

TWO, THREE, MANY ROSAS! REBELLIOUS LAWYERS AND PROGRESSIVE ACTIVIST ORGANIZATIONS

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The cast of prototypic rebellious lawyers promoted by Gerald López is incomplete. It leaves out a very important mode of lawyering: that of working for a progressive activist organization. To fill that gap, this essay introduces “Rosa,” a lawyer on the staff of an organization of low-wage workers fighting for basic change. The essay argues that working for such organizations in a way that is accountable to the organizations is an especially effective way for lawyers to contribute to economic, racial, gender, social and environmental justice. It examines three current models of such practice: in-house, in an independent law center dedicated to collaborating with progressive activist organizations, and in a law center that is controlled by the organizations it serves. It proposes a database and discussion forum, more research and teaching about historic and current examples, and expanded opportunities for students to learn from direct experience working in lawyer role with progressive activist organizations.

INTRODUCTION

In his opening chapter Gerald López presents and endorses two prototypic “rebellious lawyers.”¹ I want to introduce a third type of rebellious lawyer and urge that her approach offers an especially effective way to contribute to economic, racial, gender, social and environmental justice.

Rosa is a member of the staff collective of a growing organization of low-wage workers, predominantly of color, many of them recent immigrants. The organization has mobilized workers and their allies to forge a powerful movement. It has won significant legislative

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¹ GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE 30-82 (1992) (describing the approach to rebellious lawyering pursued by “Amos” and “Sophie”).

and policy victories and forced major changes in business practice that together make a real difference in the lives of low-wage workers and their families and communities. In the process, it has taught and empowered many workers to become leaders: to analyze conditions and possibilities, mobilize other workers, build strong organizations, coordinate successful struggles and begin to envision and fight for a very different world.

Rosa is a full participant in the team of staff and elected worker leaders that shapes the group's programs, actions and structures following broad guidelines set by its members. She contributes her unique legal understanding and experience to collective determination of strategy and tactics. As decided through that collective process, she uses her skills and credentials to take on a variety of roles. She may litigate, draft legislation, negotiate contracts, advise on structuring revenue-generating projects – or she may recruit and coordinate other lawyers and law students to perform these and other tasks. Much of her work involves public speaking and capacity-building efforts with local chapters and leaders. In some contexts she is put forward as the group's spokesperson, at other times she works quietly in the background.

Rosa meets all of López's criteria for rebellious lawyering. She “. . . grounds her work in the lives and the communities of the subordinated themselves.”² She “. . . works with others in brainstorming, designing and executing strategies aimed at responding immediately to particular problems and . . . at fighting social and political subordination.”³ She “. . . understands how to be part of coalitions, as well as how to build them.”⁴ She integrates law and lawyering into broader forms of struggle” and “. . . nurture(s) sensibilities and skills compatible with a collective fight for social change.”⁵

Rosa differs from López's prototypes in *Rebellious Lawyering* in two fundamental respects. First, she works for a broad-based progressive activist organization. Second, she is structurally accountable to that organization and structurally integrated into its decision processes. This essay is an effort to initiate a broad conversation about this type of rebellious lawyering. It is a call for lawyers and law students to engage in this work, and a plea to legal academics to pay it close attention in our research and teaching. My plan is to: (1) compare Rosa's practice to that of López's prototypes; (2) review some ways in which lawyers currently work with progressive activist organizations; and (3) suggest steps to support and advance this form of

² *Id.* at 38 (1992).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

practice through legal research and pedagogy.

II. WHAT ROSA ADDS TO LÓPEZ'S PROTOTYPES

A. *Rosa Works For A Progressive Activist Organization*

The prototypic lawyers that López promotes are admirable. They are collaborative, respectful, and rooted in their communities. But they work free-lance and ad hoc. They do not function in and with ongoing activist organizations. They help to solve problems but not to build organized power to overturn the policies and structures that keep creating those problems.

Sustained collective struggle has enabled subordinated people to win significant advances. This is the lesson of the industrial organizing drives of the Thirties and the Black freedom movement of the Sixties.⁶ Some lawyers made valuable contributions to those movements.⁷

Urging lawyers to work in and with activist organizations may not have seemed a realistic option to López writing in the relative political quiescence of the late 1980s. In our time, however, a broad array of diverse social movements and organizations has again risen to challenge injustice and fight for transformative change: from Black Lives Matter, Occupy and Moral Mondays to Fight for 15 and worker centers across the country, from Dreamers and LGBTQ activists to Standing Rock and other mobilization to stop pipelines and fracking.⁸

⁶ See generally BARBARA RANSBY, *ELLA BAKER & THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* 170-370 (2003); ROBERT ZEIGER, *THE CIO: 1935-1955* (1995); PHILIP FONER, *THE HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES* (1979); PRISCILLA MUROLO, *FROM THE FOLKS WHO BROUGHT YOU THE WEEK-END* (2012); MICHAEL YATES, *WHY UNIONS MATTER* (2009); HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES*, 377-406, 433-467 (1980); TAYLOR BRANCH, *PARTING THE WATERS AMERICA IN THE KING YEARS 1953-1963* (1988); CHARLES M. PAYNE, *I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE* (1995). For a helpful summary of the extensive literature on subordinated people organizing for power, see Scott Cummings & Ingrid Eagly, *A Critical Reflection on Law and Organizing*, 48 *UCLA L. REV.* 443, 460-465 (2001); Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 *U. PA. J. L. & SOC. CHANGE* 25, 34-39 (2011).

⁷ See CHRISTOPHER S. JOHNSON, *MAURICE SUGAR: LAW, LABOR, AND THE LEFT IN DETROIT, 1912-1950* at 131-303 (1980); STEVE BABSON, DAVE RIDDLE & DAVID ELSILA, *THE COLOR OF LAW: ERNIE GOODMAN, DETROIT, AND THE STRUGGLE FOR LABOR AND CIVIL RIGHTS* (2010); ARTHUR KINOY, *RIGHTS ON TRIAL* (1983); TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT*, 133-304 (2011).

⁸ DAVID ROLF, *THE FIGHT FOR FIFTEEN: THE RIGHT WAGE FOR A WORKING AMERICA* (2016); David Moberg, *The List of the Fight for \$15's Victories—Tangible and Intangible—Is Getting Longer*, IN *THESE TIMES* (Jun. 15, 2016, 1:26 PM), <http://inthese-times.com/working/entry/18070>; Aaron Morrison, *Black Lives Matter Inaugurates Four Years of Resistance With Anti-Trump Disruption Protest*, *MIC NETWORK INC.* (Jan. 20, 2017), <https://mic.com/articles/166084/black-lives-matter-inaugurates-four-years-of-resistance-with-anti-trump-disruption-protest>; Associated Press, *Occupy Wall Street: Ports Dis-*

Such struggles will only intensify and expand in the coming years.

Lawyers often can make significant contributions to such organizations and movements by integrating our knowledge, skills and credentials into broader collective efforts. We are needed in our traditional roles – to defend criminal prosecutions and civil suits, mount affirmative litigation, draft legislation, set up legal entities and ensure their regulatory compliance. We often have unique capacity to get information on a group’s adversaries and expose their abuses. We bring a deep understanding of legal constraints and possibilities that positions us to make an invaluable contribution to groups’ collective analysis, program, and strategy. Our stature, credentials and skills often position us to contribute to a group’s capacity to effectively present and promote its analyses and proposals.

B. Rosa Is Structurally Accountable To Her Organization And Integrated Into Its Decision-Making Processes

Rosa not only uses her knowledge, skills and credentials in support of a progressive activist organization, but her accountability to that group, and her collaboration with its leaders and activists, are structured into her roles and responsibilities. The importance of structural accountability and integration is demonstrated by the United Farm Workers (UFW)’s experience with lawyers in the 1960s, a history which has been carefully documented by my colleague Jennifer Gordon.⁹ The UFW attempted initially to collaborate with California Rural Legal Assistance (CRLA). CRLA was a great progressive legal services program led in its early years by Gary Bellow, who went on to be rightly revered as a leading clinical legal educator and exponent of political lawyering.¹⁰ CRLA fought the growers and the state government under Ronald Reagan.¹¹ Despite CRLA’s deep commitment to progressive social change, Gordon reports that its collaboration with the UFW “. . .soon unraveled in the face of tensions about goals and

rupted On West Coast, POLITICO (Dec. 13, 2011, 09:40 AM EST), <http://www.politico.com/story/2011/12/occupy-wall-street-ports-disrupted-on-west-coast-070350>; Jack Healy & Nicholas Fandos, *Protesters Gain Victory in Fight Over Dakota Access Oil Pipeline*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/2016/12/04/us/federal-officials-to-explore-different-route-for-dakota-pipeline.html>.

⁹ Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers’ Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PA. J. LAB. & EMP. L. 1 (2005-2006).

¹⁰ David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 731 (1988). For an example of Bellow’s later influential work, see Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297 (1966).

¹¹ See generally Robert Hornstein, Daniel G. Atkins & Treena A. Kaye, *The Politics of Equal Justice*, 11 AM. U.J. GENDER SOC. POL’Y & L. 1089, 1094 (2003).

strategies. CRLA sought to make decisions about legal tactics that would lead to a victory in court. The Union, on the other hand, often preferred a course of action that was riskier in legal terms but that it judged more likely to advance its long-term organizing goals.”¹²

In response, the UFW hired a young CRLA lawyer, Jerry Cohen, to join its staff and build an in-house “legal department.”¹³ Guided by UFW leaders, Cohen and his staff developed “. . .an approach to lawyering that put the achievement of organizing goals above the achievement of legal victories.”¹⁴ Their work was governed by “. . .a clear understanding about what the Union lawyers were there for: to open the field for organizing and to advance the union’s ultimate goal of large-scale farm worker representation.”¹⁵

As new lawyers grasped the UFW’s approach to law and organizing, they gained detailed practical knowledge of the union’s methods and the farmworkers’ circumstances and built close relationships with organizers and workers. In this process, they became participants in determining the UFW’s strategy and tactics and made major contributions to its success. They cleared legal obstacles to the union’s organizing of a very effective consumer boycott of stores that sold non-union grapes.¹⁶ They provided a defensive shield for the union,¹⁷ extracted strategic information from growers,¹⁸ and exposed growers’ abuses.¹⁹ In the early 1970s, they helped craft a groundbreaking California state labor law that covers farm workers, who are excluded from the National Labor Relations Act.²⁰

We have no reason to think that Jerry Cohen was a more progressive or collaborative person than Gary Bellow, or that other UFW lawyers were inherently more rebellious than the dedicated young attorneys who staffed CRLA. The difference in their practice resulted from the different structure of their relationship to the union. Cohen’s mode of lawyering changed when he moved from CRLA to the UFW. The UFW lawyers were immersed in the daily struggles of the union. Their job was to help advance the UFW in whatever way the union decided would be most effective, through discussion in which the lawyers were actively involved but did not dominate or control. CRLA lawyers had a different job and different responsibilities. Their mis-

¹² Gordon, *supra* note 9, at 14.

¹³ *Id.* at 15,16.

¹⁴ *Id.*

¹⁵ *Id.* at 48.

¹⁶ *Id.* at 15.

¹⁷ *Id.* at 17-19.

¹⁸ *Id.* at 21-26.

¹⁹ *Id.*

²⁰ *Id.* at 28-34.

sion overlapped with the UFW's but was not the same.

CRLA was hampered by federal funding restrictions that forced it to represent individual workers rather than the union.²¹ But beyond that, its institutional needs - its strategy for survival, efficacy and power, as reinforced by the occupational perspectives of lawyers working in a legal organization - depended on visible legal victories. CRLA's mission was to win cases that directly helped farmworkers and their families and communities. The UFW lawyers' job was to help build and strengthen the union through which those farmworkers and communities fought for power to change their circumstances.

III. MODELS OF LAW PRACTICE IN SUPPORT OF PROGRESSIVE ACTIVIST ORGANIZATIONS

A. *In House*

The UFW model of embedding lawyers within the leadership and strategic campaigns of an activist organization is in effect today in some similarly broad-based organizations of low wage workers, such as the Service Employees International Union (SEIU) and the National Day Laborer Organizing Network (NDLON).²² A leading example of this approach is the New Orleans Worker Center for Racial Justice.²³ NOWCRJ supports the National Guestworker Alliance as well as two local organizations, one of recently arrived day laborers and another of unemployed Black workers. The Center early formed its own legal department led by veteran human rights advocate JJ Rosenbaum. Rosenbaum and her staff are fully integrated into the Center's overall work. They maintain an impressive docket of affirmative and defensive litigation as well as legislative and policy advocacy. Some of their most valuable and innovative work has supported worker/community efforts to shape public development projects and win jobs for unemployed local Black workers.

In a recent victory, NOWCRJ lawyers and organizers helped local workers to intervene in the City's selection process for the Construction Manager of a new airport terminal in a way that not only won specific enforceable gains for local workers and communities but

²¹ *Id.* at 14.

²² SEIU – Service Employees International Union, <http://www.seiu.org> (last visited Jan. 31, 2017); National Day Laborer Organizing Network, <http://www.ndlon.org/en/> (last visited Jan. 31, 2017); see also Sheila Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999, 2022-2072 (2007) (describing a brief effort by WEACT for Environmental Justice to develop a similar legal department).

²³ New Orleans Workers' Center for Racial Justice, <http://www.nowcrj.org> (last visited Jan. 23, 2017).

also opened pathways to broader change.²⁴ The workers' action transformed the public conversation about future development projects in New Orleans and initiated new worker-led procedures and mechanisms to recruit, train and hire local workers for quality jobs in all public projects. The process strengthened the local workers' group, bringing it new energy, new members, new legitimacy and allies, and new public attention including a major rally for "Black Workers Matter."²⁵

This effort required ongoing, intensive day-to-day collaboration among lawyers, organizers and worker activists. When the Aviation Board's public hearings proved mere window dressing, the lawyers and organizers helped design the group's own "Community Request For Proposals." To evaluate the proposals, they pulled together a broad-based "Community Evaluation Commission" of religious leaders, labor unions and civic, service and community groups. When prospective contractors refused to respond to the Community RFP, the Center's lawyers provided the Board and Commission with their own briefing book that analyzed the competing bids in granular detail.²⁶

As was the case with the lawyers' work in the UFW, this approach makes lawyers structurally accountable to a collective process and integrates them in a way that enables the lawyers to make a deep contribution to the group's decision-making and activity. It can provide rewarding opportunities for personal and political growth. But it requires an activist organization that has both the financial resources to hire full-time lawyers, and a strong, experienced non-lawyer leadership that cannot be dominated or intimidated by the lawyers. In an effort to provide similar lawyering to smaller grassroots groups that have limited funding and less experienced leadership, lawyers and organizers have been exploring other approaches.

²⁴ Robert McClendon, *How To Get a Job On The City's \$650 Million Airport Terminal Project*, NEW ORLEANS, LA LOCAL NEWS, BREAKING NEWS, SPORTS & WEATHER - NOLA.COM (updated July 01, 2015), http://www.nola.com/politics/index.ssf/2015/07/how_to_get_a_job_on_the_citys.html.

²⁵ Kelsey Davis, *'Black Workers Matter' Rally at City Hall Pushes For Job Equity*, WDSU NEWS (updated June 30, 2015), <http://www.wdsu.com/article/black-workers-matter-rally-at-city-hall-pushes-for-job-equity-1/3378205>.

²⁶ Telephone Interview with J.J. Rosenbaum, Robina Foundation Visiting Human Rights Fellow, Yale Law School, formerly Legal and Policy Director, New Orleans' Worker Center for Racial Justice (May 11, 2016); E-Mail from J.J. Rosenbaum, Robina Foundation Visiting Human Rights Fellow, Yale Law School, formerly Legal and Policy Director, New Orleans' Worker Center for Racial Justice, to author (Aug. 1, 2016, 02:57 EST) (on file with author); E-Mail from J.J. Rosenbaum, Robina Foundation Visiting Human Rights Fellow, Yale Law School, formerly Legal and Policy Director, New Orleans' Worker Center for Racial Justice, to author (Nov. 12, 2016, 03:45 EST) (on file with author).

B. Non-Profit Law Centers That Assist Multiple Organizations

Some activists and lawyers have formed independent non-profit law centers that work exclusively or primarily in collaboration with progressive activist organizations. Their funding, planning and evaluation are based on this mission. The National Economic and Social Rights Initiative²⁷ supports worker, housing, health and education struggles in various localities. The Sugar Law Center assists community and worker groups in Detroit and elsewhere.²⁸ Similar centers focus on groups in a single region or locality, such as the Community Justice Project of Florida Legal Services and the environmental justice unit of New York Lawyers for the Public Interest.²⁹

A leading example of this model is the Community Development Project (CDP) at the Urban Justice Center in New York City.³⁰ CDP raises its own funds (from sources not generally accessible to its clients) to support a formidable staff of fifty, including thirty lawyers. It offers a broad array of services including litigation, policy, research and transactional support. CDP selects client groups from “excluded communities” on the basis of its estimate of their capacity, their needs and their commitment to base building, leadership development, systemic change, and coalitions.³¹ Clients include several worker centers in New York as well as community groups fighting for affordable housing, consumer rights and immigrant justice. These groups are viewed as “allies” or partners. They determine when they need CDP’s support and take the lead in determining the priorities and goals of projects and cases which they and CDP agree to work on together.³²

CDP has had success in helping client groups across the City to connect and work together. With fifteen client allies, CDP formed Stabilizing NYC to resist landlords’ efforts to harass poor and working families out of rent-regulated housing and replace them with richer

²⁷ NESRI — National Economic & Social Rights Initiative — Human Needs — Human Rights, <https://www.nesri.org> (last visited Jan. 23, 2017).

²⁸ Sugar Law Center for Economic & Social Justice — Sugar Law Center, <http://sugarlaw.org/> (last visited Jan. 31, 2017).

²⁹ Community Justice Project (Miami), <http://communityjusticeproject.com> (last visited Jan. 23, 2017); Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375 (2012-2013) (account of Community Justice Project by its founding director); New York Lawyers for the Public Interest — Justice Through Community Power, <http://www.nylpi.org> (last visited Jan. 23, 2017).

³⁰ Community Development Project: Urban Justice Center, <http://cdp.urbanjustice.org> (last visited Jan. 23, 2017).

³¹ E-Mail from Harvey Epstein, Director, Community Development Project, Urban Justice Center, to author (Nov. 14, 2016, 12:35 EST) (on file with author).

³² E. Tammy Kim, *Lawyers As Resource Allies in Workers’ Struggles For Social Change*, 13 N.Y. CITY L. REV. 213 (2009) (analysis and defense of CDP approach by a then senior staff attorney).

tenants at higher rents.³³ The coalition focuses on speculative investors, mainly private equity funds, that buy many units of rent regulated housing on highly leveraged financial terms. The investors make money only if they impose severe rent raises and service cuts. CDP's legal muscle is crucial to its allies' community-based organizing of powerful tenant resistance.³⁴ CDP's administrative support and organizational capacity enable its clients to fund, coordinate and intensify their efforts. Some of the worst predators have been forced out, and the coalition is pressing city council to publicize a "watchlist" to expose the rest.³⁵

CDP and similar law centers provide a powerful multi-faceted resource for a broad range of local groups. Set up and funded exclusively to represent and support activist organizations, such centers develop valuable institutional understanding, networks and expertise. They do not suffer the cross-pressures that undermined CRLA's work with the UFW. Still they are structurally independent of their clients. They decide what groups to represent and what projects to take on. This set-up leaves the centers' lawyers accountable only within a particular case or project. It does not position them to contribute their knowledge and perspective to a group's overall planning and decision processes, including its assessment of when and how to deploy its legal resources.

C. A Law Center Controlled By Its Clients

In an effort to bridge this gap, eight worker centers in Chicago have joined with lawyers to form Raise the Floor Alliance (RTFA).³⁶ This hybrid of the CDP and UFW/Rosa models is governed by a board of directors composed of one representative from each center. It provides legal, policy and communication support exclusively to those centers, individually and in their joint efforts. This arrangement provides structured accountability as well as the potential for RTFA staff to work closely with the centers in analyzing options, formulating strategy, building coalitions and deploying its legal and other resources.

RTFA has worked with allies to enforce and improve state laws that protect workers from wage theft, discrimination, unsafe and unhealthy working conditions and retaliation for asserting their rights.

³³ Stabilizing NYC — Fighting Predatory Equity, <https://stabilizingnyc.org> (last visited Jan. 23, 2017).

³⁴ Stabilizing NYC Coalition, *Banking on Gentrification*, http://www.uhab.org/sites/default/files/banking_on_gentrification.pdf (2016)

³⁵ Telephone Interview with Jacki del Valle, Coordinator, Stabilizing NYC (Dec.16, 2016).

³⁶ Raise The Floor, <http://www.raisetheflooralliance.org> (last visited Jan. 23, 2017).

RTFA's small staff has leveraged significant resources from the private bar, public interest centers, clinics and even the state attorney general's office to put together an impressive array of political/legal efforts to change state and local policy and practice. It has been able to support itself largely through fee shifting and referral fees on individual workers' claims. A lawyer who was instrumental in forming RTFA is in discussion with worker centers in other major cities to create similar arrangements.³⁷

IV. SUGGESTIONS FOR LEGAL RESEARCH AND PEDAGOGY

A. *Expand Our Knowledge Base*

This essay is based on my experience, my reading of the limited literature, and my interviews with practitioners I know. I have worked as a lawyer for a broad range of progressive activist organizations, including for sixteen years as a legal services attorney for community groups in the disinvested back half of Brooklyn, NY. Since 2000 I have taught a community economic development clinic at Fordham that serves as ongoing transactional counsel for major national low-wage worker organizations, environmental justice groups and other progressive activist non-profits and co-ops. Clinic grads with whom I stay in close touch work in many of the settings discussed here as lawyers for progressive activist organizations.

In preparing this essay I reached out to clinic alums and other practitioners and clinicians whom I met through my work and contacts. Some of these lawyers are engaged in impressive efforts and new approaches. Many are excited by the possibility of practicing in this way. Everyone I talked with was frustrated by how little we know of how lawyers are actually working on the ground, in and with various types of activist organizations. We are keenly aware that there are likely many more examples, variations, approaches, experiences and analyses that have not come to our attention.

To strengthen and expand this important work, it would help very much if we could assemble and periodically update an online database of lawyers working in house at activist organizations, and of public interest centers and law firms that represent such organizations. Such a site could serve as a platform for progressive lawyers, organizers and activists to share practice experiences and stories. We could use it to assess the strengths and weaknesses of various approaches, with special attention to the issues raised by the UFW experience with CRLA.

A knowledge base and discussion forum would help us to better

³⁷ Telephone Interview with Christopher Williams (Dec. 20, 2016).

understand how lawyers and progressive activist groups can best work together, under various circumstances, to deeply integrate legal knowledge and perspectives while nurturing the groups' autonomy and leadership development. We could consider together what arrangements are most sustainable economically, politically and emotionally and how various projects have addressed issues of legal ethics and professional responsibility.³⁸ We could arrange on- and off-line gatherings to meet and talk to figure out how best to advance this critical form of rebellious lawyering.

*B. Teach About How Lawyers work with Progressive
Activist Organizations*

As teachers we can inspire and prepare our students for lawyering in and with activist organizations. One part of that effort is to explore with students the work of lawyers who have functioned in this way in the past, especially in the industrial organizing drives of the 1930s and the civil rights struggles of the 1960s and early 1970s. We now have helpful biographies of lawyers who served as counsel for major industrial unions during periods of intense organizing, especially Maurice Sugar and Ernie Goodman of the early United Auto Workers,³⁹ and Arthur Kinoy with the United Electrical Workers.⁴⁰ A recent history outlines the roles played by civil rights lawyers such as Len Holt and Howard Moore, on the ground with SNCC, a leading force in the 60s Black Freedom Movement.⁴¹ Martha Davis has provided in *Brutal Need* a detailed account of lawyers' roles in the welfare rights movement of the late Sixties.⁴² But except for Gordon's study of the UFW lawyers, even this literature lacks focus, detail or analysis of just how the lawyers and organizations worked together and what the lawyers contributed both positively and negatively.

It is important that we teach our students how lawyers work in and with activist organizations and social movements and help them to analyze and evaluate that experience. Drawing on historic and current examples, we can help our students and recent graduates to look carefully at the trade-offs involved in a range of approaches: working nationally or locally, representing an organization or its members,

³⁸ See, e.g., Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection On Law and Organizing*, 48 UCLA L. REV. 443, 506-515 (2000-2001) (analysis of ethical issues raised by law and organizing); Kim, *supra* note 32 at 227-230 (arguing that the resource ally model poses fewer ethical issues than an in-house model).

³⁹ JOHNSON, *supra* note 7; BABSON ET AL., *supra* note 7.

⁴⁰ KINOY, *supra* note 7.

⁴¹ BROWN-NAGIN, *supra* note 7.

⁴² MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* (1993).

working as do Rosa and JJ Rosenbaum inside a single mass organization or in a public interest law center like CDP or RTFA that works closely with a number of such organizations, or working in a small firm that combines a paying practice with extensive work for movement organizations.⁴³

As part of this process, I urge that we re-visit the progressive union-side labor law firm as a site for rebellious lawyering. López disparaged this approach, dismissing Abe, his prototypic labor lawyer.⁴⁴ On close examination, however, López's main critique seems to be that Abe is overly accountable to "regnant" clients, predominantly undemocratic racist male-dominated business unions. The labor terrain has expanded significantly since López wrote in the late 1980s. We now have Fight for 15, car washeros' organizing campaigns, striking teachers in Seattle and Chicago and the progressive militant National Nurses United, as well as many vibrant organizations of low-wage workers. I hope López would agree that rebellious lawyering today encompasses much work in and with these organizations and movements.

C. Create More Opportunities For Our Students To Experience Lawyering For Progressive Activist Organizations

For a law student interested in this type of work, the most valuable preparation is personal experience working in the lawyer's role with a progressive activist organization. Working closely with activists on the ground can inspire our students. It can deepen their respect for what such groups can accomplish with meager resources, often in the face of powerful adversaries. At the same time, students learn firsthand how difficult such organizing can be and about the many glitches and problems that recur in groups that are over-worked and under-financed. Immersed in the work, students get more sense of the ways that a lawyer can and cannot protect a progressive activist organization and of how the lawyer can help it to advance without undermining its autonomy and internal leadership development.

Students may draw some of these lessons from any sustained experience in or exposure to lawyers working with activist organizations, such as in an externship, summer placement or post-graduate fellowship. Students learn that much more from working in lawyer role under the guidance of a skilled clinical teacher whose main focus and

⁴³ See also the non-profit Center for Constitutional Rights, <http://ccrjustice.org/> (last visited Jan. 31, 2017), which includes many progressive activist organizations among its clients and provides training and support for lawyers and law students interested in such work.

⁴⁴ LÓPEZ, *supra* note 1, at 17-20.

experience is in nurturing social justice lawyers. Sameer Ashar has shown how he uses supervision in an immigrant and refugee rights clinic to teach not only basic skills and substantive doctrine, but also competencies central to lawyering effectively for progressive activist organizations.⁴⁵ Drawing on his students' experience in bringing wage and hour claims as part of a worker center's strategic campaign, Ashar helped his students to navigate the complex triangular relationship among lawyers, their organizational allies and the individuals whom the organization mobilizes for the lawyers to represent.⁴⁶ His students learn to view their work within a broader frame:

In classes and supervision meetings, we consider varying means by which to achieve the mobilization goals of an organizer or group of clients. We consciously broaden our sense of the range of successful outcomes. . .resisting the assumption that victory in court is the sole path to social justice.⁴⁷

In our Community Economic Development (CED) clinic at Fordham, students learn to act as intermediaries between organizations and the state. We help our clients to form, structure, govern, adapt and dissolve legal entities, to gain and keep tax exempt status, and to comply with complex regulatory regimes. We help organizations to run safely and efficiently, closing avoidable legal vulnerabilities which expose them to politically motivated attack.⁴⁸

In these and other contexts, our students learn to translate and explain the legal and practical requirements and pathways of institutions that control essential access or resources. The students learn to help a group to clarify its options, its legal and other leverage and its vulnerabilities, and to assess the potential risks and benefits of various approaches. They become skilled at helping groups to explain their constituents' needs and capacities in terms that resonate with those who control essential access or resources. We help students get summer jobs, post-graduate fellowships and long-term employment doing this work, and we continue to mentor them as they grow into productive social justice lawyers.

As in most clinics, the bulk of this teaching occurs in the course of

⁴⁵ Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879 (2007) [hereinafter Ashar, *Resistance Movements*]; Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2007-2008) [hereinafter Ashar, *Collective Mobilization*].

⁴⁶ Ashar, *Resistance Movements*, *supra* note 45, at 1919; Ashar, *Collective Mobilization*, *supra* note 45, at 402, 412.

⁴⁷ Ashar, *Collective Mobilization*, *supra* note 45, at 400.

⁴⁸ For example, we assist clients who have failed to make all registrations required in multiple jurisdictions, who need to keep up with annual filings or to update and comply with their own bylaws, or who have made inadvertent minor omissions from tax and other filings.

supervising students' work for a particular client on a particular matter. We have also developed some seminar modules that expand and enhance this pedagogy:

Client profile: Our students create a detailed political and organizational profile of each group with which they are assigned to work.⁴⁹ This helps them to place their small slice of the work in its broader context so they can perform more effectively for that group. It applies the Big Law maxim that a transactional lawyer adds value in proportion to her understanding of her client's "business."

Ethics consult: Students study hypothetical fact patterns that raise major issues in lawyering for progressive activist groups and offer their analyses and opinions.⁵⁰ An academic faculty "ethics consultant" and I respond, not always in full agreement, and lead class discussion.

Dudley Street Neighborhood Initiative: In a joint class with Columbia's counterpart clinic (and sometimes New York University's) we screen *Holding Ground*, an inspiring account of how a multi-ethnic community organization gained control over redevelopment of its low-income Boston neighborhood.⁵¹ Students address discussion questions, including questions about lawyers' roles, in multi-school breakout groups.⁵²

I am aware of work with progressive activist organizations in CED clinics at some other law schools (notably University of Michigan and City University of New York (CUNY)) as well as clinics focused on community justice (Loyola- New Orleans), welfare rights (CUNY) and immigrant workers' rights (especially University of California at Irvine and Yale).⁵³ A number of other clinics likely employ some variation of this approach. As with legal practice models, we

⁴⁹ This assignment was inspired by and adapted from Patience A. Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413, 431 (2015); see *infra* Appendix A, Client Profile Memorandum Assignment.

⁵⁰ See *infra* Appendix B, Hypotheticals and Discussion Questions on Ethics in Group Representation.

⁵¹ HOLDING GROUND: THE REBIRTH OF DUDLEY STREET (Holding Ground Productions 1996).

⁵² See *infra* Appendix C, Holding Ground: Community Control of Neighborhood Development, for discussion questions, readings and class guidelines.

⁵³ Community and Economic Development Clinic, University of Michigan Law School, <http://www.law.umich.edu/clinical/CEDC/Pages/default.aspx> (last visited Jan. 31, 2017); Community & Economic Development, CUNY School of Law, <http://www.law.cuny.edu/academics/clinics/ced.html>; Community Justice, Loyola University New Orleans, <http://loyno.edu/lawclinic/fields-practice-community-justice> (last visited Jan. 31, 2017); Immigrant Rights Clinic, University of California, Irvine: School of Law, <http://www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html> (last visited Jan. 31, 2017); Worker and Immigrant Rights Advocacy Clinic - Yale Law School, <https://www.law.yale.edu/wirac> (last visited Jan. 31, 2017); Stephen Lofredo, *Poverty Law and Community Activism: Notes From a Law School Clinic*, 150 U. PA. L. REV. 173 (2001-2002) (describing work of the welfare rights clinic at CUNY Law School).

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have no source of systematic information or assessment of such clinics. Nor is there a resource for communication among those who have engaged in this form of clinical teaching or are interested in exploring it. No separate working group addresses this focus, among the twenty or so routinely offered at AALS Clinical conferences.

To strengthen and spread this mode of clinical pedagogy, it would help to have more case studies and a dedicated list serve or other mechanism for sharing approaches, experiences and materials, including seminar syllabi and skills-training modules and exercises. Such a platform would enable us to report, compare, assess, and plan among ourselves and with lawyers outside the academy who engage in this form of rebellious lawyering.

We need to study, teach and practice rebellious lawyering for progressive activist organizations more widely and more systematically. We need to identify this as a distinct focus of our pedagogy so that we can better share and learn from our experiences. We can significantly enhance our contribution to social change by nurturing, in the still-resonant call of the 1960s, “2, 3, many Rosas!”

APPENDIX A

**Client Profile Memorandum Assignment
Community Economic Development Clinic****Client Profile Memorandum—Why?**

Each major project team is required to draft a Client Profile Memorandum (CPM) regarding the team's major project client(s). The CPM is not for the client's use. Rather, it serves to help current and future student lawyers prepare for representation by familiarizing student lawyers with the client's mission, governance, activities, and the political and social context of the client's work. Good transactional lawyers prepare in advance to be attuned to the client's non-legal interests and anticipate certain legal needs. Doing this well substantially increases the value-add of a transactional lawyer.

Client Profile Memorandum—Substance and Structure Guidelines

The CPM should contain a section with information on each of the areas listed below as well as any other information your team thinks is relevant. It should be structured like a memorandum to the class with a subheading for each topic. Research is required for the CPM by searching on the client's website (if one exists), reading media articles and possibly more academic pieces. Some information may not be available through public sources, so note what you'd like to explore further with the client and we can discuss together in class. Please identify sources in footnotes in your CPM and select one or two short sources to share with the class so they can have sufficient background information prior to your presentation in class. There is no page minimum or limit, but we encourage you to be comprehensive in scope as well as succinct in your descriptions.

Areas to address in the CPM

- **Mission:** What is the client's mission? You can include a quote from the client's materials or website, but you should explain it further in your own words.
- **Business Plan:** Does this client plan to operate in the marketplace? If it does, in brief, what is the plan for doing business?
- **Collective Action:** What do the individuals or groups that have created this client organization hope to accomplish via this strategic collective action that they cannot do alone?
- **Legal Structure:** What type of legal entit(ies) is the client? Does it have any affiliates or subsidiaries? Has the legal structure changed at any point over time?
- **Governance and Internal Structure:** How is the client gov-

erned? Is it a membership organization and, if so, what powers do members have? How are its operations organized? Does it operate on a local or national scale, and through what type of branches? A diagram might be helpful here.

- **Activities and Accomplishments:** What major types of activities does the organization pursue to achieve its mission? What is the client's plan for the coming year? What are some major successes or achievements the client has had recently?
- **Funding and revenue:** How does the organization get funding – foundations, government contracts, membership dues? What other kinds of revenue sustains this client and its constituency?
- **Constituency:** Who is the membership, or if there is no membership, the constituency of the organization? Explain the demographics and needs of the constituency, as well as how they participate in the organization's activities and help further its mission.
- **Allies:** What other organizations, political leaders, industries, or other groups does the organization collaborate with to advance its mission? How do they work together and what are strategic benefits of working with these groups?
- **Opponents (if any):** What industries, groups, or leaders are opposed to the client's work? If there is an organized opponent, do some research and explain who they are and what their resources are, and what if any steps they are taking to oppose the client's work.
- **Political context and strategy for addressing it:** What political currents is the organization working within? What in the political context poses major hurdles for the client's work? What are helpful political and social trends? How does the client plan to work within this context to accomplish its goals?
- **Legal context:** What laws or regulations are pertinent to the client's activities? Are there any particular laws or regulations that the organization is trying to change or enact? Why? What laws or regulations (and regulatory bodies) govern the client's constituency?
- **Relationship with lawyers:** Does the client have lawyers on staff, on its board or in its membership/constituency, and if so, what is their role? Has the CED clinic represented the client before? On what types of matters? What other counsel has the client worked with? What roles have they played?
- **Community economic development role:** How does the client's work fit within a community economic development framework? What "community" does the client serve? Does the cli-

ent focus on economy or development? How do its strategies fall within the types of CED strategies outlined in the reading assignment?

- **Power and control:** How does CONTROL of assets, information, and physical conditions of life and work fit into this client's approach to social change? What resources does this client impact or manage?

Deadlines and Presentation Process

- By 5 pm on Wednesday, Sept. 14, 2016, send first draft of client profile memo to your major project supervisor(s).
- By noon on Monday, Sept. 19, 2016, complete final draft and circulate to the whole class.
- By noon on Tuesday, Sept. 20, 2016, read other teams' client profiles and prepare at least one question or comment for each.

Please come to class **on Tuesday, September 20** having read the other teams' CPMs and any supplemental materials. Think about areas where the clients are similar to one another and areas where they differ, and be prepared to discuss the reasons behind these similarities and differences once the team has made its presentation.

APPENDIX B

**Hypotheticals and Discussion Questions on Ethics
in Group Representation**Hypo #1:

The Street Cleaners' Alliance (the Alliance) is an organization made up of low-wage street cleaners in Queens. Private businesses hire street cleaners to keep the streets in front of their stores free of debris. The Alliance formed in January 2010 when a group of street cleaners on Main Street got together to talk about the trend towards increased number of hours the street cleaners were required to work and reduced rates of pay. They planned a successful strike in June '10, resulting in higher wages and a restructuring of work shifts so that the workers had more manageable hours. Due to the success of the strike, the group saw a surge in its membership—from 30 to 300 in the course of two years.

The executive director (ED) of the Alliance contacted the clinic during the fall of last year, asking for assistance with incorporation. The group has a board of directors made up of 11 founding members. A team of students met with the board and worked with them to incorporate the Alliance at the end of last semester. This semester, you've been assigned to work with the board to draft and adopt by-laws.

You've had a couple of meetings with the board to talk about by-laws issues. As you prepare for a third meeting with them, the ED tells you that the board wishes to include in its by-laws a provision requiring directors to sign a confidentiality policy in order to be on the board. The policy would prohibit directors from discussing board matters outside of the board without prior authorization from the board. The ED says that the board wants this policy in order to present a unified front to both the membership and the outside world (there has been some board in-fighting recently). The board wants to prevent the details of contentious discussions, including identifying particular directors as voting one way or another, from creating the appearance of a divided organization or from pitting the membership against individual board members.

You have concerns about the board's desire to keep board information confidential from members. After conducting research, you find no legal bar to the organization having a policy requiring board matters to be kept confidential from members. You have a meeting with the board in two days, where you are expected to present a draft of

the by-laws section requiring confidentiality as well as a confidentiality policy for the board to approve. What ethical issues, if any, does this raise? How might you resolve them?

Hypo #2:

For ten years now, you have represented Farm Workers New York (FWNY), an organization dedicated to improving working conditions for farm workers. You helped them get incorporated, you filed their 501(c)(3) application, you negotiated their lease for office space, you drafted their personnel policies, and you have generally helped them out with other transactional issues that have come up from time to time. The organization has been successful in organizing farm workers and securing unpaid wages and improving labor conditions for hundreds of workers.

A few years ago FWNY started to receive calls from farm workers and activists in other states interested in starting similar organizations in their locales. FWNY wrote a grant and received funding to start Farm Workers National (FWN), an organization that would coordinate efforts nationally and help new farm workers' organizations get started. Local farm worker organizations would be affiliates of FWNY that would receive financial support, leadership training and technical assistance from FWN while agreeing to allow FWN a degree of control over certain matters (e.g., that legal organizing documents contain particular provisions; FWN approval of the affiliate's annual goals; referring any contact by national media to FWN, etc.). The current executive director of FWNY would become the executive director of FWN, and the senior organizer at FWNY would step into the position of executive director there. Both are very excited about the new organization and share the same goals for it.

FWNY approached you to see if you could: (1) incorporate and apply for tax exemption for FWN; (2) draft a fiscal sponsorship agreement, with FWNY as the fiscal sponsor so that FWN can receive the grant money and other donations before it gets its own c3 status; and (3) draft an agreement that FWN would use to establish relationships with affiliate organizations, including FWNY. What ethical issues, if any, does potential representation raise in each of items (1), (2) and (3)? How would you respond to the FWNY?

Hypo #3:

Part of FWNY's work is to carry out campaigns against farm owners

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that are cheating workers out of minimum wage and overtime. FWNY organizers, which include both paid staff and volunteer farm workers, reach out to farm workers and determine where there are work place violations. Organizers spend a lot of time talking with workers, educating them on their rights and supporting them in coming forward to pursue claims against abusive farm owners. They then connect workers with pro bono lawyers. FWNY has two lawyers on staff, as well as a large network of private attorneys it has cultivated over time, who take on representation of individual workers on wage and hour claims.

Because its mission is to improve working conditions for farm workers broadly, FWNY is thinking of different strategies it might pursue to maximize its impact on the industry. While it sees value in helping individual farm workers with their claims, its main concern is with creating larger-scale change. One way it has thought it might do this is by having a say in settlement agreements between farm owners and workers. FWNY would want any settlement offers made by the farm owners to include improving workplace conditions for all, allowing workers to unionize or otherwise organize, and possibly having a say in whether settlement monies are adequate, should be higher or whether the worker should go to trial. FWNY has asked you how it might go about implementing this strategy—can it do this, and how? What ethical issues, if any, does this raise, and how might you respond?

APPENDIX C
HOLDING GROUND: COMMUNITY CONTROL OF
NEIGHBORHOOD DEVELOPMENT

As you know, this will be a joint class of Columbia's Community Enterprise Clinic and Fordham's Community Economic Development Clinic. The format will be as follows:

1. Students will introduce themselves and give very brief descriptions of the matters they are handling.
2. We will watch "Holding Ground," a film about the origins and development of the Dudley Street Neighborhood Initiative, a community group in the Roxbury neighborhood of Boston.
3. We will then divide into groups to discuss the questions below, which focus on the approaches community development groups can take and the roles lawyers for such groups can play. Each group will include Columbia and Fordham students and will be assigned one of the discussion questions.
4. Each group will report back and the whole group will discuss all of the questions together. .

In preparation for the class, please read the following:

1. Randy Stoecker, Community Development and Community Organizing: Apples and Oranges? Chicken and Egg?
available at: <http://comm-org.wisc.edu/drafts/orgdevppr2c.htm>
2. Janice Tulloss, Transforming Urban Regimes—A Grassroots Approach to Comprehensive Community Development: The Dudley Street Neighborhood Initiative
available at: <http://comm-org.wisc.edu/papers98/tulloss.htm>
3. Roberta L. Rubin, Take and Give, Shelterforce (Spring 2008, February 29, 2008)
available at: http://www.shelterforce.org/article/215/take_and_give/
4. By-Laws of Dudley Street Neighborhood Initiative (DSNI)
<http://static1.squarespace.com/static/5515d04fe4b0263cc20b3984/t/55187578e4b057e153f9ec52/1427666296706/DSNI+By-Laws.pdf>

Please also think about the following questions:

1. **COMMUNITY ORGANIZING AND COMMUNITY DEVELOPMENT:** Stoecker identifies two different roles which non-profits concerned with community and economic development can play. One is the production of tangible goods and services, such as housing or jobs. The other is empowerment: organizing members of the community to fight for both resources for the community and influence over what government and business do there (or, to put it less pugnaciously, helping members of the community to acquire the skills and confidence to tackle community problems themselves). Stoecker argues that a single organization may not be successful at playing both of these roles.

To what extent did DSNI play each role? Was it successful combining them? If so, why and how? What is the value of each of these roles to a low-income community? Are there benefits to having an organization play both roles? What tensions make it difficult for an organization to play both roles? (Consider, for example, type of staff required, impact of the organization serving as a landlord, impact of reliance on government grants and contracts.) What alternative models for achieving physical development and community organizing/empowerment seem promising?

2. **LAWYERS' ROLES:** What role(s) do you think lawyers played in DSNI's work? What other roles do lawyers sometimes play? What contributions can lawyers make to the accomplishment of tasks like housing or job development? What contributions can they make to community organizing and empowerment? Are there disadvantages to lawyers' involvement with any of these tasks? How should it be decided what role the lawyers play?
3. **GOVERNANCE STRUCTURE:** Focusing on sec. 4.1 of the DSNI bylaws, what circumstances and considerations do you think led DSNI to structure its board of directors in this way? What needs does DSNI meet by:
 - (a) allocating board seats by ethnic group?
 - (b) reserving seats for youth members?
 - (c) reserving seats for the specified categories of non-residents?

What alternative approaches might serve these needs? What

are some advantages and disadvantages of the approach taken by DSNI? What needs are served by the definition of membership in sec. 2.1? What alternative approaches might serve these needs? What are some advantages and disadvantages of the approach taken by DSNI?

4. **COMMUNITY CONTROL OF PLANNING AND DEVELOPMENT:** To what extent did DSNI control decisions regarding development of its neighborhood? Through what means? How did the results compare with those likely from more conventional development decision-making processes? Is this a good model? Could it be replicated elsewhere? How would such a model fit with the regional planning needed for transportation, industry, commercial facilities, higher education, health care, etc?

What do you think are the advantages and disadvantages of the power of eminent domain (to take over properties in the neighborhood that the owners were unwilling to sell) that the Boston Redevelopment Authority gave to DSNI? Why did DSNI choose to use a community land trust to hold the land it acquired? What functions does a community land trust serve? Are there other ways to achieve this end? Are there downsides to the community land trust model?