note 1 at 130.
[189] *Ibid* at 179-80.
[190] *Ibid* at 180.
[191] Carle & Cummings, *supra* note 15 at 455.
[192] Cummings, "Foundational Critiques", *supra* note 15 at 1989. See Section A above.

progressive movements for social reform".[193] The first alternative model, community collaborative lawyering (such as Gerald P. López's rebellious lawyering[194]), arose in response to efficacy-focused critiques of top-down impact litigation while the second, cause lawyering, responded to accountability-based critiques of professional neutrality and a focus on client-centeredness at the expense of movement goals.[195] Like Capulong, Carle and Cummings locate community, rebellious, and cause lawyering in 1990s, but their framing of what came next departs somewhat from Capulong's timeline. Rather than making specific mention of law and organizing[196] or revolutionary lawyering, they argue that what emerged is a distinct model of movement lawyering which arguably subsumes some features of both of these approaches: "contemporary movement lawyering represents less a dramatic break with the past than a reconceptualization of practice that emphasizes different features of advocacy and distinctive aspects of lawyer relationships with clients and constituencies."[197] Such lawyers are accountable to "mobilized social movement organizations that have the resources and political power to advance campaigns" and thus there is less concern about lawyer domination of clients because "social movement groups are organized and sophisticated—able to assert power in collaborations with lawyers."[198]

Finally, Aaron Samsel proposes a third formulation in his study of law *as* organizing, maintaining that the "scholarly and applied fields" of public interest lawyering which center "theories and methods of collaboration between lawyers and organizers"

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[193] Cummings, "Movement Lawyering", *supra* note 2 at 1730.
[194] Gerald P López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Boulder: Westview Press, 1992).
[195] Carle & Cummings, *supra* note 15 at 456-7.
[196] This is an odd omission given that Cummings co-authored one of the most widely cited journal articles about law and organizing: Cummings & Eagly, *supra* note 11.
[197] Carle & Cummings, *supra* note 15 at 457.
[198] *Ibid*.

emerged from Critical Legal Studies and rebellious lawyering critiques of traditional, litigation-focused public interest lawyering.[199] All three timelines highlight an evolution in progressive lawyering practices in the 1990s and early 2000s that decentered impact litigation in favour of organizing and movement-based lawyering. I do not wish to suggest that this shift directly impacted the re-emergence and evolution of law collectives and other radical legal support projects during the same time period, but rather that the correlation underscores the relationship between movement cycles and the politics of lawyering at both the grassroots level and in more institutional spaces, including progressive or public interest legal advocacy. Two examples serve to make this relationship clearer. First, the political evolution of progressive lawyering theory traced by Capulong also applies to the evolution of radical legal support praxis. Just as the resurgence of mass protest movements such as the global justice movement reignited a 1970s-like model of explicitly social justice-oriented radical lawyering, cycles of protest and mobilization beginning in the late 1990s also sparked shifts in radical legal support organizing by non-lawyers, including the development of a law collective model which explicitly invoked the lawyer-led collectives and communes of previous decades. Emerging in part out of the complex organizing infrastructures called for by summit mobilizations, this legal support model continued to center accountability and movement building within a radical legal ethic even after the demise of the global justice movement. Second, the same preoccupation with accountability lies at the core of Carle and Cummings' contemporary movement lawyering model:

[199] Aaron Samsel, "Toward a Synthesis: Law as Organizing" (2014) 18 CUNY Law Review 375 at 383-4. Crucially, Samsel notes that the "conceptual framework" of law and organizing "predates the emergence of CLS", citing Wexler's classic article "Practicing Law for Poor People" as one example.

> We define movement lawyering as the use of integrated advocacy strategies, inside and outside of formal lawmaking spaces, by *lawyers who are accountable to mobilized social movement groups* to build the power of those groups to produce or oppose social change goals that they define.[200]

Radical legal support only becomes necessary in the context of mobilized groups and it is the form of those mobilizations that shapes lines of accountability, for both localized law collectives and more transient legal teams. The central place of accountability in Cummings' broader movement liberalism analysis also leads him to look beyond the relationship between movement actors and legal support providers (whether lawyers or not) to develop "a comparative institutional perspective [which] reveals how the foundational critiques of lawyers may be better understood as specific versions of more general criticisms of social change actors and strategies".[201] This move "reframes the accountability critique as a problem of leaders, not just lawyers"[202] while simultaneously creating space within the evolution of movement lawyering theory for the legal work of non-lawyer movement actors such as radical legal support providers. It is far less evident however, that Cummings' ultimate vision – "the new movement lawyering", he writes, "may be read as an attempt to reclaim legal liberalism—smart, savvy legal liberalism—as necessary to the realization of a progressive political project"[203] – also has room for their politics, a question the next chapter takes up.

The movement lawyering models which make up the historical trajectories outlined by Capulong, Carle, Cummings, and Samsel suggest similar points of both convergence

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[200] Carle & Cummings, *supra* note 15 at 452 [emphasis added].
[201] Cummings, "Foundational Critiques", *supra* note 15 at 1991. In "Movement Lawyering", *supra* note 2 at 1650, Cummings "argues that the rise of movement lawyering in legal scholarship should be understood as part of the foundational debate over the legacy of *legal liberalism*" [emphasis in original].
[202] Cummings, "Foundational Critiques", *supra* note 15 at 1991.
[203] Cummings, "Movement Lawyering", *supra* note 2 at 1732.

and disjuncture with the work of law collectives and other legal support organizers. Debates about movement building, service provision, and the role of lawyers in radical legal support resonate with key controversies in the law and organizing, cause lawyering, and progressive professional ethics literature. Perhaps the most foundational of these concerns is that of lawyer domination when working within movements or marginalized communities. López's 'regnant'—as opposed to 'rebellious'—lawyer is the paradigmatic problem: lawyers "consider themselves the preeminent problem-solvers", they "have only a modest grasp on how large structures… shape and respond to challenges of the status quo", and most importantly, lawyers "believe that subordination can be successfully fought if professionals, particularly lawyers, assume leadership in pro-active campaigns that sometimes "involve" the subordinated."[204] Cummings and Ingrid V. Eagly highlight lawyers' "penchant for narrow, legalistic thinking and tendency to dominate community settings"[205]. Samsel argues that "efforts by well-meaning attorneys frequently frustrate the goal of the organizers and reinforce (generally poor or marginalized) participants' dependency on lawyers and other social elites for fixing their problems."[206] William P. Quigley's empowerment lawyering model takes aim at the same hierarchical practices and advocates a style of lawyering "which joins, rather than leads, the persons represented" and is explicitly focused on preventing dependency on lawyers among organizers and activists.[207] Democratic lawyering, a term coined by Ascanio Piomelli, calls for

[204] López, *supra* note 194 at 24.
[205] Cummings & Eagly, *supra* note 11 at 494.
[206] Samsel, *supra* note 199 at 376.
[207] William P Quigley, "Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations" (1994) 21 Ohio Northern University Law Review 455 at 456 and 464-65.

considering "clients not just sources of information on the problems they face, but active partners in working collectively to solve those problems."[208]

Such critiques of traditional or regnant public interest lawyering echo law collectives' self-ascribed critiques of service provision and domination but also point to the overlap between some aspects of radical legal praxis and alternative lawyering models. In cautioning against a service rather than empowerment-oriented approach, Quigley notes that one of the very few ways in which litigation may actually be considered helpful is when "defending the organization and its members", suggesting that movement defence and empowerment advocacy may not be mutually exclusive.[209] And just as Quigley's empowerment lawyering rests on "learning to assist people in empowering themselves rather than manipulating the levers of power for them,"[210] López's rebellious lawyering model recognizes that "both professional and lay lawyers learn from and deploy story/argument strategies to exercise power in necessary or desirable ways".[211] He goes on to observe that "the work of some lay and professional problem-solvers informally resists the presumed preeminence of law (and lawyers), at times even displacing the client-lawyer relationship as central".[212] Viewed through the lens of López's framework, the work of radical legal support organizers, as explicitly rebellious lay lawyers, ought to be understood as *formal* resistance to the privileging of professional lawyers. Cummings' emphasis on the centrality of 'mobilized clients' to his current iteration of movement lawyering also leaves room for law collective practices:

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[208] Ascanio Piomelli, "The Challenge of Democratic Lawyering" (2009) 77 Fordham Law Review 1383 at 1385.
[209] Quigley, *supra* note 207 at 468.
[210] *Ibid* at 479.
[211] López, *supra* note 194 at 44. See also: Gerald P López, "Lay Lawyering" (1984) 32 UCLA Law Review 1.
[212] López, *supra* note 194 at 55.

> [B]ecause mobilized clients come to the lawyer-client relationship with structure and authority, they bring the crucial ability to hold the lawyer accountable for both the construction of representational ends and decisions about strategy to best achieve those ends. Since mobilized clients are empowered, they are better positioned to resist lawyer domination.[213]

The consistent emphasis within the legal literature on lawyers' lack of accountability, their potential for domination and dependency, and the importance of mobilized clients suggests that the self-reflexive critiques of legal support organizers indicate on-going evolution in radical legal praxis. For lawyers and non-lawyers alike, the search for methods and models which build the capacities of organizations and movements is most visible in broad theories of progressive or radical legal work of the sort canvassed here. But the inclusion of movement histories, perspectives, and knowledges reveals that the legal work of activist law collectives and legal support organizers embedded within grassroots protests movements ought to be understood as a complementary – if also sometimes disruptive – model of radical movement (non-)lawyering. Their organizational, pedagogical, and political practices (embeddedness within movement organizing structures, a critique of service provision, and a commitment to strategic and thoughtful participation in movement decision-making), should be of interest to scholars and practitioners of more conventional movement lawyering who aim to avoid regnant and dominating practices.

The embedded direct support and popular legal education skills and methods of radical legal support organizers are especially resonant with the key debates in the law and organizing literature. Just as radical legal support organizers have questioned their role in strategic and tactical decision-making, so have scholars "debated the question of whether

[213] Cummings, "Movement Lawyering" *supra* note 2 at 1691-92.

lawyers should be organizers in their own right or instead delimit their role to that of lawyer qua technician and simply partner with organizers."[214] Samsel canvasses the "significant arguments against lawyers' direct involvement with organizing activities" in more detail, highlighting 'role confusion', incompatibility with competent lawyering, and most importantly, the "concentration of leadership authority" in the lawyer cum organizer.[215] Cummings and Eagly explore the core contradiction of being a lawyer involved in organizing: lawyers have specialized expertise but at the same time they "should play only a very minor role in organizing efforts because of their potential for overreaching."[216] Such critiques echo legal support organizers' critiques of lawyers – and themselves. But beyond questions of accountability and domination during movement decision-making, the law and organizing framework also speaks to the issue of lawyers as members of law collectives. The lawyers interviewed by Cummings and Eagly for example, wondered "whether they can periodically put aside their lawyering role to assume that of an organizer."[217] Some legal collectives have clearly answered that question with a resounding 'no', but Cummings and Eagly's argument that "*experienced* lawyer-organizers may find it easy to move between the roles of lawyer and organizer in day-to-day practice, [although] how they are judged under the attorney's ethical code is a more complex matter"[218] reaffirms the position of collectives with lawyer members. This emphasis on experience lines up with the tendency of lawyers who do law collective work to have a history of

[214] Capulong, *supra* note 1 at 120
[215] Samsel, *supra* note 199 at 392-93.
[216] Cummings & Eagly, *supra* note 11 at 494. Jennifer Gordon's work explores similar dilemmas via a model she terms "law in the service of organizing": "The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change" (2007) 95:5 California Law Review 2133 at 2141.
[217] Cummings & Eagly, *supra* note 11 at 505 (FN 251).
[218] *Ibid* at 505 [emphasis added].

activism or organizing outside of the law, while also gesturing to the radical legal ethic which informs such lawyers' work, as organizers and counsel.

The same ethic is discernible in the willingness of radical legal support organizers, particularly those with professional credentials, to openly grapple with 'role confusion' between their legal and activist roles. Nancy D. Polikoff explores role confusion through her own work as both an activist and lawyer, concluding that "this dual status is tolerable only when the lawyer spends part of her time functioning as a participant in a direct action movement, rather than functioning solely as its lawyer."[219] She advocates for a model of political lawyering that avoids role confusion by recognizing that activist and lawyer roles are distinct and that when an activist role is taken on by a lawyer, they should not also act as a lawyer for that protest or action: "Client-centered counseling and participation in political decision making cannot occur simultaneously."[220] Polikoff's analysis is notable for her deep knowledge of grassroots civil disobedience organizing and thus shares some of the key concerns of radical legal support organizers. She describes doing "something not normally considered lawyering work: carrying messages back and forth between those arrested and their supporters" and notes how important it is for lawyers with access to those in custody to be willing to connect arrested activists with legal support.[221] Her description

[219] Nancy D Polikoff, "Am I My Client?: The Role Confusion of a Lawyer Activist" (1996) 31 Harvard Civil Rights-Civil Liberties Law Review 445 at 449.
[220] *Ibid* at 470. Martha Minow's response to the question of "what can and what should lawyers do for clients who entertain breaking the law as one of their strategies for achieving social change?" is similar to Polikoff's: "if the lawyer wants to make or help make the choice to violate the law for political reasons, then the lawyer should join the client as a comrade rather than serve in the role of legal advisor." Martha Minow, "Breaking the Law: Lawyers and Clients in Struggle for Social Change" (1991) 52 University of Pittsburgh Law Review 723 at 747.
[221] Polikoff, *supra* note 219 at 454. Polikoff goes on to explain that this "support work can consist of holding bail money and medicine, tracking individuals so that they are not lost in the penal system, and informing a wider circle of the arrested activist's friends and family of his or her status" and then notes that she was able to find only two references to this "lawyering function" in her exhaustive review of the literature on lawyers and clients in civil disobedience actions.

of what it may mean for a lawyer to choose an activist role includes not only risking arrest but also shaping "the political dimension of the action" – explicitly foregrounding the importance of collective decision-making to grassroots protest movements.[222] When making such decisions, Polikoff writes, "[e]very client and every activist group must have a person who can inform them of their options and help them to evaluate the consequences of their actions."[223] Highlighting these movement-building tasks – facilitating legal support and advising activists – makes an argument for the value of legal collectives to lawyers engaged in defending civil disobedience but also creates space for recognizing the more unique indispensability of non-lawyer legal support organizers. If Polikoff is correct about the inability to "live one's activism within the confines of the lawyer's role",[224] legal collectives may relieve movement lawyers of some of their role confusion and at the same time carve out a role for non-lawyers in the very spaces – pre-action trainings or workshops – where lawyers are at most risk of creating conflicts. It is clear from the law and organizing and movement lawyering literatures that various ethical issues arise when lawyers work with (or as) activists (e.g. the ambiguous formation of solicitor-client relationships in the organizing context,[225] potential unauthorized practice of law by organizers or collaborators,[226] blurred lines between "practicing law" and other lawyering work[227]), but it is less clear that the process of identifying options and evaluating consequences is inevitably legal advice rather than legal information. In locating this pedagogical work

[222] *Ibid* at 470.
[223] *Ibid*.
[224] *Ibid* at 471.
[225] Cummings & Eagly, *supra* note 11 at 503 (see also 504-5).
[226] *Ibid* at 513-6 and Ashar, *supra* note 7 at 404.
[227] Carle & Cummings, *supra* note 15 at 468-69

within a tradition of political lawyering, Polikoff's framework also points to its porous boundaries and draws connections to non-lawyer led radical legal support.

A breach of the boundary between the "political and the professional" is also evident in Austin Sarat and Stuart Scheingold's now paradigmatic characterization of cause lawyers as a "deviant strain" within the legal profession, one that "denaturalize[s] and politicize[s]" the profession's self-understanding.[228] Cause lawyering "often attenuates, or transforms, the lawyer-client relationship", sometimes in ways which invoke the solidarity-based approach of legal collectives, and "tests the limits of accepted modes of legal practice".[229] Like radical legal support organizers, cause lawyers are partisan and morally active, seeking to "decommodify, politicize, and socialize legal practice" and "contribute to the kind of transformative politics that will redistribute political power and material benefits".[230] Viewed from within Sarat and Scheingold's model, radical legal support praxis—in its aspirational as well as actual forms—serves as a concrete challenge to the ideology of law's professionalism and suggests that the ideal cause lawyer need not be a lawyer at all.[231] At the heart of Polikoff, Sarat, and Scheingold's professional politic is the affinity between (non-)lawyer and movement that also serves as the foundational precept of activist legal collectives. David Luban calls this affinity "comradeship", arguing that the ideal political relationship between movement lawyer and movement client consists of "a primary one-way commitment to a political cause, and a derivative mutual commitment to

[228] Austin Sarat & Stuart A Scheingold, "Cause Lawyering and the Reproduction of Professional Authority: An Introduction" in Austin Sarat & Stuart A Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford: Oxford University Press, 1998) 3 at 3 and 10.
[229] *Ibid* at 4.
[230] *Ibid* at 3 and 7.
[231] *Ibid* at 11.

each other."[232] The conditions of comradeship are the conditions of mutual political commitment—freedom, reciprocity, and equality—conditions that underlie each of the core debates of radical legal support work.[233] It is building and maintaining comradeship that informs questions of service provision, accountability, and lawyer participation. And it is comradeship as solidarity that continues to shape the evolution of radical legal support praxes.

Such praxes are also the focus of the next chapter, which continues exploring the radical possibilities of the ethical and political commitments of radical legal support organizers by envisioning their work as "lawyering from below" – a counter-hegemonic form of prefigurative legality. This vision rests on the two key analyses developed in this chapter: how the inclusion of radical legal support organizers shifts the political and ethical terrain of movement lawyering on the one hand and the broader field of law and social movements on the other. These analyses arose from debates about radical legal support praxis, debates which also produce distinct knowledges about repression, mobilization, and the politics of law. I now turn to an exploration of this process of knowledge production, and the role it plays in shaping the insurgent legality of lawyering from below.

[232] David Luban, *Lawyers and Justice: An Ethical Study* (Princeton, NJ: Princeton University Press, 1988) at 324-5.
[233] *Ibid* at 337.

CHAPTER 6
ACTIVIST LEGAL SUPPORT AND RADICAL LEGAL PEDAGOGY AS COUNTER-HEGEMONIC LEGALITY

With an emphasis on the popular education and anti-repression praxes of law collectives and other movement-based legal support organizers, this chapter develops a conceptualization of activist legal support as a form of counter-hegemonic legality from below. I continue relying on themes and debates drawn from my interviews and archival sources to explore two facets of the pedagogical work of radical legal support organizers: popular legal education as a political intervention aimed at capacity building and a more applied variant meant to prepare activists for the logistics and consequences of detention and/or arrest. The chapter proceeds in five sections. First, I demonstrate that the popular legal education role of radical legal support should be understood as a site of social movement knowledge production about repression, criminalization, and the operation of the criminal justice system in response to contemporary protest movements, a concrete illustration of how "[p]rogressive social movements produce new and distinct knowledges about the world as it is and as it might/should be, and how to change it."[1] In section B, I examine this form of legal pedagogy as a movement-building tool that politicizes law by demystifying rights and de-exceptionalizing the criminalization of protest movements. Third, I argue that considered alongside this pedagogical function, the direct legal assistance provided by activist legal support organizers addresses a surprising limitation of the research on state repression of social movements: the minimal attention paid to post-

[1] Janet M Conway, *Identity, Place, Knowledge: Social Movements Contesting Globalization* (Halifax: Fernwood Books, 2004) at 56 [Conway, *Identity, Place*].

arrest experiences of protesters and the impact of these experiences on subsequent mobilization and organizing. In comparison to the legal mobilization literature, this analysis reveals the potentially mobilizing effects of repression and highlights the role of radical legal support organizing in catalyzing such outcomes. Section D considers the legal consciousness of radical legal support organizers and contends that the practices of non-lawyer activists in response to repression and criminalization of dissent are evidence of a generative, distinct form of legal consciousness distinguished by recognition of the tension between law as a site of both resistance and restraint. Finally, building on these four perspectives, I conclude by sketching out a vision of lawyering from below (by both lawyers and non-lawyer activists) as a form of explicitly counter-hegemonic and prefigurative legality.

A. Radical Legal Pedagogy as Social Movement Knowledge Production

> The myth that you need special training to understand the law has been perpetuated in order to keep power in the hands of the privileged.
> Phaedra Travis, Sarah Coffey & Paul Marini, *Earth First! Journal,* 2000

Previous chapters of this dissertation have discussed key examples of the pedagogical role of radical legal support, especially Know Your Rights and jail and court solidarity trainings. In this section, I explore that role more closely by looking at the popular legal education praxes of law collectives and other legal support organizers through the lens of social movement knowledge production. After introducing the concept of knowledge production by activists and movements in more detail, I zero in on the distinct modes by which radical legal pedagogy – as both a political intervention and as a core element of anti-repression practice – generates such knowledges. I close out the section by drawing

connections to key debates about the appropriate role of activist legal support in social movement organizing.

The pedagogical work of radical legal support organizers over the last two decades has resulted in a rich archive of popular legal education resources which draw on and simultaneously fuel the generation of distinct movement knowledges.[2] Throughout both eras of social movement organizing discussed in the preceding chapters, three main goals of popular legal education emerged over and over again: demystifying and politicizing law, de-exceptionalizing the criminalization of dissent, and preparing activists for the consequences of criminalization and the operation of the criminal justice system, especially during detention, arrest, and/or prosecution. A guide to law for activists produced for the 2001 convergence against the Summit of the Americas in Québec City is a paradigmatic example, setting out the "goals of popular legal education" as:

> 1. Providing a basic outline of Canadian law as it affects people involved in movements for social change. Demystifying the law and legal processes to empower activists.
> 2. Acting in solidarity – relating our interactions with the police and the legal system to our power to act collectively through a variety of strategies and tactics. Solidarity is using group decision-making to take care of each other.
> 3. Recognizing that rights in theory do not always equal rights in practice and that our own common sense and best judgement are the key ingredients in any encounter with the police and the legal system.[3]

In the course of meeting these goals, movement-based popular legal educators have developed distinct pedagogical materials and practices rooted in the need to combine

[2] See Chapter 2, part C.
[3] Doc 64 (Toronto Mob4Glob & Québec Legal Collective). The goals as stated in this guide also appear in slightly modified forms in other activist legal support resources produced around the same time. Radical legal support organizers consistently recycled and adapted existing resources such as workshop outlines and know your rights guides (usually with attribution), reflecting an iterative, diffuse process of social movement knowledge production fueled by an anti-copyright, 'do it yourself' ethic.

radical critique with grounded engagement, "to have a perspective from the inside and the outside," as a lawyer and former Québec Legal Collective member put it.[4] Their specificity is evident in both the content and methodologies of radical legal pedagogy. A Midnight Special Law Collective [MSLC] workshop guide alerts participants that they "use role plays to give you the experience of being arrested, being in solidarity, etc. without actually getting arrested. You'll learn better and remember more when you fully participate in them. We want you to have fun in the role plays, but we also want you to take them seriously."[5] Ultimately, the insider/outsider status of movement-based radical legal support translates into a form of legitimacy. A member of Toronto's Movement Defence Committee [MDC] suggested that "there's more trust" for movement-based legal resources, noting that "antifa people aren't going to the CLEO [Community Legal Education Ontario] website to learn what to do for their first court appearance."[6]

It is through this pedagogical work that radical legal support organizers and educators generate movement knowledges. Janet Conway outlines "three distinct modes of knowing anchored in activist practice": tacit knowledge, praxis-based knowledge, and knowledge production.[7] Tacit knowledges are "generated and transmitted informally through everyday cultural practices in social movements" but unlike the legal knowledge produced and reproduced by radical legal support organizers and documented throughout this dissertation, they are "practical and unsystematized and rarely perceived as specific knowledges essential to activism."[8] Praxis-based knowledge on the other hand, results from

[4] Interview of Participant 10 (5 February 2018).
[5] Doc 78.
[6] Interview of Participant 20 (26 April 2017).
[7] Janet M. Conway, *Praxis and Politics: Knowledge Production in Social Movements* (New York: Routledge, 2006) at 21-22 [Conway, *Praxis and Politics*].
[8] *Ibid* at 21-22.

practices of reflexivity "that elucidate the ongoing dialectical relationship between action and reflection",[9] practices evidenced by the Legal Collective Network meetings of the early 2000s, as but one example.[10] Such knowledges are produced "when social movements consciously and critically reflect on their political practice to identify what they have learned about themselves and about the world they are trying to change."[11] Below, I argue that law collectives "engage self-consciously and systematically" in Conway's third mode of knowing – knowledge production – which combines tacit knowledge about activist legal support tasks and reflexive, praxis-based knowledge about movement defence and state repression in a process which "recognizes, relies on and extends the first two modes of knowing, but also involves recognition that contestations over knowledge are increasingly central to political struggle in the contemporary period."[12] In doing so, I am also placing knowledge production by radical legal support organizers within a broader tradition of outsider legal knowledges. For example, Francisco Valdes argues that among others, legal feminisms, critical race theory, queer legal theory and his own approach, LatCrit, are "expanded articulations of a critical subject position in legal knowledge production [that] also have informed the evolution of similarly justice-minded experiments in outsider legal knowledge production, such as indigenous scholarship, clinical scholarship, and post-colonial studies in law and society."[13]

Indeed, much of the pedagogical work of activist legal support reflects a conscious commitment to knowledge production. In a 2001 article written for the National Lawyers

[9] Conway, *Identity, Place*, *supra* note 1 at 56.
[10] See Chapter 3, Part C(i) above.
[11] Conway, *Identity, Place*, *supra* note 1 at 56.
[12] Conway, *Praxis and Politics, supra* note 7 at 22.
[13] Francisco Valdes, "Rebellious Knowledge Production, Academic Activism, & Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008" (2009) 8:1 Seattle Journal for Social Justice 131 at 137.

Guild newsletter, members of two global justice era law collectives made the case for popular legal education as a method of both movement defence and capacity building:

> Spreading legal knowledge is essential in protecting the movement. By presenting legal trainings, disseminating clearly written materials, facilitating discussions on tactics and doing support work for people who have been arrested, legal collectives help activists have more control over their contact with the legal system.[14]

Similarly, New York City's JustUs Legal Collective described the purpose of their Know Your Rights trainings as the on-going (re)production and dissemination of legal knowledge:

> Once you receive a KYR training, we encourage you to come back, learn how to do the trainings and share your information with others. The purpose of this collective is legal sustainability. That means you learn the skills and teach someone else—hopefully, many other people.[15]

But perhaps the clearest evidence is the very practice of insisting that non-lawyers can – and should – provide legal education for activists and organizers – and train other non-lawyers to do the same. Former MSLC member Dan Tennery-Spalding gave the example of collecting information about police tactics from activists involved in forest defence ("crazy stuff that you wouldn't expect like if the police call out to you and you're up in a tree, don't talk back to them because they'll record what you say and they'll use that to identify you in court later based on your voice") and argued that "most criminal defence lawyers probably couldn't tell you that… some of this is definitely movement knowledge we wanted to keep, that we wanted to spread within the movement."[16] AJ Withers, a former member of the Toronto-based Common Front Legal Collective [CFLC] also described how

[14] Doc 65 at 14.
[15] Doc 33 (undated, circa 2005-07).
[16] Interview of Dan Tennery-Spalding (9 April 2017).

non-lawyers can draw on movement knowledge about the actual operation of the criminal justice system when working with arrestees and are thus "able to talk people through [arrest] and be like 'don't read the *Criminal Code*'. Or [tell them] 'you're going to read it, and this is what it's going to say, and this is how it actually works.'"[17] Similarly, another former member of MSLC noted that "members of law collectives tend to know the history of protests and what kinds of consequences people have faced or… how the state has responded to resistance".[18] Lawyer John Viola described this process of knowledge production as arising from the development of specialized legal – but not necessarily lawyerly – skills:

> The reality is that you need people who have been through it. Because there are so many intangible things around doing radical legal support that even if you try to get everything down on paper you wouldn't be able to. As well, every action's different you know, and so having people who have been through it before… it's going to help with innovation; innovation can't just come from people doing it for the first time. People are going to fall into the same traps over and over again so you know so it takes some veteran skills to do that and those are things that are too intangible to get down on paper or get down in digital form that you can just distribute to people… Just having the information on paper is not enough. You can read a manual on how to do heart surgery... you can't do heart surgery afterwards. The same is true with radical legal support.[19]

In a 2005 newsletter, the CFLC engaged in an explicit intervention into the production and dissemination of such social movement legal knowledge. Reflecting on the four years the collective had been active, we compiled a list of legally "ridiculous things people have done (some of which we have done ourselves)" and noted that while sometimes humorous, these actions had "had serious consequences on the people involved. These mistakes have

[17] Interview of AJ Withers (25 April 2017).
[18] Interview of Megan Books (9 March 2017).
[19] Interview of John Viola (15 March 2017).

caused a great deal of personal and political damage and we all have a responsibility to ensure that they are not repeated."[20]

This pointed intervention into movement decision-making serves as a reminder of both the contested terrain of movement knowledges and the fact that radical legal pedagogy is not exempt from the debates about the relationship between legal support organizers and other movement actors detailed in chapter five. As former Coldsnap Legal Collective member Jude Ortiz put it, "so much of the way we transmit knowledge of how to deal with this stuff [legal support] is through a service provider model."[21] His comments highlight the influence that expertise, even when movement-generated, can wield:

> It's really hard to come through with that helpful perspective on finding context to make sense of this new and unfamiliar struggle and battle in ways that aren't coming across snobby or more radical than thou or you know as like an expert who isn't gonna be wearing a suit but will be wearing a uniform of a different kind… That power dynamic is gonna be very similar to power dynamics that lawyers come into the situation with. But even so it needs to be done so that we can decentralize knowledge of how the criminal legal system actually works and figure out how to do that in a way that helps people make smart decisions about how to fight on that terrain. One of the first steps is helping people understand that *it is* a fight.[22]

Yet just as the ideal role of legal support in shaping broader movement strategy and tactics is contingent and elusive, so is that of radical legal pedagogy. Ortiz went on to tell me that "it's also really naïve to assume that people know what [repression] looks like" and that being an ally does not necessarily require taking a back seat: "One of the bad things about popular education is that it assumes that people already know everything that they need to

[20] Examples include "Gave a fake name to the police while carrying their identification" and "Showed up to a 5am action with one other person a half-hour early and was arrested": Anonymous, "The Mistakes We Cannot Make" (doc 14).
[21] Interview of Jude Ortiz (15 March 2017).
[22] *Ibid.*

know."[23] This inescapable and sometimes contradictory nexus of movement knowledge, legal expertise, and power demonstrates why both radical legal educators and accounts of knowledge production like Conway's draw on earlier conceptualizations of and debates about knowledge and pedagogy in social movements, particularly feminist approaches and Paulo Freire's *Pedagogy of the Oppressed*.[24] Reflecting on the need to respond to experiences of exploitation and mistreatment rather than simply imparting knowledge, John Viola told me, "[w]e need to be as careful and as attentive to listening to that and learning from that as we are to teaching. And I do think that that is a Freirean model."[25]

There is no doubt that legal knowledges are a site of contestation, in both broader discourse and among movements and communities that challenge the hegemony of law's meaning-making. Highlighting the specific forms of legal knowledge emerging from direct experiences of criminalization, Aziz Choudry argues that "[e]xperiences of state repression – arrests, violence, harassment, intimidation, surveillance, and sometimes entrapment" can allow activists and organizers to "analyze state power and the interests of capital from the standpoint of those targeted."[26] Choudry's insights are especially crucial because law collectives and other activist legal support providers are almost exclusively engaged in movement defence work – they are not trying to change the world through law but defending organizers whose world-changing attempts are deemed to have run afoul of the law. Responding to repression and defending against the criminalization of dissent rather than making substantive demands for policy change through law require a different set of

[23] Interview of Jude Ortiz (15 March 2017).
[24] Paulo Freire, *Pedagogy of the Oppressed* (New York: Penguin Books, 1972).
[25] Interview of John Viola (15 March 2017).
[26] Aziz Choudry, *Learning Activism: The Intellectual Life of Contemporary Social Movements* (Toronto: University of Toronto Press, 2015) at 104.

skills and political orientations and these give rise to specific modes of tacit and praxis-based knowledge production. It follows then that the pedagogical goals of the largely defensive work of radical legal support organizers, as outlined above, are also narrower and more distinct than those of the public legal education undertaken by lawyers and organizers engaging with law as an offensive tool for social change. In a recent overview of the education efforts of LGBTQ legal organizations, David L. Trowbridge concluded that "no clear theory of how public education specifically works alongside litigation has emerged."[27] In contrast, the popular education work of radical legal support organizers, while neither static nor uniform, reveals a consistent set of objectives in terms of both theory (the politics of law and rights) and practice (policies and procedures related to arrest, detention, investigation, and/or prosecution). As a result, radical legal support organizers' experiences and engagements with law generate specific subjectivities[28] and the practices of these mostly non-lawyer activists in response to the criminalization of dissent are a window into the construction of a generative and distinct form of social movement knowledge.

The next two sections continue exploring this process and the dual functions of popular legal education for and by activists: as a capacity and movement-building intervention and as a more applied variant aimed at informing activists about and defending them from repression and/or criminalization. These analyses continue to be guided by the three goals of radical legal pedagogy identified above. Section B focuses on popular legal education aimed at demystifying the law and de-exceptionalizing the criminalization of

[27] David L Trowbridge, "Engaging Hearts and Minds: How and Why Legal Organizations Use Public Education" (2019) 44:4 Law & Social Inquiry 1196 at 1200.
[28] See e.g. Lynette J Chua, "Collective Litigation and the Constitutional Challenges to Decriminalizing Homosexuality in Singapore" (2017) 44:3 Journal of Law and Society 433 at 438.

protest movements as a political intervention into the development of groups and movements, while section C examines the role of radical legal pedagogy pre- and post-arrest as a means of preventing demobilization and countering repression. Throughout, I aim to demonstrate that the pedagogical praxes of activist legal support organizers are key to understanding how and why radical legal support can operate as a form of counter-hegemonic legality.

B. PEDAGOGY AS POLITICS: BUILDING MOVEMENTS, BUILDING CAPACITY

> We aren't lawyers, but activists who work with the law to demystify it and make it accessible to other activists. This workshop is designed for the law "on the street" – what your rights are and how cops try to trick you out of them.
>
> Midnight Special Law Collective, 2002

Embedded within debates about radical legal pedagogy are many of the same conflicts and contradictions that underlie relationships between lawyers and social movements more generally – and they provide a similarly germane opportunity for reflection on radical legal support praxis. For one, such dilemmas underscore that activist-oriented popular legal education, whether in anticipation of mobilization or as a separate undertaking, is a movement-building project. It is part of a tradition of radical pedagogy, a conscious turn toward knowledge production as a tool for growing the political capacities of protest movements. Especially for movements that are routinely criminalized and surveilled, a commitment to the cultivation of legal knowledge and collective defence expertise can help turn those movements into "repeat players"[29] in their interactions with law enforcement

[29] Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change" (1974) 9:1 Law & Society Review 95.

and the courts. At the core of popular legal education as a movement and capacity-building effort is the demystification of law in theory and practice, both generally and with a particular emphasis on rights – as a discursive as well as material preoccupation. The work of de-exceptionalizing the criminalization of dissent builds on the demystification project, aiming to use experiences of criminalization and/or repression to politicize law and draw connections to broader structures of oppression, exploitation, and marginalization. I consider both in turn below.

i. Demystifying law, deconstructing rights

In the same way that solidarity has served as a foundational touchstone for radical legal support organizers, demystification lies at the heart of parallel pedagogical approaches. As the quotes earlier in this chapter suggest, my archival research is replete with references to demystification. Two decades ago, members of MSLC explained that law collectives play a key role in sharing information, "refusing to allow the legal system to separate and silence us", and "creating bridges between the activist community and the legal community, *demystifying law*, and spreading valuable skills".[30] The 2003 Legal Collective Network conference held in Montreal opened with a general "why are we here" discussion, and the minutes record the outcome of a "goals of legal support" brainstorm as: "*Demystifying the law* by changing public views of the law. Disseminating information via alternative literature, trainings and workshops. Provide support to mass demos and arrestees. Stop the world police state."[31] At the same conference, a skill-share on trainings concluded with a

[30] Doc 69 [emphasis added].
[31] Doc 88 [emphasis added].

call to not simply educate fellow activists but to train trainers: "Our goal is to *demystify* the law and to make ourselves redundant."[32]

Demystification is most often applied to criminal law and procedure but can also encompass constitutional rights to expression and assembly and to a lesser extent, immigration and human rights law (domestic and international). More than just a commitment to the provision of plain language legal information, demystification is a political project meant to reveal the contingency and inherently political nature of law. A guide distributed in the early days of Occupy Wall Street in the fall of 2011 discloses a sweeping indictment of the US legal system, using an introduction to law for activists as an opportunity to share elements of the political analysis of that movement:

> Our system of laws exists to maintain the dominance of those in power, and the police are its armed enforcers. If you doubt this for a minute, look at who are the selective targets of local laws: the homeless, the young, the poor, dissenters. Globally, look at who dies and who gets rich from our wars and other disasters.[33]

The task of demystification, however, is not necessarily a straightforward one. In interviews, radical legal support organizers noted how entrenched – and even beguiling – a reified, idealized approach to law remains. Abi Hassen, a member of the US-based Black Movement Law Project, argued that

> Demystifying… is important cultural work. We'll live in a better world or at least a more aware world when people no longer ask "can the cops do that?" The quintessential entry to popular legal education [is] that's not how anything works. Having that type of education, I think, is really important because it's not just the legal education, it's starting to understand how systems of power operate and the law is just one of them. To stop thinking about the law as magic you know, which is how a lot of people, unfortunately, do. They think that you can find a loophole… It's a system of power that you have to understand, actually interrogate,

[32] *Ibid* [emphasis added].
[33] Doc 116.

> not just think that it exists separate from everything else. Lawyers too, right?[34]

Ortiz also brought up the limitations of demystification, worrying that it may confuse deconstruction with material dismantling: "I think we should be focused on ways of knowing or ways of thinking or ways of making decisions that benefit us and not just like try and become experts in this system and try and demystify it and therefore have power in it. I don't think that's actually possible."[35] This persistent need to balance engagement and practical advice with critique and political development is especially evident in the approach of popular legal educators to the question of rights.

Rights are a consistent preoccupation of activists and a key task of popular legal education is to fight the tendency of rights discourse to re-inscribe faith in the state and to highlight and challenge law's status as both grievance and refuge. It is no coincidence that Know Your Rights trainings and guides are by far the most common pedagogical tool of radical legal support organizers.[36] For radical legal support organizers in Canada, the *Charter of Rights and Freedoms* is inevitably invoked by movement participants, especially the sections governing criminal procedure rights during interactions with police such as detention and arrest but also rights to expression and peaceful assembly. Domestic and international human rights guarantees are also commonly discussed. Again, all of this requires a form of praxis-based knowledge production that often explicitly challenges common sense notions of legal rights which may both reify rights and overstate their emancipatory potential. Deconstructing rights, as a central task of demystification, underpins or sets the stage for other key pedagogical practices. Teaching about rights

[34] Interview of Abi Hassen (27 February 2017).
[35] Interview of Jude Ortiz (15 March 2017).
[36] See Chapter 2, part C.

requires a tricky balance of meeting people where they are (this is taken up more in the legal consciousness section below), informing them without scaring or demobilizing (Part C below), and yet also making room for political education on how rights illuminate existing structures of oppression and vulnerability. The way that radical legal support organizers talk about and teach rights demonstrates a dialectical, critical approach to the relationship between rights and social change that is reminiscent of much of the legal literature on rights scepticism or rights critique.[37]

In practice, this approach requires a constant balancing between rights in theory and rights in practice, a process made explicit in almost all the educational materials I looked at. A 2001 flyer from the New York City People's Law Collective [NYC-PLC] titled "How to Handle the Heat: Police Confrontations at Protests" advised: "Always use your judgment. Consider factors such as: de-escalation, protection of others and tactics. Remember that rights do not always equal reality."[38] Another global justice era legal primer prepared by a collective in Vermont reminded activists that "there is no assurance that your rights will be respected by law enforcement officials, but that should never discourage anyone from exercising their rights. Remember, 'this is what democracy looks like!'"[39] A more recent book-length defendant's guide put out by the Tilted Scales Collective explains the "hollowness of so-called constitutional rights" and advises defendants that, nonetheless, exercising such rights is always in their best interests. "Overall," they write,

[37] See Chapter 5, part A. Janet Mosher argues that it is through such a "dialectical relationship between critical consciousness and action that social change occurs": "Legal Education: Nemesis or Ally of Social Movements?" (1997) 35:3 Osgoode Hall Law Journal 613 at 620.
[38] Doc 49.
[39] Doc 5 (Back Alley Legal Collective).

"you might find it helpful to think of these less as "rights" and more as responsibilities to yourself, your communities, and your comrades."[40]

The practice/theory dichotomy also pushed radical legal support organizers to consider the operation of rights within a framework that weighs relative risk and privilege along intersecting lines of vulnerability.[41] The last of the three goals of popular legal education set out above in part A is a good example, especially in CFLC's slightly different formulation which explains that our workshops aimed to: "Recognize that rights in theory do not always equal rights in practice and that *our own experiences*, common sense and best judgment are the key ingredients in any encounter with the state."[42] The reference to 'our own experiences' reflects CFLC's commitment to a participatory and non-hierarchical approach to popular education but also a (somewhat aspirational) attempt to make room for people's own experiences of repression (aspirational because most of our workshops were still being held for relatively privileged activists). A know your rights workshop guide prepared by the MDC – which grew out of CFLC – specifically recognized this dynamic:

> In general, when interacting with police or other agents of the state, it can be useful to assert your rights when you feel they are being violated. However, fighting or arguing with them is often pointless and may make you the target of greater oppression. You are the best judge of the context, your own privilege and vulnerability and how much to assert yourself in any given situation.[43]

But mostly, this practice/theory approach was a question of politics, a recognition of the limitations of rights. MDC's workshop outline goes on to instruct trainers that there is "a

[40] Tilted Scales Collective, *A Tilted Guide to Being a Defendant* (New York: Combustion Books, 2017) at 26-27.
[41] See chapter 3, section C for more on the emergence of this approach as an element of radical legal support praxis.
[42] Doc 10.
[43] Doc 41.

grey zone in regards to permissible police action" and suggests they start with the following explanation: "Contextualize the legal system as oppressive, the cops are not working for you, the law is not a tool for social change."[44] Looking back on this work, CFLC's Withers explained the approach we developed:

> Once we have a little bit of that information then we can feel like we understand things, we feel powerful based on that knowledge. I remember feeling that way a lot with know your rights and trainings and that sort of thing. But it's really ultimately a false sense of power and a false sense of confidence. Some of our best stuff that we put out there tries to break that down and say, we actually don't have answers, we don't know how things are going to work. What we do know is that the state dominates and controls, it represses, destroys and disrupts any threats to it. But we don't have answers, we don't have a get out of jail free card, we don't have like 'if you do A, B, and C they can't get you'. So I think some of our best stuff talks about nuances, talks about how there's no guarantees, that it's about being safer…[45]

The need for this sort of balancing act was echoed by Ortiz who also worried that a reliance on constitutional rights guarantees "runs the risk of creating a false sense of empowerment and a false sense of… knowledge is power".[46]

As a result, most popular legal education resources and trainings tackle the questions of whether or not to assert your rights and under what circumstances. Perhaps the most unequivocally enthusiastic approach is seen in the tendency of many US-based law collectives to use the phrase "Magic Words" when training activists how to assert rights to silence and counsel during encounters with law enforcement. MSLC's 2001 Legal Solidarity Handbook advised that: "Whenever cops ask you anything besides your name and address, it's legally safest to say these Magic Words: "I am going to remain silent. I

[44] *Ibid*.
[45] Interview of AJ Withers (25 April 2017).
[46] Interview of Jude Ortiz (15 March 2017).

want a lawyer." This invokes the rights which protect you from interrogation."[47] A decade later, Occupy Wall Street [OWS] organizers used nearly identical language: "If you are detained or arrested, use the magic words: "I'm going to remain silent. I would like to see a lawyer."[48] In their Legal Primer written for the mobilization against the 2008 Republic National Convention, Minnesota's Coldsnap Legal Collective used the language of Magic Words but also noted that "Some people bring up the concern that knowing your rights is irrelevant in the face of police and state harassment and repression. Clearly, we disagree."[49] The guide goes on to outline "a number of ways in which this knowledge can help keep you, your comrades, and your community safe and out of trouble". Under the heading of "Protect Yourself!", activists are advised that

> Knowing your rights and feeling confident about your ability to assert them enables you to be mentally prepared during police interactions, more likely to stay safer, and less likely to get yourself or your friends in trouble. Police will often try to frighten or intimidate you into doing things that you don't have to, like letting them search your things or answering their questions. Being prepared and having a good knowledge of your legal rights can give you some degree of leverage and power in situations where the police want to give the impression that you have none. Aside from intimidating you into doing things you don't want to, police are allowed to — and frequently do — lie. It is much easier to detect when a cop is lying to you when you know what the truth is and you know what rights you have.[50]

A similarly nuanced, yet still critical, view is found in both an activist legal guide and workshop outline prepared for the 2001 Summit of the Americas convergence by the Québec Legal Collective:

> Obviously, there is a difference between our rights in theory and our rights in practice – it is up to you decide when and how you

[47] Doc 42. See also docs 5, 18, 19, 28, and 78 among others.
[48] Doc 116 at 6.
[49] Doc 18 at 7 and 9.
[50] Doc 18 at 7.

> wish to assert and exercise your rights. It is a reality of the system we live under that those who are the most oppressed outside the legal system are also oppressed within the system, and there are no easy answers as to how to mitigate that oppression in the existing model (that is why we advocate revolution…). In general, when interacting with police or other agents of the state, it can be useful to assert your rights when you feel they are being violated, but fighting or arguing with them is often pointless and may make you the target of greater oppression. Sometimes the best time to fight the violations of rights is afterwards in the courtroom, or in the court of public opinion.[51]

More critical still was the approach to rights was conveyed by the members of the Legal Support Committee of the New York City Metropolitan Anarchist Coordinating Council [MACC Legal], who argued that although know your rights trainings are usually done "for political reasons and to empower people" such trainings are "actually completely besides the reality of people's encounters with police, especially in New York City."[52] They told me that:

> There is no point… other than telling people shut the fuck up and call your lawyer. There is no training there. The whole 'am I being detained?' and the difference between the two. It makes no difference. So know your rights trainings... I'm almost saying that they're counterproductive at this point. ...it should not be called a know your rights training and it should be part of a political education.[53]

MACC's frustration with the 'know your rights' pedagogical model, while seemingly diametrically opposed to a reliance on "Magic Words" should actually be understood as lying on the same spectrum, albeit at the far edge of how the rights in theory versus rights in practice framework is applied on the ground in the US context. The Canadian spectrum

[51] Docs 58 and 60.
[52] Interview of Participants 3-5 (26 February 2017).
[53] *Ibid*.

is somewhat narrower, bounded by a more cautious – and decidedly unmagical – approach to the invocation of the *Charter*.

A corresponding political analysis is also visible when popular legal educators are asked about the potential impact of constitutional rights guarantees on protests and other movement actions. John Viola discussed an Occupy Legal workshop during which participants requested assistance with obtaining permits to remain in Occupy encampments lawfully, and how his response required stepping in and out of a lawyerly role:

> I'm like that's not a legal question, that's a political strategy. You don't need a lawyer, at least not a criminal defence lawyer to help you with that question. You need to figure out your own legal... your own political strategy. And to me that [a permit] is a waste of time. I think I told people that at that very training. I was like, why would you negotiate for space you already have?[54]

A legal guide written by Philadelphia's Up Against the Law! collective also reminds organizers that they have a constitutional right to protest in public areas and that "If you do get a permit you are authorizing the city to limit the scope of your protest."[55] Immediately following, however, are two possible exceptions – or perhaps compromises: if "you are using an amplified sound system and/or stage" and/or "you want to secure a space for exclusive use by your group." Facilitating discussions about how and when to deploy rights claims – in both individual police encounters and as a collective and/or pre-emptive concern – is often about political and strategic decision-making as much as safety or legal defence, demonstrating in very real, practical terms the complexity of popular legal education aimed at capacity-building. Catalyzing the production of social movement knowledges requires not only a careful balancing between critique and engagement but

[54] Interview of John Viola (15 March 2017).
[55] Doc 68.

also renewed confrontation with the tensions raised by the participation of legal support organizers in tactical decision making while also attempting to remain accountable to broader movements.

ii. De-exceptionalizing the criminalization of dissent

These tensions, while clearly visible in the pedagogical work of demystifying rights and the law, also arise when radical legal pedagogy efforts tackle de-exceptionalizing protest policing and the broader criminalization of protest movements. Legal support providers are often forced to respond to and address individual rights violations in the context (and often midst) of large-scale mobilizations, limiting the critiques available and imposing boundaries on challenges to the criminalization of dissent as a *collective* harm. For lawyers, legal pragmatism, an aspect of lawyering practice deeply engrained within legal liberalism, calls for retaining legitimacy as legal professionals and packaging grievances as legal violations – with corresponding legal remedies. As a result, it often falls to non-lawyer legal activists to link individual incidents and claims to routine injustices – those patterns of domination and inequality unimpacted by the spectacle of a mass arrest – while trying, at the same time, to recognize the specificity of political repression. De-exceptionalizing means developing popular legal education approaches that recognize and take seriously the repression of social movements by state and non-state actors while demonstrating that such repression is neither exceptional nor anomalous. Given the political orientations of law collectives and other radical legal support organizers, a basic element of de-exceptionalizing is woven into the core of Know Your Rights workshops and activist legal

trainings that place detention, arrest, and other law enforcement actions within current and historical systems of racial and class domination.

De-exceptionalizing can only also be more explicit. Solidarity was defined by the CFLC as "recognizing that activists are not unique in facing state oppression and working with other prisoners and detainees."[56] The Bay Area Anti-Repression Committee's guide notes that "It is often a surprise to first-time arrestees that the police often do not uphold prisoners' rights."[57] But even – or perhaps especially – in radical movements and networks, a more sophisticated and historically grounded form of de-exceptionalizing the criminalization of dissent can act as a check on latent liberalism and drive the development of movement knowledge. Choudry argues that "…rather than viewing [mass arrests, surveillance, etc] as "exceptional," both the historical and contemporary breadth of state repression could – and should – encourage us to reflect on how and why such state security practices play a central role in the societies in which we live."[58] In some ways, de-exceptionalizing is the most challenging or advanced aspect of popular legal education, because it is necessarily built on a foundational demystification of law and critique of rights. This was a goal we took seriously when developing the CFLC activist legal guide, which included the following analysis:

> Activists need to re-examine the ways we view ourselves, and how our view differs exponentially from that of the state's. De-mystifying our roles and perceived innocence, and recognizing that the state aims to immobilize our movement in every capacity. It is naïve to assume we won't be targeted if we are cheerleading or offering medical support or carrying puppets in an action.[59]

[56] Doc 10.
[57] Doc 6 at 12.
[58] Choudry, *supra* note 26 at 105.
[59] Doc 10 at 46.

We also made this clear in our "Rights and Solidarity" workshop outline, which was written in part to counter persistent expectations around police conduct at protests or demonstrations:

> Although some people may wish to identify themselves as "unarrestable", it is important to be aware that there is no role in a protest that guarantees an arrest will not occur. It is also important to rid yourself of the notion that if you are innocent you will not be arrested. Sometimes non-arrestables are particular targets of the police - for example the police have been known to target legal observers, street medics and radical cheerleaders. The police often arrest first, and sort out the evidence later - their immediate goal is to end the demonstration.[60]

Challenging such expectations is partly an exercise in demystifying constitutional rights but it also requires teaching activists about historical and current patterns of state repression. Coldsnap's Jude Ortiz underscored the need to include such accounts in activist legal trainings:

> I think it would be much more useful to approach it [popular legal education] as like, here's what we need to know about fighting in this terrain and this terrain is a minefield that's meant to trap you and trick you and to destroy you and to do that against entire communities and it does that super, super well. And to understand that you have to have a good sense of how counterinsurgency works in the US, how repressing communities based on systemic racism and classism and all those other things, how that works out as part of an entire fabric of the government.[61]

Ortiz's comments also gesture toward a link between de-exceptionalizing and the development of recognition that rights claims operate within intersecting oppressions. Reflecting on the development of CFLC's workshop materials, AJ Withers explained our approach:

> I went back to school and I go to these classes and it's like a week on gender and a week on race and I hate that so much. Our training,

[60] Doc 81.
[61] Interview of Jude Ortiz (15 March 2017).

> we were like, we won't do things separately. We'll have a section on disability or migration for example, but the whole training, every section that we talk about we will talk about how it affects people without status, how it affects trans people, how it affects disabled people, how it affects people of colour … we did that purposefully to make those marginalized communities visible and have them feel very included in the trainings and also have the folks with privilege better understand all throughout every step of the legal system where their privilege was."[62]

Popular legal education aimed at relatively privileged activists with little if any lived experience of the operation of the criminal justice system reveals another strain of de-exceptionalizing, one that aims to use the criminalization experienced by protesters as a window into broader systemic issues with police, prosecutors, and courts. In our interview, a former member of Washington DC's Justice & Solidarity collective recalled asking for people to do court support and telling them "if you're gonna go, stay there for a while and experience arraignment court for a day and see how terrible it is and understand that this is the world for people every single day when we're going on about our lives."[63] In their guide, the Bay Area Anti-Repression Committee highlighted:

> The stark racial demographic of US prisons, and the savagery of poverty and policing condemning whole populations to jail cells all reveal to us a larger trend in repression against communities that has nothing to do with their supposed threat to the public. Rather that the state fears these communities have revolutionary potential to change society.[64]

A former member of Coldsnap praised that Committee's approach, noting that its

> emphasis on understanding that this [anti-repression] isn't particular to the radical community. There are communities who have been doing this for a really long time in a multitude of ways and who are very specifically targeted. So as much as anarchists and radicals and folks can be like oh, we're being targeted by the police, just having a wider lens on our ability to see past oneself or

[62] Interview of AJ Withers (25 April 2017).
[63] Interview of Carol Tyson (6 March 2017).
[64] Doc 6 at 25.

> one's own organization and to understand the complex ways that that's being applied across the board and has been really for a while and at a disproportionate rate.[65]

Finally, radical legal pedagogy requires imbuing de-exceptionalizing with a recognition that there *is* something specific and pernicious about state repression of oppositional politics, particularly when the symptoms of that repression include surveillance, infiltration, targeted and indiscriminate arrests, widespread police misconduct, etc.[66] Once again, this requires placing the repression experienced by contemporary activists and organizers into historical context with respect to previous patterns – local, national, and international – of state repression and protest policing. These interventions are particularly visible in the dissemination of locally-focused movement knowledge by activist legal support organizers. Montreal's Collective Opposed to Police Brutality on "political profiling" after a demonstration or protest:

> At the end of the protest, the police will often waste their time following demonstrators and exercise their power to intimidate them… They will use any possible reason to hand out violations and at the same time fill their notebooks and databases with the identification and information of as many activists as possible. The usual criminal charges brought against the protestors are assault and obstructing police. So never let your guard down and do not leave a protest alone.[67]

The Bay Area Anti-Repression Committee also points to this form of local movement knowledge, and suggests that all organizers ask themselves some key questions:

> How have police responded in the past to actions similar to the one you are planning? Were arrests made? What did the media say about the action and police response? What does this tell you about their potential response this time? How does your knowledge of police tactics in your region affect decisions you make?

[65] Interview of Participant 16 (13 March 2017).
[66] Many such instances are documented throughout chapters three and four.
[67] Doc 16.

> By posing these questions, we hope folks will take time to consider the advantages that the police have over us and how we might make our actions more strategic. We shouldn't let the state's tactics scare us out of organizing, but we should be mindful to not ignore their tactics either.[68]

Similarly, in their analysis of their legal support work for the mobilization against the World Economic Forum in early 2002, NYC-PLC noted that they deliberately kept the focus on commonplace criminal charges and "consciously chose to limit the amount exposure we gave to the PATRIOT laws and other terrorist acts along with specific ordinances like the so-called mask law."[69] This can also be seen in the work of the Coldsnap Legal Collective in the development of the Community RNC Arrestee Support Structure [CRASS] in the aftermath of the 2008 Republican National Convention:

> In the wake of violent state repression and hundreds of arrests, many arrestees and their allies came together to figure out how to collectively fight the charges and hold the state accountable. Groups initially involved in organizing this collaborative legal support saw a clear need for it to continue after the action. Further, many hoped it would involve a broad, decentralized spectrum of those affected by state repression, rather than a narrow or particularly vocal subsection of the activist community.[70]

Such a process of acknowledging and then contextualizing the repression and criminalization of protest movements both draws on movement knowledges and furthers their production. As a pedagogical praxis then, de-exceptionalizing builds the analytical and practical capacities of movements and contributes to their resilience and growth.

[68] Doc 6 at 7.
[69] Doc 93.
[70] Doc 70 at 5.

iii. The limits of pedagogy: movement building v. movement defence

Within this commitment to movement building lies a tension between the provision of legal knowledge as a pedagogical intervention aimed at the development of political and ideological capacity and the more applied or practical task of preparing activists for the potential consequences of criminalization. While there is a universal understanding that the work of law collectives and other activist legal support organizers inevitably includes both elements, my research revealed differing opinions about their relative importance. Mac Scott, a member of the MDC and other collectives, maintained that direct support is ultimately more central to building sustainable movements:

> I think the popular education's good and important in terms of supporting communities, building alliances with communities, bringing more people into the movement, but in some ways, I feel like the movement defence work is more important – because I think that's about sustainability. Public legal education is really awesome and useful but when it's not connected to campaigns and movements, it easily becomes radical social work.[71]

After canvassing many of the same factors, a former member of both MSLC and the Coldsnap Legal Collective, Lindsey Shively, argued that popular legal education contributes more effectively to mobilization:

> I feel like that stuff [education] is as important or more important than the mass defence stuff. I mean I do believe in organizing arrestees and doing the hotline and jail vigils and all that... But the education stuff didn't feel so reactionary. It felt like preparing people, like giving people skills and tools to make informed consent decisions… I could talk about race and class and gender there and immigration status in a way that was harder to do after the fact. I saw that work as popular education. And still do. Looking back on my legal work, I don't know that I kept anybody out of jail really… It doesn't actually have the same kind of impact that education has in terms of empowering people to be in the streets more, be in the streets in a smart way.[72]

[71] Interview of Mac Scott (23 April 2017).
[72] Interview of Lindsey Shively (10 March 2017).

Yet the distinction between legal education and direct legal support, particularly in the heat of a large mobilization or mass arrest scenario, is not always a straightforward one. Recall the Coldsnap Legal Collective's decision to deliberately blur this distinction during the 2008 Republican Convention; in contrast to traditional legal observers, their street team had "a more interactive role of being trained to provide *ad hoc* legal rights trainings as needed on the street, serving as a vital part of the Coldsnap communications team, and witnessing and reporting police actions."[73] Similarly, MSLC's Legal Solidarity Workshop warned participants that "Most people arrested won't have gone through this training so you will be training them on the bus or in jail. Consider this a trainer training."[74] In their study of global justice era summit mobilizations, Amory Starr, Luis Fernandez, and Christian Scholl noted that while rights, solidarity, and legal trainings begin prior to a mobilization, "[v]iral training in solidarity principles and tactics even takes place in arrest vehicles and continues in jail."[75] The members of MACC Legal advocated for "understanding legal support as a political education movement", strongly connecting the two using a hypothetical example of 100 protest arrests:

> We're doing legal support for these hundred people. But in a sense we're actually doing political education for a thousand people. Because each one of those people have ten friends that are following the case… If you see legal support as political outreach, it changes your perspective on... how do you keep yourself from being a service provider or just an NGO is that you see your job as political education. And so then that changes who you support and how you provide that support because it's all... in a sense, there's a political line that you're holding to and trying to utilize.[76]

[73] Doc 18 at 79.
[74] Doc 78.
[75] Amory Starr, Luis A Fernandez & Christian Scholl, *Shutting Down the Streets: Political Violence and Social Control in the Global Era* (New York: NYU Press, 2011) at 139.
[76] Interview of Participants 3-5 (26 February 2017).

In effect, popular legal education aimed at both directly supporting criminalized movements and demystifying and critiquing law lies at the intersection of education and organizing, a terrain also occupied by movement lawyers employing law and organizing approaches.[77] Debates about the role of popular legal education in movement decision-making and/or its relative value as compared to more direct support work implicitly challenge Scott L. Cummings and Ingrid V. Eagly's contention that law and organizing practitioners may not understand that education and organizing are distinct and that education is not always a precursor to organizing.[78] The praxes of radical legal educators also reflect Cummings and Eagly's cautionary note that lawyers who do engage in organizing-focused education need to "employ a broad range of planning and coordination skills" so that they can, for example, facilitate meetings or develop (presumably appropriate) curriculum.[79] These challenges are already recognized by popular legal educators and their location within broader activist legal support frameworks requires that they step in and out of both roles – education and organizing – with an understanding that both are key sites of social movement knowledge production. Nonetheless, tensions between pedagogy as political education and more applied pedagogy in service of direct support remain and as discussed in the next section, these tensions are crucial to understanding the role that radical legal support *and* pedagogy play in the post-arrest moment to counter repression, pre-empt mobilization, and catalyze re-mobilization.

[77] See Chapter, Parts A and E above.
[78] Scott L Cummings & Ingrid V Eagly. "A Critical Reflection on Law and Organizing" (2001) 48 UCLA Law Review 443 at 482.
[79] *Ibid* at 482.

C. PEDAGOGY AS PRACTICE: REPRESSION, (DE)MOBILIZATION, AND THE POST-ARREST EXPERIENCE

> When we foster an ethic of anti-repression and create a network of support, we turn some of the most frightening and disempowering experiences into empowering ones that strengthen us.
>
> Bay Area Anti-Repression Committee, 2014[80]

The pedagogical practices and direct support work of radical legal support – together and apart – are key to understanding the post-arrest experiences of activists and they play an important role in determining whether these experiences end up being demobilizing or movement-building. In the first part of this section, I examine the work of social movement scholars on state repression and the post-arrest experience of activists and argue that the knowledge produced by radical legal support organizers speaks to the apparent dearth of scholarly research on arrests. In the second part, I consider the potentially mobilizing impact of arrests and other forms of repression and contrast this perspective with that of the legal mobilization literature. Both parts grapple with the complex connections between repression and mobilization, and center radical legal support work a form of anti-repression praxis founded on resistance to both criminalization (as movement defence) and demobilization (as movement building).

i. Shaping the post-arrest experience

The organizational, pedagogical, and practical work of law collectives and other activist legal support organizers can deeply impact the post-arrest experience, mitigating or even eliminating the demobilizing impact of repression. As set out in detail in chapters three and four, the presence or absence of legal support is an important part of the post-arrest

[80] Doc 6.

experiences of activists, experiences which scholars such as Jennifer Earl and Steven E. Barkan contend are generally absent from discussions of state repression of social movements. Below, I canvas their claims and argue that understanding the impact of arrests on movements as an unexamined or neglected phenomenon requires disregarding the knowledges produced by movement actors such as activists and radical legal support organizers.

Earl maintains that while protest policing is the most studied form of overt and coercive repression of social movements, the resulting arrests and their consequences have received less attention.[81] She writes that "few researchers interested in the intersection of socio-legal and social movements research have focused on the criminal justice system", turning their attention to civil litigation instead.[82] Earl further suggest that a failure to consider the various consequences of arrest and prosecution means missing out on the "power of work that does wed socio-legal and social movements research" and "its ability to consider both the character of movements *and* the character of the legal system."[83] Contrary to scholars who have argued that arrests are less repressive than, for example, the use of barricades or police violence, Earl's own empirical research demonstrates that "arrests seem far more aggressive, consequential, and repressive".[84] Earl argues that for social movement actors, "the process is the punishment," noting that "arrests and the process of prosecution allow for what legal sanctions against protest cannot: procedural

[81] Jennifer Earl, "Political Repression: Iron Fists, Velvet Gloves, and Diffuse Control" (2011) 37:1 Annual Review of Sociology 261 at 265 and 270 [Earl, "Political Repression"]. See also Jennifer Earl, "'You Can Beat the Rap, But You Can't Beat the Ride:' Bringing Arrests Back into Research on Repression" in Patrick G Coy, ed, Research in Social Movements, Conflicts and Change, Volume 26 Research in Social Movements, Conflicts and Change 26 (Bingley, UK: Emerald Group Publishing Limited, 2005) 101 at 104 [Earl, "Beat the Rap"].
[82] Earl, "Beat the Rap", *supra* note 81 at 104.
[83] *Ibid* at 105 [emphasis in original].
[84] Earl, "Political Repression", *supra* note 81 at 270 and Earl, "Beat the Rap", *supra* note 81 at 107.

punishments".[85] Her research reveals many of the same claims made by movement participants and documented by radical legal support organizers: punitive arrests with no prospect of successful prosecution, police violence, collateral costs of arrest (lost jobs, money spent on legal defence, etc.).[86]

Perhaps the clearest example is the work done by both CFLC and MDC to create materials and trainings about a specific – and persistent – form of post-arrest repression faced by activists and protesters in Toronto: the imposition of overly broad, restrictive, or even unlawful release conditions by police officers and/ or justices of the peace.[87] Recognizing the impact of these practices, accumulating and sharing knowledge about this seemingly obscure area of the law of bail became a focus of our pedagogical contributions. In a section entitled "Release from the Police Station", MDC's 2012 "Basic Workshop on Rights and Solidarity for Activists" contained the following warnings:

> You might be released from the police station either by the "officer in charge" or by a justice of the peace if one is brought to the station. The police will give you a notice to appear in court, or you may be asked to sign a promise to appear in court.
> The police may try to attach conditions to your release from the station.
> Common release conditions include not associating with co-accused (which can be avoided if you can show that you cannot help but do so because they're your housemate/lover/co-worker etc.), not returning to the 'scene of the crime' (again, if you can argue that this is impossible, you may be able to avoid it) and 'keeping the peace and being of good behaviour'.

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[85] Earl, "Beat the Rap", *supra* note 81 at 119.
[86] Earl's research is primarily based on studies from the 1960s to 1980s and one case study in 2004 (the Republican National Convention held in New York City; see Jennifer Earl, "Protest arrests and future protest participation: The 2004 Republican National Convention arrestees and the effects of repression" in Austin Sarat, ed, *Special Issue Social Movements/Legal Possibilities, Studies in Law, Politics and Society* (Emerald Group Publishing Limited, 2011) 141). Oddly, her analysis does not include the mass mobilizations and arrests associated with the US global justice movement, even though the changes in protest policing during that time would illustrate many of her arguments.
[87] See generally Jackie Esmonde, "Bail, Global Justice, and the Limits of Dissent" (2003) 41:2 Osgoode Hall Law Journal 323.

> A lawyer should be able to argue against blanket prohibitions on attending demonstrations, but courts may impose more specific limitations.[88]

CFLC's legal guide asked activists to prepare for the possibility of strict release conditions in advance and noted the difficulty of making such decisions following an arrest:

> Establishing guidelines for ourselves in our interactions with the kops [sic] and the courts, *figuring out which potential conditions we would be comfortable signing to get out of jail*, before we risk arrest, and solidifying a surety ahead of time are all valuable preparations we can take, as we may not be emotionally fit to make difficult and life altering decisions while in custody.[89]

The same thread carried through to our instructions for arrestees once they were released. MDC's workshop suggested the formation of defendants' committee and encouraged

> defendants to organize collectively and help each other with fundraising, sharing legal information, organizing political support and look for one another. This is important for two reasons: the MDC cannot guarantee direct support or lawyers beyond the bail hearing stage and, more importantly, because the trial process can be long, isolating and costly. *Supporting each other is resisting the oppressive, isolating and de-mobilizing impact of criminal charges*.[90]

Earl's "the process is the punishment" analysis is also reflected in the workshop's coverage of the criminal trial process:

> [A]s you begin attending your court hearings ('set dates') you will notice that you cannot set a trial date until you have your 'disclosure'. You have the right to 'disclosure' of the Crown's case against you – you should get anything relevant that is in the Crown's possession. Only after you have received this information (*and this can take a LONG time*) will your lawyer be able to set a trial date.[91]

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[88] Doc 41. The last comment refers to the fact that we consistently saw the imposition of blanket prohibitions on attending protests even after such a release condition had been ruled unconstitutional by a superior court. See *R. v. Clarke*, [2000] O.J. No. 5738 (ONSC) (QL).
[89] Doc 10 at 46.
[90] Doc 41 [emphasis added].
[91] Doc 41 [emphasis added; capitalization in original].

Like Earl, Steven E. Barkan argues that "[d]espite the importance of the post-arrest experience for protestors' own fate and for that of their movements, their prosecutions and trials remain a black box in the study of the social control protest."[92] While not discounting the importance and contributions of the protest policing literature, Barkan noted that "it disregards what happens to protesters after arrest and thus offers only an incomplete understanding of the criminal justice control of social movements."[93] Barkan traces the development of research on protest prosecution from Otto Kirchheimer's *Political Justice: The Use of Legal Procedure for Political Ends* (1961) through to a series of texts, both academic and popular, about political trials from the late 1960s to the 1980s, noting that these works shared Kirchheimer's "historical and descriptive approach and did not address larger theoretical issues."[94] Despite the subsequent rise of the fields of both law and society and social movement studies, only a few writers have addressed political justice and according to Barkan, it is a field that remains neglected.[95] My research indicates that little has changed, and that the "greater understanding" of the "dynamics and impact of the post-arrest experience of movement activists" that Bakan called for in 2006 has materialized only in the work of embedded scholars such as Starr, Fernandez, and Scholl[96] and the knowledges produced by movement actors themselves. While the "circumstances under which this [post-arrest] experience serves as a means of social control of protest, or alternately, as a means of mobilization"[97] is a question that remains generally unexplored,

[92] Steven Barkan, "Criminal Prosecution and the Legal Control of Protest" (2006) 11:2 Mobilization: An International Quarterly 181 at 190.
[93] *Ibid* at 182.
[94] *Ibid* at 183.
[95] *Ibid* at 184. Barkan argues that the idea of political justice "combines both instrumental and symbolic concerns", reflecting the fact that in democratic societies, law "serves both social control and due process functions that are often in tension": at 191 and 183.
[96] Starr, Fernandez & Scholl, *supra* note 75.
[97] Barkan, *supra* note 92 at 184.

the movement praxes highlighted in this study respond to several of the hypotheses in Barkan's proposed political justice research agenda. Of the factors impacting pretrial decision-making and trial strategy he identified, most are dilemmas or phenomena which movement organizers and radical legal support providers will easily recognize. For example, echoing both Earl's "the process is the punishment" analysis and the pedagogical practices of the CFLC, MDC, and many other law collectives, Barkan posits that the more confrontational the behavior of protesters and the more radical their goals, the more likely it is that "they will face pretrial detention or higher bail vs. personal recognizance or lower bail."[98] At the trial stage, his hypotheses focus on the capacity and desire of defendants in bringing political defences, factors which activists and legal support organizers have long worked to nurture and foment. The highly successful court solidarity organized by the R2K Legal Collective in the aftermath of the Philadelphia Republic National Convention in 2000 discussed above is but one example.[99] More specifically, Barkan proposes that a "*pro se* defence increases the likelihood that a political defense will achieve more of the goals that political defendants and their movements may have", pointing to another core pedagogical task of radical legal support: teaching defendants to represent themselves in court. The organizers of the Montreal Activist Arrest and Trial Calendar, which was active in the early 2000s, highlighted both factors, stating that the calendar

> reflects how the courtroom has become another terrain of political struggle, as protesters collectively defend themselves against the strategy of mass, targeted and bogus arrests by the Montreal police. The calendar also reflects some significant successes inside the courts. As protesters have had to deal with the courts more-and-more, they have also become more knowledgeable and savvy

[98] *Ibid* at 187.
[99] See chapter 3, section B.

> about fighting back, *including a few individuals who have successfully represented themselves during the court process*.[100]

The work of Starr, Fernandez, and Scholl also contributes to a greater understanding of the post-arrest experience. In addition to cataloguing the work of activist legal support organizers, including law collectives, they specifically consider the impact of arrests and other forms of criminalization on social movements in the manner called for by Earl and Barkan. Starr, Fernandez, and Scholl "see policing as just one tactic of a system of social control far more subtle, indirect, and significant than civil management of protest" and argue that "Understanding social control means understanding how various forms of repression encourage and discourage the transformation of dissent into participation in social movements."[101] As does Barkan, they cite the formative analysis in Isaac Balbus's 1973 *The Dialectics of Legal Repression: Black Rebels Before the American Criminal Courts*, maintaining that the "police privilege of using mass arrest as a method of control without being held accountable by the courts for providing reasonable charges and evidence" has not changed since then.[102] Examining the decade between 1999 and 2009, Starr, Fernandez and Scholl discuss the post-arrest experiences of alterglobalization activists, noting not only the police practices that subject political arrestees "to exaggerated detention, unusual conditions, excessive charges, and targeted abuse"[103] but also the forms of collective action which challenge and resist those practices. They highlight how

[100] Doc 38 [emphasis added].
[101] Starr, Fernandez & Scholl, *supra* note 75 at 2 and 7.
[102] *Ibid*. at 86. At the same time, however, Starr, Fernandez and Scholl claim that "Very few activists charged at summit mobilizations in the post-Seattle era have been convicted." The accuracy of this statement is questionable, particularly if felony charges are included, and there is no citation or other evidence for this claim, but more importantly, their own discussion clearly demonstrates that conviction is not necessarily the point. For example, they note that when activists are prosecuted, it is often perceived leaders who are singled out.
[103] *Ibid* at 139.

"Activists have developed a set of tactics that enable arrestees to disrupt the jail in order to protect endangered compatriots, demand better conditions, and pressure for collective release and/or minimal charges" and catalogue the wide variety of court solidarity tactics often organized or catalyzed by law collectives, noting that these are often aimed at highlighting arrestees facing more serious charges.[104]

In doing so, they document precisely the sorts of radical legal support and pedagogy praxes that address the political justice analysis Barkan says is missing from the academic literature, demonstrating how his research agenda points to the knowledges produced by movement actors. Presumptions that both "pretrial detention and/or higher bail" and "full prosecution of protesters" are "more likely when arrest density is medium and less likely when arrest density is low or high" clearly speak to the use of jail solidarity as a tactic during the global justice era as well as longer-standing practices of court support and solidarity.[105] The Libertas Legal Collective, which emerged out of the Québec Legal Collective, explicitly addressed the need to respond to the political and social costs of prosecutions in the wake of mass mobilizations with high arrest density:

> Even though the people facing charges were arrested in the midst of a massive political mobilization, the legal system is designed to be as alienating and demobilizing as possible. We will need your help to make sure that the people sitting in front of the jury does not feel alone and isolated from the 50,000 of you who stood by their side during the summit, and could just as easily have ended up in a similar situation.[106]

By grounding post-arrest movement praxes within the political justice framework, Starr, Fernandez, and Scholl reinforce the role that popular legal education plays in shaping those

[104] *Ibid* at 139.
[105] Barkan, *supra* note 92 at 186-87. "Arrest density" refers to the capacity problem caused by many arrests "either from a very large protest or from several smaller protests over a relatively short time": at 186.
[106] Doc 36.

praxes: the "most basic aspect of anti-repression is a grassroots viral education program to teach people their rights as dissenters."[107] Their analysis also serves as a reminder that the post-arrest moment serves a key determinant of future movement engagement – individually and collectively. Starr, Fernandez and Scholl argued that the "empowering information" gleaned from popular legal education can flow beyond its original context and contribute to movement building, as activists bring "home memorabilia in the form of legal skills that will change communities."[108] This suggestion is but one example of how an understanding of radical legal support organizing points to a different approach to movement mobilization (as well as de-mobilization and re-mobilization) than that found in the legal mobilization literature.

ii. Mobilizing repression, repressing mobilization

The impact of radical legal support on the post-arrest experience is significant in and of itself, but it can also act as a key determinant of whether or not arrests – and repression more broadly – lead to demobilization. After contrasting legal mobilization – the dominant legal literature on social movements – with movement-derived legal knowledges and research by social movement activist-scholars, I argue for an account of mobilization that centers involuntary engagement with law[109] and recognizes repression as a potentially

[107] Starr, Fernandez & Scholl, *supra* note 75 at 138.
[108] *Ibid* at 145.
[109] It is perhaps a testament to the prevalence of legal mobilization-based approaches in the law and social movements literature that it is not unusual to find examples of authors taking pains to point out that engagement with the law is not always voluntary. See e.g. Eduardo RC Capulong, "Client Activism in Progressive Lawyering Theory" (2009) 16 Clinical Law Review 109 at 116: "activists often do not have a choice but to work within the legal system, as when they are arrested or otherwise prevented from engaging in activism by state authorities."

mobilizing force. This conceptualization highlights the movement defence praxes of radical legal support organizers and educators at various stages of a mass mobilization.

Legal mobilization, the leading law and society approach to the study of law and social movements is a framework which "merges a dynamic dispute-oriented, interpretivist understanding of legal practice with insights from social movement theorizing about collective action based on "political process"."[110] Legal mobilization scholars, Michael McCann explains, reject "understandings of law largely limited to discrete, determinate rules or policy actions", but rather understand law "as particular traditions of knowledge and communicative practice."[111] For the purpose of this study, the core claim of legal mobilization is that "law is mobilized when a desire or want is translated into an assertion of right or lawful claim."[112] Sandra R. Levitsky argues that the legal mobilization literature marked a key shift in studies of law and social movements, away from a "court-centered, positivist perspective of law" (exemplified by Rosenberg's *Hollow Hope*, discussed in the preceding chapter), and toward a "competing perspective on the utility of legal strategies for social movements [that] views law more expansively, as a set of meanings more than of regulatory controls."[113] According to Levitsky, "The key contribution of this literature is that it seeks to identify how, when and to what degree legal mobilization can offer powerful resources for social movements, even as existing legal ideologies and institutions constrain movement activity."[114] Legal mobilization's description of how law matters

[110] Michael W McCann, "Law and Social Movements" in Austin Sarat, ed, *The Blackwell Companion to Law and Society* (London: Blackwell Publishing Ltd, 2004) 506 at 506.
[111] *Ibid* at 507.
[112] *Ibid* at 508.
[113] Sandra R Levitsky, "Law and Social Movements: Old Debates and New Directions" in Austin Sarat & Patricia Ewick, eds, *The Handbook of Law and Society* (Hoboken, NJ: John Wiley & Sons, 2015) 382 at 385.
[114] *Ibid* at 386.

during early stages of "organizational and agenda formation"[115] is especially relevant here. This stage is often understood through the lens of rights consciousness, particularly the "constitutive role of legal rights both as a strategic resource *and* as a constraint, as a source of empowerment and disempowerment".[116] In the legal mobilization framework, the role of rights consciousness raising in political mobilization involves two processes: agenda setting (drawing on "legal discourses to name and challenge existing social wrongs or injustices") and "defining the overall "opportunity structure" within which movements develop".[117]

Both processes have resonance to the work of activist legal support providers and can shed light on the crucial but sometimes contradictory roles rights play in popular legal education and as a tool for movement defence. But if legal constructs such as rights "shape our very imagination about social possibilities", as McCann argues, they must be considered in situations where activists and legal support organizers alike do not voluntarily mobilize the law so much as they are involuntarily mobilized *by* the law through processes of repression and criminalization. Viewed this way, rights consciousness (as sparked by popular legal education) is a driver not only of mobilization (through empowering and emboldening activists) but in concert with direct legal support, may also play a role in pre-empting demobilization and catalyzing re-mobilization, in the post-arrest phase and beyond. This is not to suggest, of course, that movements are never partially or fully de-mobilized – or even immobilized – by law, despite the best efforts of organizers and legal support providers. But because the effects of repression, as a mechanism of legal

[115] McCann, *supra* note 110 at 510.
[116] *Ibid* at 508.
[117] *Ibid* at 510-11, emphasis in original removed.

mobilization, are so contingent, the legal mobilization framework needs to be augmented by the knowledges produced directly by social movement actors as well as social movement research on repression and the long-term impacts of criminalization.

Barkan's discussion of legal mobilization begins by recognizing the key mismatch between its approach and the movement-building work of radical legal support: "Although legal mobilization involves the use of law by social movements, it is also true that law can be used against social movements."[118] Indeed, he reminds readers that prosecutions and trials are "normal events in the life cycle of many protest movements".[119] In Barkan's analysis, both the protest policing literature which considers policing only within the context of state repression and legal mobilization scholarship overlook the possibility that arrests may *begin* a mobilizing process.[120] For radical legal support organizers, this is familiar territory, and even something of an understatement. Former Midnight Special Law Collective member Dan Tennery-Spalding told me that

> Being arrested is actually one of the most radicalizing things that people can go through; and again, I would ethically never make anyone do that but it's true. What keeps people safe is to give them a framework with which to understand this experience including the fact that they will probably be okay if they shut the fuck up and trust their friends more than they trust the police. I think that [framework] was our biggest, the biggest way that we could help keep people safe.[121]

The members of NYC's MACC Legal advocated for helping arrestees to place their experience in historical context: "our line is there's a long tradition of this, people have beaten these charges. You're not the first. You're not going to be the last. You know there's

[118] Barkan, *supra* note 92 at 182.
[119] *Ibid*.
[120] *Ibid* at 183.
[121] Interview of Dan Tennery-Spalding (9 April 2017).

going to be people after you and this is part of a long tradition that you can be proud of."[122] They noted that especially for newer activists, the pedagogical role of legal support organizers in the post-arrest moment is crucial:

> Most of them have very little political experience, so this is going to be their political education. And we want these people to (a) come out of it alive and well, and (b) come out of it as committed to the resistance as possible and not be terrified by what's going to happen and with a complete sense of helplessness.[123]

Framed in this context, jail and court solidarity are revealed as praxes meant to mobilize repression by transforming the post-arrest experience; indeed, "a little solidarity goes a long way"[124]. These and other radical legal support strategies evolved alongside shifts in protest policing to "incapacitate incapacitation", as outlined in chapter four, and in doing so, they have created opportunities for movement-building and mobilization to emerge from instances of repression. Over time, the knowledges produced during these moments have accumulated, normalizing and shedding light on the post-arrest experience.

For the movements this dissertation arises out of, such knowledges – how to organize post-arrest solidarity strategies and longer-term defendant support, facilitate access to criminal defence resources, and the like – may in fact further mobilization more effectively than proactive, voluntary engagement with law. In their discussion of political litigation, a category which includes both criminal defence and civil litigation, Starr, Fernandez, and Scholl note the limits of the latter in challenging rights violations and unlawful police practices. They consider the 'social organization' of civil litigation, noting that because of its dependence on lawyers, such lawsuits, even when they are initiated by

[122] Interview of Participants 3-5 (26 February 2017).
[123] *Ibid*.
[124] Interview of John Viola (15 March 2017). See the introduction to Chapter 1 above.

arrestees, tend not to replicate the "empowering, self-diffusing, highly participatory, and synthetic qualities" of other anti-repression practices.[125] Without clear cultures and methods of participation, "[A]ctivists have not made proactive litigation into a participatory process."[126] My research bears out this claim. Recall the discussion at the 2003 Legal Collective network conference, during which participants concluded that civil suits brought in the aftermath of mass mobilizations are expensive, slow, and resource intensive, a form of "damage control" rather than justice.[127] Similarly, the class action lawsuits launched after the Toronto G20 were initiated by lawyers independently of defendant organizing efforts, and had little or no discernable connection to other, more participatory police accountability projects.[128]

While this seemingly counterintuitive conclusion underscores the central role played by movement knowledge production in truly generative responses to repression, it also points to the inherent difficulties of post-arrest organizing. Opportunities for getting new people involved in movements arise through defendants' committees, civil suits, and other types of collective response, and for existing participants, these same structures may prove rejuvenating and (re)energizing. But again, the opposite may prove true. Social movement scholars who study resistance, backlash, and the long-term impacts of repression have found evidence of both outcomes. Two recent studies – one historical, the other more contemporary – illustrate the complex consequences of repression. In their

[125] Starr, Fernandez & Scholl, *supra* note 75 at 137.
[126] *Ibid*.
[127] Doc 89; see Chapter 3, section C(i) for more.
[128] See chapter 4, section C and Irina Ceric, "Class Actions, Mass Movements: Policing, Politics, and the Toronto G20 Settlement Agreement" *Upping the Anti* (9 September 2020), online: https://uppingtheanti.org/blog/entry/toronto-g20-settlement-agreement.

study of the impacts of repression on a US Black nationalist organization active in the 1960s and 70s, Christopher Sullivan and Christian Davenport concluded that

> Repression neither strictly increases nor strictly decreases movement participation; rather, it does both. The study demonstrates that if we want to fully understand how repression influences those who seek to change or overthrow government, then we must get "inside" movements to study effects both on individuals and on their organizational interactions.[129]

A case study of the repercussions of the Pittsburgh and Toronto G20 summits on local activists and movements in those two cities found that the majority of the activists the researchers spoke with "explained how the police repression and infiltration, and sometimes the inability of the movement to handle it, affected them emotionally".[130] Fear and trauma

> led some people to demobilize immediately after the protests, while others kept going until the legal situation stabilized, and then stepped away from organizing, some temporarily, others permanently. However, the repression also mobilized new activists, who explained how the experience of the G20 and the subsequent movement against police actions radicalized them.[131]

Because radical legal support organizers are often intimately involved in mediating the effects of repression, most have developed tools for addressing trauma, individually and collectively. The OWS Legal Working Group's "Dissident Survival Guide" advises activists that

> Dealing with law enforcement, the courts, and the corrections system, even for short periods of time, can be extremely traumatizing. You are not alone. There are good resources for self-care and places for you and your family to process through these

[129] Christopher Michael Sullivan & Christian Davenport, "The rebel alliance strikes back: understanding the politics of backlash mobilization" (2017) 22:1 Mobilization: An International Quarterly 39 at 40.
[130] Lesley J Wood et al. "Eventful events: local outcomes of G20 summit protests in Pittsburgh and Toronto" (2017) Social Movement Studies 1 at 11. This study arose out of the authors' roles as both research and participant-observers and was based on follow-up interviews with anti-G20 organizers in Pittsburgh and Toronto as well as previously published materials written by activists: at 4.
[131] *Ibid* at 11.

> experiences with others who have gone through similar things. Do not hesitate to reach out. You have a community, and your health and welfare matters to us.[132]

CFLC's Rights and Solidarity Legal Workshop Guide reminded workshop leaders that as a "legal team, we have to arm folks with the information of common charges they may face, conditions and implications if convicted, during our trainings *to help them prepare emotionally*."[133] Sometimes this required difficult conversations during workshops: "Discussion idea: ask if people have arrest experiences and use these (and your own) to discuss the process (i.e. being taken to the station, fingerprinting, searches/removal of belt etc., being placed in a (cold) holding cell)."[134] Our legal guide for activists was just as blunt:

> the legal team views the process of fighting this system as an emotionally draining experience on each individual involved. From friends and supporters, to medics, legal teams and those arrested, the violence of the state has a very real and insidious impact on our ability to cope and struggle. At any point in our lives, folks actively fighting the system/ those being targeted by the state, can and do experience post-traumatic stress syndrome. As a legal team, it is our responsibility to educate folks about the ways stress and trauma can affect their ability to make clear and conscious decisions, ones they will be comfortable living with.[135]

Some recommendations are small, but poignant. Mutant Legal's "Best Practices for Jail Support in NYC" suggests: "If you do not personally know the arrestees try to take cues from them on what kind of support they would like. Coming out of jail can be overwhelming so respect their boundaries when offering support. Not everyone wants a hug."[136] Such pedagogical and support practices are intensely grounded and at the same

[132] Doc 54.
[133] Doc 81, emphasis added.
[134] *Ibid.*
[135] Doc 10 at 45.
[136] Doc 46.

time reflective of an insurgent legal imaginary. As political projects, both the work of shaping post-arrest experiences into mobilizing ones and the broader pedagogical interventions it builds on are evidence of a distinct orientation toward law and the state, one that engages with the law as it is without fully conceding its legitimacy or acknowledging it as the boundary of emancipatory possibilities.

D. Legal Consciousness and Radical Legality

> Don't believe your goals are impossible, just because someone in a suit or a uniform said so.
>
> Direct Action Network Legal Team, 1999[137]

This orientation is also evidence of an explicitly counter-hegemonic form of collective legal consciousness. Through both internal, self-reflexive analyses and outward-facing pedagogical and support practices, radical legal support organizers challenge the legitimacy and hegemony of existing state law while prefiguring a different set of legal and political relations. In this section, I provide an overview of the legal consciousness literature as found in the constitutive law and society tradition[138] and apply it to the work of radical legal support, demonstrating that the practices of non-lawyer activists in response to criminalization and repression are a window into the social construction of a generative and distinctive form of legal consciousness. I begin by looking at Patricia Ewick and Susan

[137] Doc 19.

[138] There is at least one, and according to some authors, two additional streams of legal consciousness, with general agreement that a parallel stream is to be found in the Critical Legal Studies literature. See Adrian A. Smith, "Legal Consciousness and Resistance in Caribbean Seasonal Agricultural Workers" (2005) 20:2 Canadian Journal of Law & Society 95 at 107 and following and Orly Lobel, "The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics" (2007) 120:4 Harvard Law Review 937 at 939.

S. Silbey's framework from *The Common Place of Law: Stories of Everyday Life*[139] and then turn to research which specifically explores the legal consciousness of social movement participants, particularly radical environmental activists. Building on the previous sections of this chapter, I suggest that legal consciousness is one concrete way to theorize the knowledge production function of radical legal support as a counter-hegemonic project.

Silbey has described the study of legal consciousness as the "search for the forms of participation and interpretation through which actors construct, sustain, reproduce, or amend the circulating (contested or hegemonic) structures of meanings concerning law."[140] More succinctly, Ewick and Silbey defined legal consciousness as "participation in the process of constructing legality", a process through which "each person's participation sustains legality as an organizing structure of social relations."[141] This is a useful lens for interpreting the relationship between movements for radical social change and the law as legal consciousness is formed "within and changed by social action," making room for exploring how activists' experiences of law and repression produce distinct legalities by "keep[ing] alive the tension between structure and agency, constraint and choice."[142] Similarly, Kitty Calavita argues that the tension in legal consciousness arises "between its role in reproducing legal hegemony and the agentive quality entailed in resistance."[143] While we all participate in the construction of legality in the course of our everyday lives,

[139] Patricia Ewick & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).
[140] Susan S Silbey, "After Legal Consciousness" (2005) 1 Annual Review of Law and Social Science 323 at 334.
[141] Ewick & Silby, *supra* note 139 at 45.
[142] *Ibid* at 45 and 46.
[143] Kitty Calavita, *Invitation to Law & Society: An Introduction to the Study of Real Law*, 2nd ed (Chicago: University of Chicago Press, 2016) at 54.

social movements, Silbey argues, "are purposely, explicitly, and self-reflexively developing forms of legal consciousness."[144] She notes that a legal consciousness analysis can be fruitfully applied to studies of "specific projects of political or workplace mobilization" and approvingly cites the work of legal mobilization scholar Michael McCann, concluding that his work demonstrates that "[p]olitical mobilization and legal consciousness, that is, participation in the construction of legality, went hand in hand."[145] Ewick and Silbey set out three forms (or "cultural narratives"[146]) of legal consciousness: "conformity *before* the law, engagement *with* the law, and resistance *against* the law."[147] In addition to introducing these narratives below, I briefly consider the legal consciousnesses displayed and deployed by radical legal support organizers as variations on the ways "[p]eople describe their relationships to law as something *before* which they stand, *with* which they engage, and *against* which they struggle."[148]

To stand *before* the law is to defer to its claims to autonomy, to "tell the law's story of its own awesome grandeur".[149] In this narrative, law is understood as impartial, a "realm removed from ordinary affairs by its objectivity".[150] For radical legal support organizers, particularly those doing popular legal education work, this form of legal consciousness is primarily engaged in and with as a source of tension or site of contradiction. We often meet people at moments when law's autonomy, its other-worldliness, has taken a hit – although the damage is rarely fatal and may be countered by allegiance to higher laws based on

[144] Silbey, *supra* note 140 at 356-7.
[145] *Ibid*.
[146] Simon Halliday & Bronwen Morgan. "I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination" (2013) 66:1 Current Legal Problems 1 at 5.
[147] Ewick & Silby, *supra* note 139 at 45.
[148] *Ibid* at 47.
[149] *Ibid*.
[150] *Ibid*.

moral or ethical precepts. Juggling contradictions is an intrinsic part of demystifying and deconstructing law and rights, of recognizing why people harmed and oppressed by law and the state frame their injuries as rights violations, and yet look to those same institutions for redress and reform. Brought (usually involuntarily) before the law in such circumstances, activists may "believe in the appropriateness and justness provided through formal legal procedures, although not always in the fairness of the outcomes."[151] Indeed, it is this "tolerance for the gap between law on the books and law in action that the concept of legal consciousness was originally developed to explain."[152]

When engaging *with* the law, on the other hand, "law is described and "played" as a game".[153] This is a world of competitive struggles, in which law's legitimacy and power are momentarily less important than achieving a desired outcome for oneself.[154] Both activists and legal support organizers play with legal norms and the usual operation of the administration of justice when employing tactics such as jail and court solidarity. Similarly, accepting "formal legal constructions and procedures only for *specified* objectives and *limited* situations"[155] can include decisions to bring constitutional challenges, make plea bargains, and/or mount political defences. Sometimes the boundaries of the law are specifically invoked as a terrain of struggle. As a 2002 guide by California's Just Cause Legal Collective noted: "[t]his material is not intended to help you violate or circumvent the law, but rather to guide you in determining the limits of legal behavior."[156] At the same time, radical legal support organizers and activists – if not always the lawyers they work

[151] *Ibid*.
[152] Silbey, *supra* note 140 at 360.
[153] Ewick & Silby, *supra* note 139 at 48.
[154] *Ibid*.
[155] *Ibid* [emphasis added].
[156] Doc 32.

with – recognize that even limited engagement for instrumental purposes is a game played according to someone else's rules.

To resist or struggle *against* the law is to find cracks in its power; "[u]nwilling to stand before the law and unable to play with the law, people act against the law."[157] When law's "schemas and resources" override people's "own capacity either to maintain its distance from their everyday lives or to play by its rules", they "exploit the interstices of conventional social practices to forge moments of respite from the power of law."[158] Ewick and Silbey document myriad examples of typical forms of resistance that are very different from how activists understand that term; to be against the law may look like "small deceits, humor, and making scenes", rather than civil disobedience or direct action.[159] But what these forms of resistance often share is a lack of cynicism. Although "legality is understood to be arbitrary and capricious",[160] resistance against the law is usually undertaken with a "strong sense of justice and right."[161] The message that "legality can be opposed, if just a little"[162] is a key goal of radical legal pedagogy, although that message is sometimes equally tongue in cheek. A Legal and Solidarity Training workshop prepared for the 2001 inauguration of George W. Bush by NYC-PLC, R2K Legal and others informed activists that "We live in a society where laws are used to oppress, this training is to educate on those laws and possible options in relation to the laws. We (trainers and collective members) are not taking any position as to how people act in relationship to laws."[163]

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[157] Ewick & Silby, *supra* note 139 at 28.
[158] *Ibid* at 48.
[159] *Ibid*.
[160] *Ibid* at 28.
[161] *Ibid* at 49.
[162] *Ibid*.
[163] Doc 50.

The three forms of legal consciousness position the "speaker differently in relation to law and legality (as a supplicant, player, or resister)",[164] but they cannot be reduced to investigations of "what particular individuals think and do".[165] For Ewick and Silby, legal consciousness is about participation in the production of structures.[166] Nonetheless, one critique of legal consciousness as a mode of analysis is that it has become overly individualized and psychologized. Silbey herself has argued that although "Legal consciousness as a theoretical concept and topic of empirical research developed to address issues of legal hegemony", much of the scholarship neglects "the relationships among consciousness and processes of ideology and hegemony" and thus the concept has been "domesticated within what appear to be policy projects".[167] Researchers applying legal consciousness to studies of radical activism however, have successfully argued for its continued relevance and utility as a theoretical framework.

In a 2009 study of US radical environmentalists affiliated with Earth First! and other deep ecology based movements, Erik D. Fritsvold argued that the "legacy of knowledge about radical social movements and their conceptions of law would benefit greatly from increased inclusion of Ewick and Silbey's model."[168] Taking up Silbey's 2005 challenge to use legal consciousness as a means of examining law's hegemonic power, Fritsvold contended that "conceptions of law by radical social movements seem like an unambiguously appropriate target" for such an analysis, noting that Ewick and Silbey "explicitly link legal consciousness and social consciousness".[169] Methodologically, my

[164] Ewick & Silby, *supra* note 139 at 224.
[165] Silbey, *supra* note 140 at 324.
[166] Ewick & Silby, *supra* note 139 at 224.
[167] Silbey, *supra* note 140 at 323-24.
[168] Erik D Fritsvold, "Under the Law: Legal Consciousness and Radical Environmental Activism" (2009) 34:4 Law & Social Inquiry 799 at 806.
[169] *Ibid* at 806 and 810.

research on radical legal support organizers and their "perceptions of the law and social order" share a key characteristic with Fritsvold's examination of radical environmentalists in that both "have been vetted intensively within the movement".[170] Crucially, his study concludes that the legal consciousness of radical environmental activists transcends "even the most extreme boundary" of an *against* the law consciousness.[171] Emanating from both shared politics and lived experience, participants in movements for radical social change can develop an *under* the law consciousness, seeing law as not only inappropriate as a tool for social change, but as "an active agent of injustice" and an "active repressor of dissent".[172] This is an explicitly revolutionary position that can only be adequately represented by a fourth prong of legal consciousness as it is exemplified by a belief that the legal system as a whole protects and defends a fundamentally corrupt and illegitimate system.[173] The activists Fritsvold profiles are "not subservient to law; rather, they are subverting it—hence, Under the Law."[174] Especially in the context of popular legal education, the characterization of currently existing state law as illegitimate is a consistently recurring theme in the work of radical legal support organizers. A protest manual prepared for the 2005 US presidential inauguration protests by the J20 Legal Support Team is paradigmatic:

> The legal system is designed to break us down and dehumanize us. Having a legal support plan is just one more step toward resisting the criminal "justice" system, the illegitimate state it props up, and the corporate and government rulers who use this system to oppress and silence us all."[175]

[170] *Ibid* at 809.
[171] *Ibid* at 806.
[172] *Ibid* at 806 and 812.
[173] *Ibid* at 813 and 819.
[174] *Ibid* at 817.
[175] Doc 66.

Even when the intended audience is not an activist one, this narrative is often front and center as seen in CFLC's contribution to an alternative "disorientation" guide for first year law students: "We see the law as a limited but useful tool for social change. We reject the legitimacy of the current system's courts, cops, and borders, and we seek to use our skills to support grassroots struggles for social transformation."[176]

Like Fritsvold, Simon Halliday and Bronwen Morgan argue for the continued relevance of legal consciousness and its application to the study of radical social movements: "legal consciousness research has more potential than is presently being pursued to explore *collective* sense of agency in response to disadvantage that is sustained or ignored by law."[177] Building on Fritsvold's 'Under the Law' analysis, Halliday and Morgan develop a competing fourth narrative of legal consciousness which they term dissenting collectivism on the basis that for radical environmental activists, "state law is critiqued as being oppressive to groups and, more significantly, is struggled against – not as an accommodation of power, but in a group-based attempt to alter the structures of power in society."[178] Collective dissent "harnesses the gaming potential of state law" (*with* the law) but is also "fuelled by a sense of a higher transcendent law above state law" (*before* the law).[179] Based on a data set of interviews with radical environmental activists in England and Wales, Halliday and Morgan's dissenting collectivism is an effort to understand "when and why resistance to state law can become more than symbolic accommodations of law's power".[180] Their data reveals three principle elements of

[176] Doc 85.
[177] Halliday & Morgan, *supra* note 146 at 32.
[178] *Ibid* at 29-30
[179] *Ibid* at 6.
[180] *Ibid* at 31.

dissenting collectivism – an understanding of formal law as fundamentally illegitimate, and incipient sense of an alternative conception of law more closely related to justice and ethics, and a willingness to play games with formal state law – all of which are integrated through a "sense of strong collective identity and collective agency".[181]

This emphasis on collectivity is most evident in the foundational role of solidarity as an organizing praxis of radical legal support, but collective responsibilities arise in other contexts as well. The OWS Dissident Survival Guide urges activists to consider the potentially shared consequences of individual actions:

> Do your best to minimize unplanned contacts with law enforcement. Don't let your important political work be neutralized by trivial violations. Jumping a [subway] turnstile, smoking weed, or shoplifting may feel like everyday ways to subvert an oppressive system. But getting arrested for this kind of relatively minor violation can seriously undermine your more important work and lead to increased monitoring of your political activities. Whether it is worth it to you is a question you must answer for yourself. But if you are associated with a movement, remember that the political dreams of millions of people can be undermined by even sporadic instances of petty illegal behavior, giving rise to warrants, and scrutiny of both you and your associates.[182]

Collective agency and identity in response to repression were also highlighted by CRASS in their 2010 guide, "Untitled, or What to Do When Everyone Gets Arrested":

> [W]e have all gained so much more than we've lost since the RNC [Republican National Convention]. We've provided each other with much needed political and emotional support as we've faced our enemies in the courts and in the streets. That's solidarity. And we've taken care of those who needed help returning to town to fight their charges and resist state repression. That's mutual aid. These are things the state cannot understand, and thus cannot destroy. These are things that strengthen us and our communities,

[181] *Ibid* at 15-16.
[182] Doc 54.

> helping us to be stronger for the next time we come face to face with our oppressors.[183]

The central thrust of Halliday and Morgan's dissenting collectivism is *struggle*: "Legal consciousness is not simply about what people *think* about law, but also about what they *do*."[184] In concert with Fritsvold's 'Under the Law' and the powerful foundation of Ewick and Silbey's original framework, a legal consciousness lens provides a glimpse of the challenge radical legal support praxes pose to hegemonic legality – and the alternate conceptions they prefigure.

E. Toward Lawyering From Below: The Prefigurative Legal Imagination as Counter-Hegemonic Legality

As responses to repression and criminalization, the capacity-building and movement defence praxes of activist legal support organizers demonstrate the counter-hegemonic and prefigurative potential of radical legal work. Especially when carried out by non-lawyers, this work points toward a mode of movement lawyering *from below*, a mutual aid project that does not take the legitimacy of the legal system as a given and recognizes that repression can breed resistance as well as demobilization. Framed in this way, the anti-repression and direct support interventions of radical legal support organizers disrupt hegemonic frames of protest *and* policing[185] and serve to both evidence and catalyze a strain of collective, explicitly counter-hegemonic legal consciousness. All of these processes rely on the knowledge production function of radical legal pedagogy, the same

[183] Doc 70.
[184] Halliday & Morgan, *supra* note 146 at 30.
[185] Mike King, *When Riot Cops Are Not Enough: The Policing and Repression of Occupy Oakland* (New Brunswick, NJ: Rutgers University Press, 2017).

engine that drives the prefigurative legal imagination of activist legal support organizers and the movements they emerge from.

Lawyering from below is a Gramscian vision of counter-hegemonic legality cultivated and strategically deployed by radical legal support organizers and movement participants. It relies on Italian Marxist Antonio Gramsci's call for the development of organic intellectuals, for "active participation in practical life, as constructor, as organiser, 'permanent persuader'".[186] He saw that a social group emerging through struggle needed to ideologically assimilate and conquer traditional (or professional) intellectuals while "simultaneously elaborating its own organic intellectuals."[187] Wielding the tools of law from below, including or even especially by non-lawyers, locates radical legal support providers as agents in what Gramsci described as the "war of position" in his conceptualization of revolutionary social change, an intellectual and cultural struggle for the development of a working class counter-hegemony where "the superstructures of civil society are like the trench-systems of modern warfare".[188] A lofty aspiration yes, but as a model of insurgent legality, lawyering from below emerges from the established legal support praxes documented throughout this dissertation: the provision of legal support as a movement-embedded, mutual aid project that is accountable to other movement participants and resists (if not always successfully) the professionalization and service-provision models of lawyering from above. Firmly rooted in solidarity as an anti-repression tactic, lawyering from below anticipates arrests, detentions, and other forms of criminalization and aims to ensure that the post-arrest experience is generative, working

[186] Antonio Gramsci, *Selections from the Prison Notebooks* (New York: International Publishers, 1971) at 10.
[187] *Ibid* at 10
[188] *Ibid* at 235.

with other organizers to counter trauma and demobilization while catalyzing resistance and re-mobilization.

This approach to mobilization is explored in Mike King's study of Occupy Oakland, which analyzes repression "through a discussion of social movement tactics, the state's need to project legitimacy, and the role of popular support and solidarity."[189] King argues that contrary to generally held views that they are separate conceptually and temporally, the dominant contemporary models of protest policing[190] – negotiated management and strategic incapacitation – are "strategies of force and consent [that] are mutually constituted."[191] Given the social control function of policing, "consent and coercion constitute a hegemonic praxis that establishes norms, in which disruptive challenges to the social order become alien to the process of protest itself."[192] King develops an analysis in which repression is intimately connected to the rise and maintenance of hegemonic or common-sense understandings of state and police legitimacy and discourses of legality.[193] Viewed in this context, when the work of radical legal support disrupts the successful criminalization and delegitimation of movements, it operates as a potentially counter-hegemonic challenge to not only the immediate impacts of repression but also to hegemonic frames of protest and dissent much more broadly. By producing knowledge about the relationships between police tactics and solidarity-based legal support strategies – and facilitating their spread – lawyering from below can act as a barrier to incapacitation and demobilization, discursive and material. Rather than seeing protest as

[189] King, *supra* note 185 at 38.
[190] See chapter 4, section A.
[191] King, *supra* note 185 at 24.
[192] *Ibid* at 44.
[193] *Ibid* at 38 and 77.

aberrational, it seeks to contribute to the development of effective, strategic social movements with an understanding of both current and historic practices of state repression and to build the capacity of those moments to produce their own knowledges in response.[194]

Lawyering from below is a form of counter-hegemonic legality borne of involuntary movement *defence* rather than deliberate legal *offence*. When law is engaged with proactively, it is via what Robert Knox calls principled opportunism: "a basic tenet that law is not to be used on its own terms, but rather in furtherance of a strategic goal (which includes transcending liberal legalism)."[195] Principled opportunism is an especially valuable tool in the aftermath of mass arrests and other contentious events, moments which are often marked by a bifurcation of the substantive politics underlying the mobilization and procedural denunciations of the criminalization and regulation of dissent. It is this space that articulates the necessity of an explicitly counter-hegemonic legal consciousness of the 'under the law' or 'dissenting collectivism' variety among movement participants and it is the work of demystifying law and rights and de-exceptionalizing the criminalization of dissent that allows lawyering from below to drive its construction and diffusion. This is a radical (or even revolutionary) consciousness at odds with the "critical legal consciousnesses" Cummings identifies as a component of the current social movement turn in law.[196] He argues that a focus on the world of practice reveals several such critical orientations, including "constrained legalism, "which strategically deploys

[194] As Choudry notes, the "kind of activist knowledge about state repression of dissent, political policing, and the national security state that can emerge through the experience of being targeted is constructed through dialogue and in dialectical relationship to state security practices": *supra* note 26 at 105.
[195] Robert Knox, "Strategy and Tactics" (2010) 21 Finnish Yearbook of International Law 193 at 227.
[196] Scott L Cummings, "Critical Legal Consciousness in Action" (2009) 120 Harvard Law Review 62.

law in a way that is neither utopian in its hopes for legal reform nor rejectionist in its dismissal of legal avenues of transformation."[197]

No such constraints bind the liberatory aspirations of radical legal support organizers. William Carroll locates the contemporary potential for movement building in the development of what Gramsci called a 'counter-hegemonic historic bloc', the combination of "leadership in civil society with leadership in the sphere of production".[198] This process encompasses the role of the organic intellectual but it also involves what Carroll describes as the "welding of the present to the future", participation in a war of position that "includes a process of moral and intellectual reform that not only renovates common sense into good sense, but incrementally erodes the distinctions between leaders and led" and creates a basis for participatory democracy.[199] This is a claim that stops short of taking state power[200] but instead aims at the creation of a historic bloc around a counter-hegemonic project, moving us from "subalternity to a counter-hegemonic collective will."[201] The notion of prefiguration that lies at the heart of this project is nothing to new radical movements for social change, which have long attempted to 'build a new world in the shell of the old'.[202] Lying somewhere between critique and destruction as a creative force, bridging the distance between law as it is and what lies beyond, a prefigurative

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[197] *Ibid* at 63.
[198] William K Carroll, "Crisis, movements, counter-hegemony: in search of the new" (2010) 2:2 Interface: a journal for and about social movements 168 at 176-7.
[199] *Ibid* at 176.
[200] Legally, Carroll does not appear to be invoking a necessarily sovereign moment. It is closer to the question Ruth Buchanan poses as the "limits of law itself" and "the necessity of theorizing the 'event', that is, the need to address the usually unspoken question about the relationship between law, force and revolution." Ruth Buchanan, "Writing Resistance into International Law" (2008) 10 International Community Law Review 445 at 454.
[201] Carroll, *supra* note 198 at 177.
[202] See e.g. the preamble to the constitution of the International Workers of the World (1905), online: https://iww.org.uk/preamble/.

legality is evident in the alternative conceptions of law Halliday and Morgan cite as a hallmark of dissenting collectivism. More importantly, it is intrinsic to the foundational radical legal support praxis of solidarity. In 2008, Coldsnap noted that "our ability to work together and our numbers" add up to more than the ability to clog the gears of the criminal justice system: "Every time we use this power, we build and strengthen our ability to *shift the paradigm we're living in*."[203] Prefiguration is about advancing analyses of the criminalization of dissent that go beyond frames of liberal constitutionalism to theorize and actually construct alternate notions of justice, accountability, and redress, both within our own movements, communities, and/or organizations and in terms of challenging the state on its own terrain. Mac Scott put it this way:

> One of the things through working with the law that has been hard and weird and also lovely for me is the concept of how do you actually create mechanisms for justice? My mind has been changed by doing legal work and I'm not fully able to figure it out – it's been changed. But what do we look forward to in movements in terms of dealing with those issues? Because they're not gonna go away after some glorious revolution.[204]

MSLC's Legal Solidarity Workshop reminded participants that it contains "just a small sample of possible tactics and demands. Let your creativity and the situation guide you. We will always be more creative than the system."[205] In their 2001 solidarity manual, NYC-PLC wrote:

> In any decision that will so dramatically affect individual members of the group, it becomes that much more necessary that everyone has 'consented' to a decision. One goal is that voices that are usually marginalized based on race, class, gender, sexual orientation and other oppressions are more likely to be heard. *The*

[203] Doc 18 at 29 [emphasis added].
[204] Interview of Mac Scott (23 April 2017).
[205] Doc 78, Legal Solidarity Training

> *way we relate to each other today is a part of the society we are trying to create in the future*.[206]

The members of MACC Legal told me:

> pretty much all the work that we do, is much more, you know, kind of *analysis by deed*. We're much more interested in not holding like theoretical discussion groups when none of us are part of theory groups or reading groups – and those aren't bad. Our thing is like how do we get a group of people to work collectively in... kind of getting the experience of anarchy – and winning. Because we're also interested in winning… Our thing is how do we get people to build trust and to connect and to create affinity, and to be perfectly honest, groups of defendants are kind of tailor made for that to happen. It's a perfect social engineering moment of being able to be like 'OK you go alone, you're helpless [against] the power of the state. Come together, it's a force multiplier and you can support each other, and it can be where your politics is…'[207]

"Analysis by deed" also underscores lawyering from below as *praxis*: a melding of theory and practice that draws on and commits to building the already deeply counter-hegemonic potential of radical legal support and popular legal education. As an outgrowth of social movement knowledge production, prefigurative legality holds the potential for shifting movements' engagement with law away from purely reactive, crisis-driven moments and into questions of what can come next.

[206] Doc 80 [emphasis added].
[207] Interview of Participants 3-5 (26 February 2017).

CHAPTER 7
LAWYERING FROM BELOW IN THE CURRENT MOMENT (AKA, A LITTLE SOLIDARITY STILL GOES A LONG WAY)

> Outside the court there was a squad of elated, exhilaratingly sympathetic jail support volunteers and legal observers—people who'd gone through the same process or wanted to help others who had, who showed up day after day to greet arrestees as they emerged from the belly of the beast. They had tables so laden with food, drinks, cigarettes, and medical supplies they looked like they were about to overflow. Everything was free. Everything could be free.
>
> Greg Afinogenov, 2020[1]

1. Three endings, three hashtags

This dissertation has had three possible endings. At first I thought I would finish it in early 2020 with a story about the time I trudged through deep snow on Wet'suwet'en territory to give legal trainings for land defenders and how, after the RCMP invaded those territories to make way for a pipeline, Indigenous people and allies blockaded roads and railways and demonstrated in the tens of thousands under the banner of #WetsuwetenStrong. But it wasn't quite finished when, in mid-March, COVID-19 abruptly #shutdownCanada again and I thought this dissertation would be my version of pandemic baking, a product of socially-isolated writing made possible by the essential work, and inequitably held risk, of others. And then came June and I still wasn't done and suddenly people were back on the streets, masked and weary, to say again (and again and again) that #BlackLivesMatter and I wanted to join them, dissertation be damned. Each of these three moments was full of law, marked by urgent invocations of exception and emergency and made subject to

[1] Greg Afinogenov, "Everything Could Be Free", *n + 1* (9 June 2020), online: https://nplusonemag.com/online-only/online-only/everything-could-be-free/.

extraordinary remedies – injunctions, exclusion zones, quarantines, curfews – that became instantly ordinary. And it turned out that each of these possible endings pointed to its own conclusion after all.

2. Movement-embedded methodologies and the re-resurgence of radical legal support

As I write, it has been more than two months since the police killing of George Floyd in Minneapolis reignited struggles for racial justice, and people are still on the streets in what has become an insurrectionary moment. Across the US and Canada, people are protesting police violence and impunity, pulling down monuments to colonialism and white supremacy, and forcing real conversations about defunding, or even abolishing, police forces.[2] My social media feeds are full of the usual invitations to demonstrations and online panels but also something new: infographics about knowing your rights and why you shouldn't talk to police and digital security at street protests and so on.[3] These images are beautiful and creative and funny – they are, after all, competing with memes and cat photos for our increasingly fragmented attention – and I know that I am watching a sea change in how we do popular legal education (and grassroots organizing more generally), take place in real time. At the same time, I am wondering how I would begin to describe this development as part of a third era of radical legal support – or if I even could.

In chapter three of this dissertation, I traced the re-emergence and consolidation of the law collective model of activist legal support during the global justice movement. In chapter four, I documented its partial dissolution and the concomitant emergence of other

[2] See e.g. Black Lives Matter Toronto, "Defund the Police – Demands" (2020), online: https://blacklivesmatter.ca/defund-the-police/.
[3] Terry Nguyen, "How social justice slideshows took over Instagram", *Vox* (12 August 2020), online: https://www.vox.com/the-goods/21359098/social-justice-slideshows-instagram-activism.

approaches to defending protest movements against criminalization and repression. During both eras, I highlighted how shifts in activist tactics and legal support strategies evolved alongside changing approaches to protest policing and other state responses. In some ways, our present moment has much in common with this second, 'age of austerity' era of radical legal support. Some of the same movements for racial justice are at another peak and the consequences of COVID-19 are likely to create a financial crisis larger and more protracted than the one which began in 2008. But this current juncture, which pairs an upswing in mobilizing with a global pandemic that makes face-to-face organizing difficult, also feels fundamentally different. And while crisis-driven organizing always tends toward the *ad hoc* and often demonstrates the limitations of movement infrastructures, viewed from the vantage point of my little corner of current mobilizations, one such limitation looms especially large: at least in terms of activist legal support, we are reinventing the wheel – again. I am answering the same questions I've answered a million times before – about how bail works (and doesn't) and police practices and *Charter* rights – and the plethora of dueling infographics points to confusion and piecemeal responses as much as an upsurge in organizing. Many familiar names still pop up – Toronto's Movement Defence Committee, the Bay Area Anti-Repression Committee, Philadelphia's Up Against the Law!, New York City's Mutant Legal etc. but the absence of other names, skills, and practices only underscores the difficulty of sustaining *intergenerational* social movement knowledge production.

Yet there are also new names, new structures, and a growing digital archive of relatively recent movement resources to draw on and consolidate. More than a year ago, Chris Dixon wrote about the "noticeable downturn" in movement trainings – broadly

construed as "intentional mechanisms for helping people to learn… organizing skills" – since the peak of the global justice movement in the early 2000s.[4] A few months into the pandemic era, this downturn may be in reverse; the upswing in trainings, resources, and other movement defence efforts signals the potential emergence of a third iteration of radical legal support. In addition to swift changes in how – and where – popular legal education occurs, evolutions in the language and practice of solidarity are also becoming visible as abolitionist politics shape critiques of and responses to protest and everyday policing alike. These are nascent shifts, but even this brief assessment points to the importance of movement-embedded research in documenting and analyzing the work of grassroots activists. Due to the massive amount of electronic ephemera produced by today's movements, it may be that documenting this moment will be harder than my task here was, but close study based on interviews and primary documents remains crucial for the development of movement-relevant research and theory.

3. Movement-relevant theory and the future of law and social movements research

The value of this sort of thinking and writing was very much on my mind as I wrapped up this dissertation during the forced solitude of lockdown. While I can point to countless threads that remain to be followed and expanded, given the scant research on activist legal support, three broad areas stand out. First, while this project is a small contribution to the study of law and social movements in Canada it is also evidence of the need for more research on the intersection of activism, social movements, and law (as both a proactive tool and a source of repression) in the Canadian context. The various literatures canvassed

[4] Chris Dixon, "Training for Movements", *Canadian Dimension* (3 May 2019), online: https://canadiandimension.com/articles/view/training-for-movements.

in chapter five (on law and social change strategies, clinical lawyering and education, rights critiques, Indigenous resistance, etc.) point to key concerns that could use current, critical elaboration by researchers of progressive or left movements for social change. The present moment, however, also calls for studies of how right wing, and especially populist, movements engage with law and other state apparatuses – and how they wield legal tools against counter-organizers and oppressed communities.

My examination of the so-called "social movement turn in law" in chapter five also highlighted how the praxes of radical legal support organizers shed light on key debates about movement lawyering and thus ought to be understood as a form of legal work that often corresponds to but also contests the work of movement lawyers. These praxes also suggest future avenues of research. There is much more to be said about movement lawyering and radical legal support, both in terms of the politics that non-lawyer activists bring to their pedagogical and direct support work and the way they enact those politics through practices of accountability, rejection of service provider models, and collective ethical commitments. Nor does the concept of "lay lawyering" even begin to account for the breadth and significance of movement-based radical legal support praxes.

Finally, the dearth of research on the post-arrest moment and the impact of criminalization and repression on mobilization, as discussed in chapter six, reveals the need for further consideration of the "legal afterlife of protest,"[5] in the current moment and beyond. This dissertation focused on non-lawyer activist collectives and the experiences of arrestees, detainees, and other movement participants were beyond my scope, but that is an even more under-studied area; apart from scattered, first-hand accounts, I know of no

[5] I am indebted to Prof. Adrian Smith for this turn of phrase.

writing from the perspective of the "recipients" of radical legal support.[6] Closer attention to the post-arrest experience, particularly if undertaken via a granular, movement-embedded approach, would also lay a foundation for further investigation of the relationships between protest policing and movement tactics. In chapter four, I canvassed the historical evolution of protest policing and argued that activist legal support tactics evolved alongside it, but it is increasingly apparent that police practices also respond to and are shaped by movement strategies and that the relationship is a dialectical one. That the quiet of lockdown turned out to be only a momentary lull in street protest during a year marked by upheaval and mobilization only underscores the necessity of research into the operation of the criminalization of dissent on the basis of direct engagement with affected movements.

4. Counter-hegemonic legality: implications and imaginaries

The relationship between protest and policing was also on my mind in late January 2020 as I sat, once again, in a borrowed office preparing for a legal observer training, this one belonging to the Office of the Wet'suwet'en in so-called Smithers, British Columbia. During that trip, I spent a few days on Wet'suwet'en territory training legal observers and meeting with land defenders as they prepared for the RCMP's inevitable enforcement of an injunction prohibiting interference with the construction of a natural gas pipeline. The RCMP moved in in early February, arresting and brutalizing Indigenous land defenders

[6] A starting point for this research would be studies of movement lawyering and client activism or empowerment. See e.g. Eduardo RC Capulong, "Client Activism in Progressive Lawyering Theory" (2009) 16 Clinical Law Review 109.

over several days[7] after barring journalists and legal observers from an ever-expanding exclusion zone.[8] Their actions precipitated a cascade of solidarity actions across Canada and beyond; by mid February, rail blockades by Indigenous people and allies had effectively shut down supply chains across much of Canada. A web of injunctions was issued by courts in four provinces and yet the protests and blockades only grew.[9] Just as they would a few months later, informal activist networks sprung into action and worked to spread the arcane movement knowledge about injunctions and contempt of court I and other activist legal support organizers in BC had accrued during previous battles pitting environmental activists and Indigenous communities against extractive industries. Indigenous solidarity work was not new to me, nor to activist legal support,[10] but the Wet'suwet'en solidarity movement felt like a seismic shift. For the first time in my experience, the rule of law itself was made subject to scrutiny – and not just by Indigenous peoples or in subcultural activist milieus – and the fault lines and contradictions inherent

[7] Amanda Follett Hosgood, "Emotions High as RCMP Arrest Seven at Last Wet'suwet'en Post", *The Tyee* (10 February 2020), online: https://thetyee.ca/News/2020/02/10/Emotions-High-Unistoten-Arrests/.
[8] CBC News, "Wet'suwet'en hereditary chiefs among those calling for civilian review of RCMP actions", *CBC News* (30 January 2020), online: https://www.cbc.ca/news/canada/british-columbia/wet-suwet-en-hereditary-chiefs-police-action-1.5445950.
[9] Shiri Pasternak & Irina Ceric, "Injunctions have only served to prove the point: Canada is a smash-and-grab country for industry" *The Globe & Mail* (20 February 2020) O6, online: https://www.theglobeandmail.com/opinion/article-injunctions-have-only-served-to-prove-the-point-canada-is-a-smash-and/.
[10] See my discussion of the Water Protector Legal Collective in Chapter 4, section D(ii) above. A 2005 'Disorientation Guide' prepared for incoming law students by the CFLC (Doc 85) contained a prescient call to arms: "The struggle for the land intensifies the fact that Canada and the United States are settler states built on stolen land should be known by all, but the ongoing process of dispossession of First Nations people is often ignored. First Nations communities, who have struggled for 500 years against imperialist plunder and colonial genocide, are continuing to assert sovereignty and self-determination. One weapon in this struggle is that of the law – as flawed as it is – in order to back up ever-expanding grassroots Indigenous movements. Research assistance and legal support in this area is one of the most important tasks for young legal activists, as it cuts to the core of the legitimacy of the Canadian state and its judicial system. Not only that – this area is one of the most litigated constitutional questions of the past 15 years."

to the settler law of the Canadian state lay exposed.[11] As an activist-researcher, it was an opportunity to witness first-hand not only the "ways in which cultural narratives about legality constrain and/or enable social action" but also how quickly those cultural narratives can change.[12]

In the preceding chapter, I sketched out a vision of lawyering from below, relying on the explicitly counter-hegemonic legal consciousness that radical legal support organizers demonstrate and catalyze in order to envision a model of prefigurative legality enacted by lawyers and non-lawyer activists alike. In the narratives of both the Wet'suwet'en solidarity movement and our current moment, I see room for such legalities to flourish. Particularly for settler allies, the former was an example of how an insurgent legality – one that reimagines relations on these territories and inscribes new lines of jurisdiction even as the extant ones stand – can emerge out of struggle. In the current mobilizations for racial justice, I see similar possibilities for aligning movement defence and responses to criminalization with the politics of those movements, for engagement with the state through what John Holloway describes as "a movement in-against-and-beyond the forms of social relations which the existence of the state implies."[13] Alongside the pandemic-fueled diffusion of mutual aid as a collective practice and the broader proliferation of once unthinkably radical critiques of policing and the criminal justice system, I see possibilities: for a lawyering from below that prefigures new legalities as it wrestles with the material realities of the current ones, that works within and against the

[11] See e.g. Erin Seatter & Jerome Turner, "Untangling the 'rule of law' in the Coastal GasLink pipeline standoff", *Ricochet* (5 February 2020), online: https://ricochet.media/en/2904/untangling-the-rule-of-law-in-the-coastal-gaslink-pipeline-standoff.
[12] Simon Halliday & Bronwen Morgan, "I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination" (2013) 66:1 Current Legal Problems 1 at 32.
[13] John Holloway, *Change the World Without Taking Power: The Meaning of Revolution Today*, 2nd ed (London: Pluto Press, 2010) at 235.

state as movement strategy dictates, but also sees beyond it. In his account of joining the resistance against New York City's curfew, "one of hundreds of documents of the current moment of Black rebellion", Greg Afinogenov describes his arrest and subsequent encounter with jail support organizers, concluding "[e]everything was free. Everything could be free."[14] Reading his words more than twenty years after my first brush with jail support, I cried. A little bit of solidarity still goes a long way – sometimes it's the only thing that does.

[14] Afinogenov, *supra* note 1.

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APPENDIX A:
LAW COLLECTIVES AND OTHER RADICAL LEGAL SUPPORT PROJECTS

The following is a list of activist legal support projects active in Canada and the US at any point since the late 1990s. It is based on my primary research sources as well as internet and media searches.
* indicates a project/group I was directly involved in as a member or participant
** indicates a project/group I worked with in close collaboration and/or a coalition

	Legal Collective	**Location**	**Years Active**
1	Austin People's Legal Collective	Austin, TX	~2004–2009
2	Back Alley Legal Collective	Vermont	2001–?
3	Bay Area Anti–Repression Committee [ARC]	San Francisco Bay Area	2011–present
4	Black Movement Law Project [BMLP]	New York City	2014–present
5	Cincinnati People's Law Collective	Cincinnati	2002–?
6	Coalition Opposed to Police Brutality**	Montreal	1995–present
7	Coldsnap Legal Collective	St. Paul, MN	2008–2010
8	Common Front Legal Collective [CFLC]*	Toronto	2001–07
9	Common Ground Legal Collective	New Orleans	~2005–2009
10	DC Justice and Solidarity	Washington, DC	2001–?
11	Dead City Legal Posse	Washington, DC	2017–2018
12	Dissent on Trial Collective**	Toronto & Montreal	2003–?
13	Fists Up! Legal	Bay Area	2013–2014
14	Freshet Collective	North Dakota	2016–present
15	G8 Legal Collective	Calgary	2002–?
16	Just Cause Law Collective	Oakland	2001–~2004
17	JustUs Legal Collective	New York City	2007–?
18	Legal Support Ottawa**	Ottawa	2002–~2007
19	Libertas Legal Collective** (formerly Québec Legal)	Montreal	2000–~2005
20	Legal Support to Stop the War [LS2SW]	SF Bay Area	2003–2004
21	MACC Legal Support	New York City	2017–present
22	Miami Activist Defense	Miami	2003–~2004
23	Midnight Special Law Collective [MSLC] (formerly DAN Legal) **	Oakland	1999–2010
24	Movement Defence Committee*	Toronto	2008–present
25	Mutant Legal**	New York City	2011–present
26	New York City People's Law Collective [NYC-PLC]**	New York City	2000–~2006
27	Occupy Legal Bay Area	SF Bay Area	2011–2012
28	Olympic Resistance Network – Legal Committee [ORN Legal]**	Vancouver	2009–2010
29	Portland People's Law Collective	Portland, OR	~2002–?

30	R2K Legal Collective	Philadelphia	2000–2004
31	SOA Watch Legal Collective	Fort Benning, GA	?–present
32	Terminal City Legal Collective*	Vancouver	2016–2018
33	Tilted Scales Collective	Oakland	~2014–present
34	Up Against the Law! Legal Collective	Philadelphia	2002–present
35	Water Protector Legal Collective [WPLC]	North Dakota	2016–present

APPENDIX B: COMPLETED INTERVIEWS

No.	Name	Organization(s)	Location	Date
1	Kris Hermes	R2K Legal, etc.	Vancouver	February 9, 2017
2	John Viola	NYC-PLC, LS2SW, and Occupy Legal	Bay Area	March 15, 2017
3	Unnamed	NYC-PLC and MACC Legal	NYC	February 26, 2017
4	Unnamed	NYC-PLC and MACC Legal	NYC	February 26, 2017
5	Unnamed	MACC Legal	NYC	February 26, 2017
6	Jude Ortiz	Coldsnap and Tilted Scales	Bay Area	March 15, 2017
7	Dan Tennery-Spalding	MSLC	Remote	April 9, 2017
8	AJ Withers	CFLC	Toronto	April 25, 2017
9	Mac Scott	MDC, NYC-PLC, etc.	Toronto	April 23, 2017
10	Unnamed	Québec Legal and Libertas	Vancouver	February 5, 2018
11	Moira Meltzer-Cohen	Mutant Legal	NYC	February 25, 2017
12	Carol Tyson	Justice and Solidarity	DC	March 6, 2017
13	Sarah Hogarth	NYC-PLC, etc.	NYC	May 12, 2017
14	Lindsey Shively	MSLC, Coldsnap	Bay Area	March 10, 2017
15	Abi Hassen	BMLP	NYC	February 27, 2017
16	Unnamed	Coldsnap	Bay Area	March 13, 2017
17	Megan Books	MSLC	Bay Area	March 9, 2017
18	Ame Hayashi	Mutant Legal	NYC	March 1, 2017
19	Unnamed	Mutant Legal	Remote	March 31, 2017
20	Unnamed	MDC	Toronto	April 26, 2017
21	Niiti Simmonds	MDC	Toronto	April 23, 2017
22	Ryan White	MDC	Toronto	April 23, 2017

APPENDIX C: DOCUMENTARY MATERIALS

No.	Collective/Author	Location	Type	Title/Description	Date
1	A. Nonymous and MSLC	Bay Area	Guide	Advanced Tips for Videographers	2001
2	Anarchist Black Cross Calgary	Calgary	Guide	Know Your Rights! A Primer for Canadians	May 2007
3	Anonymous		Conference Materials	Notes re evidence	2002
4	Austin People's Law Collective	Austin, TX	Newsletter	APLC News	Spring 2009
5	Back Alley Legal Collective	Vermont	Guide	Legal Primer for Activists	2001
6	Bay Area Anti-Repression Committee	Oakland	Guide	Repress This! Ways to be your own Anti-Repression Committee	March 2014
7	MSLC	Oakland	Guide	Organizing Mass Defense	Sept 2001
8	CFLC	Toronto	Misc.	We Fought the Law	Nov 2004
9	CFLC	Toronto	Guide	How to Prepare to do Legal Support for a Demonstration	May 2002
10	CFLC	Toronto	Guide	In the streets and in the courts we fight to win: a legal guide for activists	Sept 2001
11	CFLC	Toronto	Newsletter	In the courts and the streets, Vol 11, Issue 13	Nov 2004
12	CFLC	Toronto	Newsletter	The Gavel and the Gun, Vol 13, Issue 11	Nov 2004
13	CFLC	Toronto	Newsletter	In the streets and in the courts (unnumbered draft)	June 2005
14	CFLC	Toronto	Newsletter	In the courts and the streets, Vol 12, Issue 2	Fall 2005
15	CFLC	Toronto	Workshop	CUPE Young Workers Conference	Oct 2004
16	COBP Collective	Montreal	Guide	Guess What! We've Got Rights?!	2017
17	COBP Collective	Montreal	Guide	Guess What! We've Got Rights?!	March 1999
18	Coldsnap Legal Collective	Minneapolis–Saint Paul	Guide	Need to Know Basis: Minnesota Legal Primer for the RNC	2008
19	DAN Legal Team	Seattle	Guide	Answers to Legal Questions	1999
20	DAN Legal Team	Seattle	Guide	Jail/Court Solidarity	1999
21	DC Justice & Solidarity Collective	Washington, DC	Report	S29 2001 DC Fall Demonstrations	2001
22	Fists Up!	Bay Area	Guide	Dealing with Police	Dec 2014

No.	Collective/Author	Location	Type	Title/Description	Date
23	Windsor OAS Legal Working Group	Windsor	Internal	Windsor OAS Legal Strategy	May 2000
24	Just Cause Law Collective	Oakland	Guide	Demonstrations and the First Amendment	Jan 2001
25	Just Cause Law Collective	Oakland	Workshop	LO Workshop Agenda	Feb 2001
26	Just Cause Law Collective	Oakland	Guide	Instructions for Legal Observers	2001
27	Just Cause Law Collective	Oakland	Report	Examples of Jail/Court Solidarity	June 2005
28	Just Cause Law Collective	Oakland	Guide	Police	Jan 2001
29	Just Cause Law Collective	Oakland	Guide	How to Use Jail/Court Solidarity	2004
30	Just Cause Law Collective	Oakland	Guide	Laws Commonly Used to Prosecute Activists in California	Jan 2001
31	Just Cause Law Collective	Oakland	Guide	Speaking to the Media	Jan 2001
32	Just Cause Law Collective	Oakland	Guide	Sex work law in California	2002
33	JustUs Legal Collective	NYC	About	Untitled pamphlet	
34	Libertas LC	Montreal	Conference Materials	Up Against the Law Conference: Invitation	Apr 2005
35	Libertas LC	Montreal	Guide	Legal info for the protest against WTO	2003
36	Libertas LC	Montreal	Newsletter	Summer 2002 Bulletin	Summer 2002
37	Libertas LC		Misc.	Under the Lens of the People Book Launch	Nov 2013
38	Libertas LC and CLAC	Montreal	Report	Montreal Activist Arrest and Trial Calendar	2000—2005
39	MDC	Toronto	Guide	A legal guide for activists	June 2010
40	MDC	Toronto	Guide	Information for People Coming from the US…	June 2010
41	MDC	Toronto	Workshop	Basic Workshop on Rights and Solidarity for Activists	June 2010
42	MSLC	Oakland	Guide	Legal Solidarity Handbook	2001 and 2003
43	MSLC	Oakland	Guide	Legal Observer Guide	May 2007
44	MSLC	Oakland	Workshop	Dim Sum Roleplay Cards	July 2002
45	MSLC	Oakland	Workshop	Dim Sum Bullet Points	July 2002
46	Mutant Legal	NYC	Guide	Best Practices for Jail Support in NYC	
47	NYC-PLC	NYC	Guide	Legal Support for Demos and Actions	March 2001

No.	Collective/Author	Location	Type	Title/Description	Date
48	NYC-PLC	NYC	Workshop	Education 4 Educators	Apr 2001
49	NYC-PLC	NYC	Guide	How to Handle the Heat handouts	Apr 2001
50	NYC-PLC, After Midnight, R2K Legal	Washington, DC	Workshop	Legal and Solidarity Training (Inauguration)	Jan 2001
51	Occupy Legal	Bay Area	About	Occupy Legal Mission	Dec 2001
52	Occupy Legal	Bay Area	Workshop	Occupy Legal KYR 101	Oct 2011
53	Olympic Resistance Network	Vancouver	Guide	A Legal Guide for Olympic Protesters	2010
54	OWS Activist Legal WG, Anti-Rep Cttee	NYC	Guide	OWS Dissident Survival Guide	March 2012
55	Peasant Revolt	Edmonton	Guide	Survival Skills: Guide to Public Order Situations	
56	Philadelphia Legal Collective	Philadelphia	Conference Materials	Legal Collectives' Conference Agenda	Jan 2002
57	Political Prisoners Union of Québec	Montreal	Guide	A Guide for the Political Prisoners of Québec City	2001 or 2002
58	Québec Legal Collective	Montreal	Guide	Legal Informations [sic]	2001
59	Québec Legal Collective	Montreal	Report	From Québec City to Orsainville	May 2001
60	Québec Legal Collective	Montreal	Workshop	FTAA Legal Workshop	2001
61	Resistance Without Reservation	Vancouver	Guide	A legal guide for protesters	2004
62	Students, Recent Graduates & Legal Workers WG	Toronto	Report	WAPC Statement	July 2007
63	Tilted Scales Collective		Guide	The Tilted Guide to Being a Defendant	2017
64	Toronto Mob4Glob & Québec City Legal Defence Collective	Toronto and Montreal	Guide	Intro to Law for Activists	Apr 2001
65	Travis, Sitrin, Scott		Article	The Resurgence of Activist Legal Collectives (Guild Notes)	2001
66	J20 Legal Support Team	Washington, DC	Guide	Demo Manual	2005
67	DC Justice & Solidarity Collective	Washington, DC	Guide	Legal Office Manual	2008
68	Up Against the Law! Legal Collective	Philadelphia	Guide	KYR/SSOY	2014
69	Travis, Coffey, Marini	Oakland	Article	Wrenching the Bench (EF! Journal)	2002

No.	Collective/Author	Location	Type	Title/Description	Date
70	CRASS	Minneapolis–Saint Paul	Guide	Untitled, or What to Do When Everyone Gets Arrested	July 2010
71	Common Ground LC	New Orleans	Internal	Legal Orientation for New Volunteers	2009
72	SOA Watch LC	Fort Benning, GA	Guide	Know your Rights and Realities	July 2005
73	G8 Legal Collective	Calgary	Misc.	RCMP Complaint Letter	June 2002
74	MSLC	Oakland	Guide	Dealing with Police	Apr 2008
75	MSLC	Oakland	Guide	KYR with the Cops!	2009
76	MSLC	Oakland	Guide	Court Solidarity	July 2001
77	Olympic Resistance Network	Vancouver	Misc	Letter for legal support	Feb 2009
78	MSLC	Oakland	Workshop	Legal Solidarity Workshop	Sept 2006
79	MSLC	Oakland	Workshop	Legal Support for Small Actions Handout	Aug 2007
80	NYC-PLC	NYC	Guide	Solidarity	March 2001
81	CFLC	Toronto	Workshop	Rights and Solidarity Legal Workshop Outline	2001
82	JustUs Legal Collective	NYC	Guide	navigating the system	2007
83	JustUs Legal Collective	NYC	Guide	Know Your Rights! What you need to know	2008
84	MDC	Toronto	Guide	Information for Parents	June 2010
85	CFLC	Toronto	Report	Disorientation Guide Article	Aug 2005
86	Mutant Legal	NYC	Guide	KYR - The Key Phrases	Jan 2015
87	NYC-PLC and CLAC Legal	NYC and Montreal	Guide	Borders Are Bad!	March 2001
88	CFLC	Toronto	Conference Materials	North American Legal Collectives Conference 2005	2005
89	Unknown	Montreal	Conference Materials	Montreal LC Conference Day 1 Notes	Feb 2003
90	Unknown	Montreal	Conference Materials	Montreal LC Conference Day 2 Notes	Feb 2003
91	Unknown	Austin	Conference Materials	LC Conference 2004 notes	May 2004
92	CFLC	Toronto	Conference Materials	2005 Conference Minutes	Feb 2005

No.	Collective/Author	Location	Type	Title/Description	Date
93	NYC-PLC	NYC	Report	WEF Analysis	Feb 2002
94	MSLC	Oakland	Misc	An Open Letter from Midnight Special	July 2010
95	Austin People's Law Collective	Austin	Conference Materials	2004 LC network conference schedule	March 2004
96	Libertas LC	Montreal	Conference Materials	Up Against the Law Conference: Overview	May 2005
97	Libertas LC	Montreal	Conference Materials	Up Against the Law Conference: Schedule	May 2005
98	Austin People's Law Collective	Austin	Video	Austin People's Law Collective	Sept 2012
99	DC Justice & Solidarity Collective	Washington, DC	Video	A taste of justice	2009
100	MDC	Toronto	Report	Parliamentary subs re G20	2010
101	rahula janowski	Oakland	Guide/ Report	Legal (Seattle Logistics Zine)	2000
102	MSLC	Oakland	Guide	Know Your Rights Comix #3	
103	Katya Komisaruk	Oakland	Guide	Beat the Heat: How to Handle Encounters with Law Enforcement	2003
104	MSLC	Oakland	Guide	Know Your Rights Comix #1	
105	Kris Hermes		Article	Collective Action Behind Bars (Upping the Anti)	2016
106	MSLC	Oakland	About	History	2004
107	Irina Ceric	NYC	Internal	Québec City legal planning meeting notes	Feb 2001
108	Laura	Toronto	Internal	Legal Brainstorm random thoughts	March 2001
109	Québec Legal Collective	Québec City	Report	Update on Activists Arrested at FTAA Protests	Apr 2001
110	transACTION	Toronto	Guide	transACTION guide: Legal/Jail Solidarity	March 2001
111	Windsor OAS Legal Working Group	Windsor	Guide	Excerpts from the OAS Shutdown Coalition Legal Information Kit	2000
112	Libertas LC	Montreal	Report	Notes: Under the Lens of the People Book Launch	Nov 2003
113	NYC-PLC	NYC	Guide	NYC-PLC's Role in Providing Legal Support During the RNC	2004
114	Miami Activist Defense	Miami	Newsletter	MAD Blast #1	Dec 2003
115	LS2SW	Bay Area	About	Legal Support to Stop the War (LS2SW)	June 2005

No.	Collective/Author	Location	Type	Title/Description	Date
116	Anonymous	New York City	Guide	Occupy! Your Guide to the International Occupation Movement of 2011	Oct 2011
117	CRASS	Minneapolis–Saint Paul	Report	The St. Paul RNC, One Year Later	2009
118	CrimethInc.	Minneapolis–Saint Paul	Article	We Are All Legal Workers: Legal Support at the RNC and After	May 2009
119	Anonymous		Internal	RNC Collective Bargaining/Solidarity Proposal	May 2008
120	Anonymous		Internal	RNC Collective Bargaining checklist	July 2008
121	MDC	Toronto	Other	Backgrounder for Summit Legal Support Project Defence Counsel	June 2001
122	MACC Legal Support	NYC	About	MACC Legal Support	2017
123	CFLC	Toronto	Internal	Meeting minutes, August 14, 2001	2001
124	MDC	Toronto	Misc	Appeal for broad political support for the G20 arrestees	June 2010
125	Mutant Legal	NYC	About	Our collective	2012
126	Olympic Resistance Network	Vancouver	Internal	Meeting minutes, March 12, 2010	2010
127	MDC	Toronto	Report	Summary Report Police Contacts G20 Activists and Organizers	2010
128	Occupy Legal	Bay Area	Internal	Meeting minutes, April 10, 2012	2012
1A	Environmental Law Centre Society	Victoria	Guide	Civil Disobedience: a legal handbook for activists	1999
2A	Law Union of Ontario	Toronto	Guide	Offence/Defence: Law for Activists	1996
3A	War Resisters League	NYC	Guide	Handbook for Nonviolent Action	1989
4A	Standing Up for Racial Justice	USA	Guide	SURJ DOJ Action Kit	2014
5A	National Lesbian and Gay Civil Disobedience Action	Washington, DC	Guide	Out and Outraged: Civil Disobedience Handbook	1987
6A	Livermore Action Group	Berkeley	Guide	International Day of Nuclear Disarmament	1983
7A	Livermore Action Group	Berkeley	Guide	Livermore Weapons Lab Blockade/Demonstration Handbook	1982