

PEGASUS LEGAL SERVICES
FOR CHILDREN
TAKING STOCK OF A REBELLIOUS
NON-PROFIT PRACTICE
IN NEW MEXICO

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*This article is my effort to take stock of the work we have done at Pegasus Legal Services for Children, a non-profit legal organization in New Mexico. In the spirit of Gerald López's *Rebellious Lawyering*, particularly employing the methods and aims of the book's core (Chapter 2 -5),** I explore some of the daily practices and the structures we have adopted at Pegasus and how those practices and structures relate to the purposes of our work. For over two decades, López's vision has provided me with a north star. His essential tenets –working collaboratively as co-eminent problem-solvers, seeing ourselves and our clients as members of communities with collective interests, understanding that legal wins are never full victories and never disentangled from ideology, endlessly studying the coercive forces of the political economy, and actively reflecting on our methods and aims –guide my work. In this article, I invite others to join me, to see how they and we might seriously realign our own daily effort, so that our work is even more deliberately calculated to improve the status of New Mexico's children. In our current circumstances, maybe the humility imposed by the depth of our challenges will provide us all greater clarity in diagnosing and addressing the problems we face.*

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In 2015, the State Bar of New Mexico recognized Pegasus Legal Services for Children – the organization Elizabeth McGrath and I co-founded¹ – as the Outstanding Legal Organization of the

* I want to thank Gerald López, my teacher, colleague and dear friend, a generous listener who, for decades, has inspired me to reflect, connect and act with courage towards a more just world. I would also like to thank all of my colleagues at Pegasus, but especially Elizabeth McGrath, my partner and co-founder. Finally, many thanks to the people that helped me as I was writing this article: Steven Adelsheim, Zoe Adelsheim, Matthew Bernstein, Stephen Carpenter, Alexis DeLaCruz, Jenny Horne, April Land, Joanne Newman, Gary Peck, Melina Salvador, Maureen Sanders, Gail Stewart and Wendell Tong.

** GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

¹ PEGASUS LEGAL SERVICES FOR CHILDREN, <http://pegasuslaw.org/> (last visited June

year.² That same year, Kids Count, a respected national data center sponsored by the Annie E. Casey Foundation, ranked New Mexico 49th among the 50 states in “Child Well-Being.” Juxtaposing this honor with this persistently horrible statistic should not undermine the importance of celebrating moments of success (especially for our clients, our staffers, our allies, and our funders). Nor should it suggest that Pegasus either must transform all it touches or be regarded a failure.

Still, the enduringly harsh conditions facing many New Mexican children and families requires Pegasus, in the full rebellious tradition, to take stock.³ Taking stock requires honest reflection, including describing the context in which we live and work, reviewing and re-considering our aims, and assessing how we are working to achieve our purposes, and doing so from varied and divergent perspectives. Have our activities, from mundane routines to larger undertakings, produced desirable effects? In the face of hard and soft data, what can we do better? Different? On our own? With others?

To my way of thinking, the obligation to take stock extends further than Pegasus. For all of us committed to improving the lives of children in New Mexico, the circumstances insist upon uncompromising appraisals. Even and perhaps especially those who believe that they are getting by or thriving in New Mexico need to grasp what it means for New Mexico to be consistently battling Mississippi for last place among states in child well-being indicators. What choices do we continue to make – and why—that so routinely threaten and devastate children’s lives?

New Mexico is a minority-majority state. According to 2015 *Kids Count*, 59% of New Mexico’s children are Hispanic, 25% are White/Non-Hispanic, 12% are Native American, 2% are Black, 1% are Asian and 1% are identified as other.⁴ New Mexico’s 2015 Kids Count ranking at 49th is, unfortunately, in line with our ranking over

8, 2016).

² “*Outstanding and Extraordinary*” *Pegasus Wins 2015 Award from New Mexico State Bar*, PEGASUS LEGAL SERVICES FOR CHILDREN (Sept. 24, 2015), <http://pegasuslaw.org/outstanding-and-extraordinarypegasus-wins-2015-award-from-new-mexico-state-bar/> (last visited June 8, 2016).

³ GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992) [hereafter, LÓPEZ, *REBELLIOUS LAWYERING*]. Of the large literature now elaborating the rebellious vision, perhaps the article most provocatively raising the idea of deeply systematic ambitions of taking stock is Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004).

⁴ NEW MEXICO VOICES FOR CHILDREN, 2015 KIDS COUNT IN NEW MEXICO 5, <http://www.nmvoices.org/wp-content/uploads/2016/01/2015-NM-KC-DataBook-final.pdf> (last visited Mar. 28, 2016) [hereafter KIDS COUNT].

the last decade. Our best Kids Count rating was 40th, in 1995.⁵ While other states have experienced some level of recovery since the recession, income inequality in New Mexico has increased.⁶ With thirty percent of our children living in poverty, New Mexico has the highest child poverty rate in the nation.⁷

The impact of these ratings is not equally distributed. For example, while 77% of our children are not proficient in reading by 4th grade, 84% of Hispanic children and 90% of Native American children are not reading at a proficient level by 4th grade.⁸ One would think that the chronic nature of these rankings would result in redoubled efforts to improve our schools, including school funding.⁹ Yet today, we have less K-12 per pupil spending than before the Great Recession.¹⁰

Rebellious Lawyering – an essential reference for rebellious practitioners of all sorts published over twenty years ago by Professor Gerald P. López – challenges those who seek a more just world to boldly acknowledge that: (1) lawyering is never sufficient and perhaps not even well-suited to the pursuit of change we seek; and (2) by using our collective capacities, we might be able to join with others in ways that yield material and emotional and ideological transformations.

In his work, López helps us see how our daily practices and the structures we adopt directly relate to our ability to achieve our aspirations. López’s vision of rebellious lawyering is not easily distilled or confined. At its heart, to me, *Rebellious Lawyering* insists that we learn how to share power with people and communities who have been subordinated in our society, not once, not occasionally, but so routinely that we “normalize” radical egalitarian and democratic life. Simultaneously, rebellious lawyering challenges us to appreciate that we are all operating within the real world structures in which we live and that we must escape them, somehow, through ruptures we imagine just might work. There’s no other way.

⁵ *Id.* at 4.

⁶ *Id.* at 8.

⁷ *Id.* at 8.

⁸ *Id.* at 6, 18.

⁹ NM Center on Law and Poverty, *Increasing Funding and Promoting Evidence-Based Practices to Improve Student Outcomes*, <http://nmpovertylaw.org/project/first-education-project/> (last visited June 8, 2016); Second Amended Complaint for Declaratory Judgment and Injunctive Relief, *Yazzie, et al. v. New Mexico, et al.*, CV-2014-02224 (1st Dist. Ct. Santa Fe, July 14, 2015), available at <http://nmpovertylaw.org/wp-content/uploads/2015/08/Complaint-Yazzie-Second-Amended-Complaint-2015-07-14.pdf>; *Martinez v. State of New Mexico*, CV-2014-00793 (1st Dist. Ct. Santa Fe, April 1, 2014), cited in *MALDEF Challenges New Mexico’s Denial of the Fundamental Right to Education in Most Comprehensive Educational Opportunity Lawsuit Yet Filed*, MALDEF http://www.maldef.org/news/releases/maldef_challenges_nm_denial_of_education/.

¹⁰ KIDS COUNT, *supra* note 4 at 21.

Any person, in any role, in any activity, can consciously aim to share power with others. For those of us who make this choice, our efforts will always be imperfect because our interactions are embedded in our current context. Yet, in the moments where we come close to bridging inequality and difference in our individual interactions and sometimes even collectively, we have a beautiful opportunity to see and feel our full humanness by directly working together to collaboratively create change. We *live* change in these moments. Rebellious practitioners of all sorts look for big and small ways to challenge structures that resist sharing power and work collectively to build structures that promote it. And lawyers, in particular, must work hard to be life-sized and clear-eyed about the limits of our professional role(s) in any social change endeavor.

A cadre of well-trained rebellious lawyers can and should be part of the effort to change the political climate in New Mexico – not because we’re in any sense special, but because we should help shoulder the burden. Those of us that care about New Mexico’s children must work to shift the practicable morality that guides us all in the choices we make about generating and distributing resources and in the choices we make about using those resources ambitiously and effectively for our children and families.

I. WHAT I BROUGHT TO MY WORK AT PEGASUS

In his 2005 address, *Living and Lawyering Rebelliously*, Professor López begins with the premise that though we can and should always grow and learn from others; “we can not separate who we are from what we are trying to understand.”¹¹ By describing my legal training and my view of what we do at Pegasus, I hope to illuminate for myself and others, those opportunities for transforming how we may collectively work to support children and families.

Before I went to law school I was a single parent. Without significant governmental support I would not have been able to finish post secondary education. I received WIC, subsidized child care, a Pell Grant, and work-study funds. As a work-study student, I worked at Peanut Butter & Jelly (PB & J), a community based therapeutic preschool which required parent involvement.¹² Most parents were court ordered to participate in the program. As a classroom assistant, I hugely benefited from the parents’ presence, learning with them and

¹¹ Gerald P. López, *Living and Lawyering Rebelliously*, 73 *FORDHAM L. REV.* 2041 (2005); Gerald P. López, *The Idea of A Constitution in the Chicano Tradition*, 37 *J. LEGAL EDUC.* 162 (1987).

¹² PB & J FAMILY SERVICES, <http://pbjfamilyservices.org/programs/> (last visited June 8, 2016).

from them about child development.

My application to law school reflected the injustice I saw in my work there. Sometimes families would ask me to go to court with them. There I saw that the lawyers for the children had not done even basic investigations about the needs of the families. I personally knew that they had never observed these parents and their children at PB&J. If they had, they would have seen how even very young children often wait for their parents, then rush to meet them when they arrive. They would know how important it is to provide all families with the resources they need to succeed. Even then I said to myself, shouldn't meaningful investigation about what is important to your client be the bare minimum for anyone practicing law, the point of departure?

I entered law school with a passion for children and families but without much sense of what lawyers do across a range of institutions and roles, especially when they attempt to push for, and at least occasionally achieve, a more radically egalitarian and democratic life for children and families. While perhaps an aberration, law school prepared me well for my chosen career. I arrived at Stanford Law School in 1990, during an extraordinary period where a dedicated team of faculty, students, staffers, and others had collectively developed and implemented the Lawyering for Social Change Concentration, a coordinated and sequenced set of clinical and non-clinical courses, beginning in the first year and extending through the second and third years, all animated by the rebellious vision of lawyering.¹³ Only now, after decades in practice and experience with legal education across the country, do I fully appreciate how my years in law school and the Lawyering for Social Change Concentration rank easily as among the most ambitious and effective transformation in the history of legal education, from 1870 through today.¹⁴

¹³ Gerald P. López, *Training Future Lawyers To Work With the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1998-99); Gerald P. López, *The Work We Know So Little About*, 42 STAN L. REV. 1 (1989).

¹⁴ Despite the remarkable capacity of legal education to resist sensible change of all sorts, much less the transformation López and a small group of others insist upon, the literature is wide and deep. For early and powerfully insightful insistence by observers outside of the legal profession analyzing why legal education must transform itself, see the work of Alfred Reed. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF LAW, 112-113 (1921); ALFRED Z. REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA (1928). For an example of older literature by legal academics, seldom read and seldom cited, calling for such change, see John H. Wigmore, *Novus Methodus Discendae Docendaeque Jurisprudentiae*, 30 HARV. L. REV. 812 (1916). For work of the certain of the high profile realists of 20th century critical of legal education and, to some degree, offering alternatives, Jerome Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907 (1933); KARL LLEWELLYN, THE STUDY OF LAW AS A LIBERAL ART, IN JURISPRUDENCE 375 (1962). For late 20th century ABA Report calling for certain notable

The training that engaged me intermeshed the close study of power with the close study of human problem solving. We looked at the promises and limits of conventional legal strategies such as planning, policy-making, and litigation. We also studied what were, in those years, still unconventional legal strategies – outreach, education, and mobilization and how to play diverse roles within and in coordination with social movements – all with the close analysis of how everyday experiences viewed from divergent backgrounds, and bodies of thought from diverse fields like anthropology, cognitive sciences, political theory, community organizing, moral philosophy, social movements, pre-school and K-12 teaching, theology, theater, acting and others might serve to deepen and sharpen how we live and how we lawyer. We focused on the gifts, skills, and sensibilities central to the enormously diverse roles lawyers and others play in assorted problem-solving teams.

Instilling deep respect for our future clients and client communities as co-eminent problem solving practitioners was part of the foundation of the sophisticated three-year curriculum. The rigors of our training, inside and outside the classroom, signaled that becoming an effective lawyer, especially one working with any subordinated group, inevitably entangled us in complexities at all levels, including, of course, the intermingling of the intellectual and the emotional. The Lawyering for Social Change Concentration told us directly we would not get points either for hyper-rationality or for boundless passion. Both regularly result in skewed and even harmful lawyering, obscuring our field of vision, stifling our curiosity, and restricting our capacity to formulate with others diverse ways of diagnosing and

changes, see AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (also known as “MacCrate Report”). For examples of largely conventional accounts calling for significant change, especially in the second and third years, see WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007) (also known as “Carnegie Report”); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007) (also known as “Best Practices Report”). For samples of a significant outpouring of scholarly and popular literature calling for legal education to change, see Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School*, 13 AM. U.J. GENDER SOC. POL’Y & L. 511, 531-39, 562 (2005); Bonita London, Geraldine Downey & Vanessa Anderson, *Daily Life During the Transition to Law School: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J.L. & GENDER (2007); Carrie Menkel-Meadow, *Taking Law and _____ Really Seriously: Before, During and After “The Law,”* 60 VAND. L. REV. 555 (2007); Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. REV. 609, 610 (2007).

responding to problems. Our professors were training lawyers to do great, radical work. We learned to take pride in grasping the rebellious practice of problem solving as a craft and occasionally, an art. All that, stitched together, was the impossible-to-miss message.

Having internalized the rebellious vision (aims, methods, and all), and funded by an Echoing Green Fellowship, I returned to New Mexico and worked at the New Mexico Protection and Advocacy System.¹⁵ As a lawyer, I worked with people with disabilities living in institutions,¹⁶ children with disabilities who were being pushed out of the public schools for behavior related to their disabilities, and with children in the abuse and neglect system. Five years later, I joined Peter Cubra, a civil rights lawyer who represented children and people with disabilities. Working with a team of lawyers, we brought litigation challenging the failure of the New Mexico Medicaid managed care system to address the needs of children with disabilities.¹⁷

By the end of my first decade of lawyering, I had seen first hand how people are harmed when institutionalized and segregated from the rest of our community. I had worked to get beyond my own biases related to working with people with disabilities, especially those with limited cognitive abilities. I learned (and am still learning) about how we all have variable capacities and how important it is to see and support the agency of those with whom we work, regardless of age or disability. I had also gleaned information about the power of governmental entitlement programs as a way to leverage access to resources and about how critical it is to understand the ins and outs of governmental institutions. Understanding the law around governmental entitlements reinforced what I knew from experience: programs like food supplements, subsidized child care, and student financial assistance are central to helping many young families thrive.

Over twenty years ago, in our training at Stanford and in his writing, López urged us to develop a vision of a good life, one worth describing and defending:

It must have a view of how a legal regime—a constitutional regime—provides enough room to permit people to reconstitute themselves while at the same time offering enough stability to nurture our aims and desires. It must have a view of how personal relationships and political identity get shaped, challenged and en-

¹⁵ *Our Fellows: Tara Ford*, ECHOING GREEN, <http://www.echoinggreen.org/fellows/tara-ford> (last visited June 8, 2016).

¹⁶ Melissa Harrison and Margaret E. Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387, 429-433 (1996).

¹⁷ April Land, *Dead to Rights: A Father's Struggle to Secure Mental Health Services for His Son*, 10 GEO. J. ON POVERTY L. & POL'Y 279 (2003) (including a description of her work on behalf of a shared client).

riched. It must have a view of work and art and play and their (perhaps unified) relationship to a fundamentally altered world and a fully lived life. It must have a view of itself as a necessarily partial, provisional, experimental take on a better life. And so on and on.¹⁸

Here's the heart of it: I was a young single parent in New Mexico and through work and life, I knew many other struggling young families. Unlike too many other young parents, I was able to pursue higher education which enabled me to have sufficient economic means to provide for my daughter. The fact that so many other young families did not see or have a path forward to adequately support their children was unfair and unjust. I also knew, both from my own experience and from what I saw with others, that successfully raising children requires more than just adequate income.

Through my work, I aim to help people see that all children are worthy and deserving of our best efforts to care for and support them. We have a responsibility to organize our communities around this truth. I want all of our children to be able to imagine a future with possibilities. And I want them all to be prepared with the ideas, skills, and sensibilities to achieve their aims.

For me, Pegasus has been one means to this end.

II. LAUNCHING PEGASUS

In 2002, more aware than ever of the challenges facing children and families in New Mexico and even more grounded in the realities of a practice shaped by the rebellious vision, Elizabeth (Liz) McGrath and I launched Pegasus Legal Services for Children. Because Liz was passionate about working with children and their families – having represented children in the abuse and neglect system for over a decade – our paths had intersected over the years. I knew she had an abiding commitment to improving the state of affairs for children and their families. I also knew she was an excellent lawyer who was willing to challenge other lawyers to improve the quality of representation of children.

With encouragement from many diverse constituencies, we decided to focus our efforts on those outside any formal system – those regarded as the most marginalized of all. We opted to provide direct legal services to children and their families and, informed by what we learned from our individual clients, address the systemic barriers they face. We chose to work with children and their parents, their foster parents, their grandparents, and even the informal support networks that often substitute for families, especially for couch-surfing teens.

¹⁸ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 377.

We studied the disparate fiscal, political, and cultural dynamics shaping the well-being of New Mexican residents. We had to woo and confront institutions charged with serving the needs of children in hopes of developing constructively accountable relationships.

We realized the importance of disabusing all those who might think Pegasus would follow the historical, misguided and harmful tradition of white women who tried to “rescue” other people’s children, a tradition of unjustifiable interference in the lives of poor families and communities of color. We were not those women, and we had resolved never to become them. Others will have to testify – today and in the future – whether or not we have lived up to our convictions, which are so central to our very vision of a practice worth pursuing and a life worth leading.

Explaining the work we do at Pegasus has been a challenge – from the beginning through today. The “scripts” and “elevator pitches” that we routinely use to describe our organization too often fail to capture our work with our clients, their loved ones, stakeholders and our larger community. Here is our current brief description of our work:

Pegasus Legal Services for Children is a private, non-profit agency that serves the civil legal needs of New Mexico’s vulnerable children and youth. Pegasus promotes and defends the rights of children and youth to safe and stable homes, quality education and healthcare, and a voice in decisions that affect their lives.¹⁹

Our elevator pitch does not convey our commitment to rebellious work – to creative, collaborative problem solving and radical egalitarian and democratic aims. Our pitch hopefully conveys our commitment to dignifying children as fully human, whose voice and agency matter.

Although we often fall short, in big and small ways, Pegasus has been informed by the vision of a non-profit law firm set forward decades ago by López:

What might a rebellious non-profit law office look like? Turn loose your imagination for just a moment. It would, of course, encourage clients and lawyers to share problem-solving duties, to link their collaboration to the work of other professional and law problem-solvers. Far from interfering with radical ambitions, the office would help make things happen for those within the rebellious idea: Its general design and standard operating procedures would reflect an effort to identify and respond to evolving needs and aims.²⁰

¹⁹ PEGASUS LEGAL SERVICES FOR CHILDREN, <http://pegasuslaw.org> (last visited June 10, 2016).

²⁰ LÓPEZ, REBELLIOUS LAWYERING, *supra* note 3 at 83.

From our earliest planning, we mapped the landscape of others who were demonstrating commitment to the needs of children and their families. Over the years, Pegasus has worked with many thoughtful, creative, and committed individuals and organizations. We have strong informal networks of support – community activists, parent and grandparent groups, youth organizations, service providers, politicians, educators, community art organizations and others. Without doubt, there is more that we can and should do to institutionalize our commitment to working with others and holding ourselves accountable to the communities with whom we work. Still, Pegasus is deeply rooted in ground that has been cultivated by many passionate professionals, parents, policy makers, youth – people who have devoted their lives to New Mexico’s children.

A. *Co-Founders*

López brilliantly imagined what a new director of a non-profit law firm would need to observe to be able to evaluate the organization. He knew that all the office details mattered, from how the physical space was arranged, to how people talked to each other, clients, and others, to how staff documented and reflected upon their work, to how the local political economy interacted with state, national, and global dynamics, to how every particular project (case, outreach, mobilization, movement) connected with one another, and, of course, what work was getting done and how well.²¹

Liz and I were co-founders. Since we were not inheriting someone else’s structure, we set out to create an organization that would promote excellent and innovative legal representation. In our early years, there was a constant tension between the practical pressures on us to figure out how to do and fund the work and our aspirational goals about how to conceptualize and put in place the best possible organizational structure to support the broad vision behind the creation of Pegasus. Even with the gift of a blank slate, we had a much to learn about setting up a business, and even more to learn (with less of a roadmap) about how to formalize rebellious practices.

Liz has always shouldered much of our organizational development work and devoted countless hours to researching and attending trainings on what makes successful non-profit organizations strong.²²

²¹ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 87-102 (stating, for example, “Much happens in a reception area that shapes and amends working relationships.”).

²² Besides countless trainings through the United Way’s Center for Nonprofit Excellence on evaluation, nonprofit accounting, grant writing, etc., Liz found resources such as: SUSAN KENNY STEVENS, *NONPROFIT LIFECYCLES: STAGE-BASED WISDOM FOR NONPROFIT CAPACITY* (2d ed. 2002); JEANNE BELL, JAN MASAOKA, STEVE ZIMMERMAN, *NONPROFIT SUSTAINABILITY: MAKING STRATEGIC DECISIONS FOR FINANCIAL VIABILITY* (2010);

Liz's dedication to management eased the transition from Co-Director leadership to Executive Director leadership that became necessary in 2013 when, as a result of a family move, I relocated to California. Liz has taken on full leadership of the organization and I have continued as the Legal Director, primarily assisting the organization with its education and policy advocacy.

B. Our Board of Directors

Executive directors typically want either cheerleading boards or fundraising boards that, for the most part, stay out of the way. We, by contrast, wanted and needed encouragement, fundraising, and more. Liz and I realized early on that it was important to help the board members understand the importance of their role and the critical need for them to have their own work plan, develop meeting agendas, lead their own meetings, record what they each agree to do, and hold themselves accountable for accomplishing assignments. Beyond even our expectations, lawyer board members saw our need for support in responding to the demand for our services. They stepped in as volunteers to do intakes in the office – for years, and beyond their board terms. With their support, our clients received first-rate intake lawyers and our board had access to real-time information about the referrals we received, how we processed those calls and how our team worked with clients.

Liz has insisted we improve our capacity to capture data, assessments, and outcomes related to our work. She hustled after funds that made it possible for us to hire outside experts to do a qualitative and quantitative analysis of our guardianship project, a review that gave us insight into how our clients felt about our staff, as well as whether, and in what ways, our clients believed that obtaining legal guardianship helped the caregiver and the child. As the program director for the guardianship program, Larry Kronen embraced the need for this scrutiny. Assessing our own work required time and resources, and it necessarily meant being open to shifting our work in response to what we learned.²³ With information about office practices and our data, the board has been better situated to help us think about new ways to measure and support our work.

Embracing the need for reflection and outcomes, not primarily for funding purposes, but to inform the program work, is a rebellious notion:

Those within the rebellious idea should and frequently do develop

NCNB GOVERNANCE SERIES, NATIONAL CENTER FOR NONPROFIT BOARDS (1996) (publication series of the organization now known as BoardSource).

²³ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 81.

both a system of periodic formal evaluation and an attitude of constant critical self-evaluation . . . Since the aims of the practice they engage in are complex, standards for evaluating success must be innovative and rely heavily on qualitative measures. . . They have to engage all involved in gathering and assessing what can be learned about the impact of existing operations on perceived needs and then, in turn, re-inform and improve practices with what they've just learned.

Of course, the money matters too. From the beginning, the board also recognized that some activities may not have an obvious direct funding stream (grants, contracts, court awarded fees). Typical revenue streams often woefully underfund, or do not fund at all, work we think is crucial, *e.g.*, representing children in abuse and neglect, pursuing education cases, or community engagement efforts. We have had to scrutinize our routine work and justify running under-resourced programs.

Some directors believe that strong boards should not micro-manage but rather focus primarily on “policy.” But for us, having board members who care enough about the organization to get their hands dirty and to act as a sounding board when hard decisions have to be made has worked well, especially when board members possess the awareness – the judgment – to also know when to step back when our work is going well.

C. Supporting Pegasus Staff

Currently the Pegasus team includes a front office person, six full time lawyers (including Liz), an office administrator, a part-time lawyer (me), two paralegals, a legal assistant, a part-time development assistant, several contract attorneys, a contract bookkeeper, and volunteer attorneys. We also routinely have high school, college, social work and legal interns.²⁴

Pegasus is a team of people that comes together to create critical change. Cynthia Gibbons, our office administrator, demonstrates how important each person is to the dynamic. She is the real go-to person in the organization, the bridge between staff and Liz. The duties assigned to Cynthia are central to the organization. Among other tasks, she supervises all non-lawyer employees, prepares grants and reports and ensures our bills are paid and our finances are ready for our bookkeeper. Cynthia can hear most office conversation throughout the

²⁴ For an illustration of how diligently we aim to give the law students working with us challenging assignments aimed to help develop their lawyering capacity, see *Sarah Parks Delves Into Child Welfare Law as Bergstrom Fellow*, UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, <http://lawschool.unm.edu/news/archives/2009/sepember/parks> (last visited Aug. 3, 2016) (describing Sarah Parks's fellowship at Pegasus).

day, often perhaps to her detriment. When she hears that others in the office need help, she tries her best to be of service. Most of us do not see all she does to keep us afloat. We see only how she helps us individually – all those 5-minute offers of help that not only interrupt whatever else she was already doing but add up to hours in a day. Cynthia makes her “of service” attitude almost invisible, quietly modeling an ethic Pegasus promotes: that we all help each other regardless of job description. We have largely succeeded in bringing on people who endorse that ethic, and no employee at Pegasus expects others to get them coffee. The people who have derived the most out of working at Pegasus are those who endorse our mission. Valuing our mission may be a necessary component to working well at Pegasus, but it is emphatically not sufficient.²⁵

Law schools do not typically teach one how to lead or support an energetic and effective team – or, at least, do not teach as ambitiously and effectively as they should.²⁶ My initial management style was primarily premised on being a good role model and bringing on others with the expectation that they would work independently. A common narrative upholds this management style: I hire good people and then get out of their way so that they can do their work. At least as I implemented this idea, it was naïve. Supporting a team of people requires paying attention to a number of complicated dynamics. We have weathered some periods of instability – both because of our own learning curve regarding management and because of personality clashes. Our relatively flat organizational structure, without much hierarchy, also poses specific challenges because often staff can not easily see a path for advancement within the organization.

As we grew, we needed “to examine patterns in the office and make adjustments to better realize aspirations.”²⁷ We knew we needed administrative and management help, so we found it. First, during one of our periods of instability, in 2009, we worked with a local leader with extensive experience in organizational development to facilitate a process that engaged all of us in identifying key obstacles to our ability to work together as a team. With her help, staff

²⁵ In Chapter 2, López describes in detail how critical it is to examine the people, their roles and the conditions under which employees work. He describes the star qualities of a person like Cynthia: “The ‘caring’ qualities she conveys when helping someone are *not* dispensable among lawyers or receptionist or anyone else.” LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 101.

²⁶ At various times during his decade at Stanford Law School, López taught “How To Start Up and Sustain A Private or Non-Profit Progressive Law Practice,” but not during my three years there. In years since, a tiny number of courses have focused on such questions, though without the same grounded and imaginative focus.

²⁷ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 83.

were able to identify barriers to their work success. The most common problems identified related to people being unsure about their roles and responsibilities, an unintended result of our effort to create an organization where everyone took responsibility for helping each other.

In 2012, we worked with several University of New Mexico business graduate students to again help us with organizational development, including Ian Esquibel, who later joined our board. Here is how they described their project: “During our preliminary interview with Ms. Ford, she identified her biggest concern as: ‘Creating an organizational structure that supports individual-level employee motivation while ensuring long-term sustainability of the work.’²⁸ Both co-directors seemed interested in promoting job motivation and satisfaction not only to retain employees, but also to cultivate them as part of a succession plan that can ensure long-term sustainability for Pegasus.”²⁹

The graduate students used a quantitative tool to understand the motivations of our staff from a number of different angles. They concluded:

Pegasus faces organizational challenges, but each challenge has a solution. Employee survey responses communicate that Pegasus employees are more highly motivated and satisfied than the average worker. The employee responses reiterate that Pegasus has a strong team. The co-directors can take credit for hiring ambitious staff members who are internally motivated. They can also continue to support staff, goals and their collective work to solidify an organizational culture of cohesion, motivation and satisfaction.³⁰

Perhaps unsurprisingly, our staff scored high as personally motivated and for wanting to grow as individuals. In looking at the data, we noticed two important points. First, people were not getting sufficient information about how well they were doing their jobs. Second, Liz and I were significantly more dissatisfied than our staff. Setting goals and getting feedback about our work was a motivator. We all wanted to be successful and to continue to develop new skills. The research suggested we needed to find ways beyond our annual evaluation process to help our employees set specific, challenging goals, to provide a structure to give regular feedback, and to create a review process that would engage the team on how to best grow in their work.

²⁸ *Organizational Analysis of Pegasus Legal Services for Children* (2012) (unpublished) (on file with author).

²⁹ *Id.*

³⁰ *Id.*

Pegasus is a small and nimble organization. We reject the notion that we should stay rigidly confined to existing programs or approaches. The puzzle for us is to be intentional about how to achieve our aims and still be responsive to changing conditions and new opportunities. Our general ethic is that if we can help, we will. We accept the risk that we may take on more than a small group of people can accomplish – a risk we limit by working with others. Perhaps it's already obvious, but we openly embrace a basic truth: We demand a lot of ourselves.

III. WORKING WITH INTENTION

Determining what our daily work should look like has been an evolutionary process. Like all non-profit law firms, we do not have the capacity to meet what some might regard as “the most traditional legal needs” of the children and families who call us, much less to help with all the important collective work being done in communities and at a policy level, all of which we regard as inevitably entangled and important.

Pegasus has never advertised. At first, with no other staff, Liz and I answered the phone and tried our best to respond to the needs of our callers, even when all we could do was point them to others for help. Like Etta and Dan in *Rebellious Lawyering*, we felt then and still feel, “the impulse to take on everything – all at once and right now. [We] want to help get things moving around “big” issues like the income distribution system and alternatives to the market and, at the same time, around “small” issues . . .”³¹ Like other rebellious practitioners, we hope that: “If [our] work by its nature is often small scale, it is always big-spirited.”³²

In the beginning, people called largely with questions they thought either Liz or I could answer, based on our past work in the community. Liz was one of the primary drafters of the New Mexico guardianship statute, so a high volume of our calls have always been from those relatives who serve as caregivers. Because much of my work has been advocating for children with disabilities, we have always had a steady stream of families calling with special education problems. But we wanted to represent children more directly. Grace Spulak came on board with a Skadden Fellowship and began our youth law program. Grace has been a leader within Pegasus and the state, advancing quality representation of children and youth.³³ For

³¹ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 276. See also Daria Fisher Page, *Etta & Dan: Seeking the Prelude to a Transformative Journey*, 23 CLIN. L. REV. 251 (2016).

³² LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 276.

³³ *Interview with Grace Spulak, Pegasus Legal Services for Children*, YOUNG NON-

nearly a decade, our four primary areas of service have been youth law, education, guardianship, and abuse and neglect.

We wanted Pegasus to “create value” for our clients and our community.³⁴ Yet, we worried that in the crush of responding to calls and building programs, we were not keeping track of how our daily work related to our larger aims. In closely examining a non-profit law firm practice, López was accurate: “Every non-profit law office battles at some level over its evolving identity and, more than occasionally, over what its practice should be like.”³⁵ In 2009, we hired Ruth Shy, a long time social justice advocate, to help Pegasus create a strategic work plan. With Ruth’s help, we identified existing challenges such as: lack of money within the state, government programs that were overburdened (courts, child welfare, juvenile justice, education), children perceived of as their parents’ property, and teenagers perceived of as trouble. We also identified existing opportunities: a strong child advocacy community and the national political agenda under the Obama administration. The conditions facing the communities we served were brutal: more of our clients and their families were in prison, mental health services were sparse, multi-generational trauma was pervasive, and we were seeing more severe acts of violence against children.

Our goal-setting process was informed by the following core beliefs:

- Our whole society benefits when children’s needs are met.
- Children thrive when they stay connected to their families and their communities.
- Children have rights and deserve quality representation.
- It is essential to treat everyone with whom we work with respect: clients, co-workers and opposing parties.

We next looked at each of our primary areas of practice and questioned whether our current programs lined up with our vision. Although the existing scope of work seemed intimidating, we outlined opportunities for new work too. Working with Ruth gave Pegasus staff an opportunity to take stock of the organization’s work and helped us make an intentional plan about how we wanted to work in the future.

PROFIT PROFESSIONALS NETWORK CENTRAL NEW MEXICO (Feb. 25, 2013) <https://ynpncnm.wordpress.com/2013/02/25/interview-with-grace-spulak-pegasus-legal-services-for-children/>.

³⁴ In the modern scholarly literature, Ron Gilson may well be most responsible for introducing the idea of adding value as a measure of a lawyer’s contribution to her or his clients. See Ronald Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *YENS L. J.* 239 (1984).

³⁵ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 84.

Our scope of work has inevitably had to shift in response to unanticipated barriers and opportunities, but taking the time to periodically reflect is necessary to chart the course.

A. *Children Have Rights and Deserve Quality Representation*

Many adults are not keen on children having lawyers. People assume that parents can/should/will take care of their kids. The experiences of the children we work with – and the empirical data – contradict this reassuring conventional image. Indeed, the realities facing our clients leave us baffled by the resistance to legal services for children. We work with children who do not have parents caring for them, who are placed in foster care, who live with relatives or fictive kin, and some who live entirely on their own.

Children and youth need adults, often to pursue a legal remedy, but almost always to do well in their lives. Even when young people have the right to an independent voice in a proceeding, we need to help them advocate for themselves and link them to adults who will love and care for them whenever possible. For older youth, sometimes the best that we can do is to recognize that they are on their own and enable them to legally navigate critical aspects of life, like accessing health care, signing a lease, or enrolling in school.³⁶

Like many young people who contact Pegasus, Jhette Diamond struggled on her own for several years before calling us. To escape violence and neglect at home, at 14 years old, Jhette had moved in with a family friend. By age 16, Jhette had already begun to stabilize her life. She was doing well in school and had a job at a restaurant but, as a minor without a legal guardian, she ran in to constant roadblocks to taking care of herself. Pegasus attorneys represented Jhette to help her become emancipated so that she could make her own decisions, such as accessing her own medical care.

On July 2, 2012, in *Diamond v. Diamond*, the New Mexico Supreme Court interpreted the Emancipation of Minors Act³⁷ and issued its decision in favor of Jhette, declaring Jhette an emancipated

³⁶ Much has been written about the role of lawyers for children and children's rights, see, e.g., DOUGLAS E. ABRAMS AND SARAH H. RAMSEY, *CHILDREN AND THE LAW, DOCTRINE, POLICY AND PRACTICE* (4th ed. 2010); Donald N. Duquette and Julian Darwall, *Child Representation in America: Progress Report from the National Quality Improvement Center*, 46(1) *FAM. L. Q.* 87 (2012); David D. Meyer, *The Modest Promise of Children's Relationship Rights*, 11 *WM. & MARY BILL OF RTS. J.* 1117 (2003); JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL & PRACTICAL DIMENSIONS* (2d ed. 2001); Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 *FORDHAM L. REV.* 1507 (1996); Michael Wald, *Children's Rights: A Framework for Analysis*, 12 *U.C. DAVIS L. REV.* 225 (1979).

³⁷ EMANCIPATION OF MINORS ACT, N.M. STAT. ANN. §32A-21-1 to §32A-21-7 (1978).

minor and ordering her mother to provide Jhette with child support. Now courts have clear authority to emancipate a minor for specific purposes that are in the young person's best interests. This ruling meant that New Mexico's Emancipation of Minors Act is recognized now as a law that actually protects young people, and is not simply interpreted as a means to cut off parental legal ties to youth who are living independently.³⁸

Over the course of my career, there has been a tremendous shift in what constitutes "best practices" in representing children. When I first started representing children in abuse and neglect cases, I was a court appointed guardian *ad litem* for children of all ages, and my duty was to zealously represent their "best interests."³⁹ This meant that lawyers for children, even older children, had a responsibility to inform the court about what the lawyer thought was in the child's best interest, even when the lawyer's position was in direct conflict with the child's position.

Many lawyers and many others, including New Mexico's Children, Youth and Families Department leadership, recognized that youth – especially those involved in cases where the questions involved whether and under what conditions they could live with their families – should have a right to an attorney who would represent them, whose duty of loyalty was to the youth's expressed interest, *not* some attorney's idea of "best interest."⁴⁰ Working together, in 2005 we succeeded in changing the model of representation for youth in abuse and neglect cases. Now young people age 14 and older in New Mexico have traditional attorney representation. This shift proves dramatic. No longer can attorneys formally assume the incapacity of young people. Instead attorneys now have to listen to their clients, counsel them, and help their clients develop their own positions on issues.

At Pegasus, we have learned how decisive it is to actively engage all our child clients, even those under fourteen. The youngest child's agency should be respected. Even babies respond to the world in

³⁸ *Jhette Diamond's Emancipation*, UNIVERSITY OF SAN DIEGO SCHOOL OF LAW, (Sept. 17, 2015), http://www.sandiego.edu/law/school/news/detail.php?_focus=52607; *Diamond v. Diamond*, 283 P.3d 260 (N.M. 2012); see also Lauren C. Barnett, *Having Their Cake and Eating it Too? Post Emancipation Child Support as a Valid Judicial Option*, 80 U. CHI. L. REV. 1799 (2013) (stating that the *Diamond* case is a first of its kind).

³⁹ *State Children, Youth and Families Department v. George, et al.*, 964 P.2d 158 (N.M. Ct. App. 1998).

⁴⁰ CORINNE WOLFE CHILDREN'S LAW CENTER, NEW MEXICO JUDICIAL EDUCATION CENTER, INSTITUTE OF PUBLIC LAW, UNIVERSITY OF NEW MEXICO SCHOOL OF LAW, 2014 NEW MEXICO CHILD WELFARE HANDBOOK 6-1 (2014), <http://childlaw.unm.edu/resources/common/docs/2014-child-welfare-handbook.pdf> (describing the 2005 change in New Mexico law governing model of representation for older youth).

which they find themselves and, in a variety of ways, they communicate what they need. That's not wishful thinking, "pop psychology," or left mythology. Our experiences bear out the importance of our commitment to actively working to understand what children are communicating to us about their needs. Our experiences find support in the most sophisticated of interdisciplinary literatures.⁴¹

B. *Working with Youth as Collaborators Creating Change*

Pegasus works with youth collectively, not just individually. Young people are politically engaged. This fact is absolutely no surprise to us, and it shouldn't be to anyone else. Nationally, youth are making their collective interests heard in a number of ways including mastering open source social media tools. Over the years, Pegasus has linked efforts with a number of both formal and informal youth led coalitions and groups. We have worked closely, for example, with Generation Justice, whose mission is "to inspire youth to become media makers committed to social transformation."⁴² For example, Taylor Griffin interviewed Generation Justice youth radio blogger Victor Torres about his experience advocating to get the school services he needed and to improve services for other students with disabilities, including taking formal legal action.⁴³ These amazing young journalists regularly produce incredibly high quality multi-media projects, from radio to video blogs to full-out campaigns about issues important to them and to their communities.⁴⁴

Recently, Pegasus and Generation Justice wrote a grant proposal together. Typically, Pegasus sees itself as bringing significant advocacy expertise to the table. This time, however, we realized that we

⁴¹ Candice L. Maze, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, Practice & Policy Brief, AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW (Oct. 2010), http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ethicalrep_final_10_10.authcheckdam.pdf; Patrice L. Engle, *Comprehensive Policy Implications of Child Rights*, in A GUIDE TO GENERAL COMMENT 7, IMPLEMENTING CHILD RIGHTS IN EARLY CHILDHOOD 13 (Bernard van Leer Foundation, ed., 2006), http://www.unicef.org/earlychildhood/files/Guide_to_GC7.pdf (United Nations Committee on the Rights of the Child interpreting how human rights principles apply to infants and young children: "Participation of children: . . . from birth, children communicate their needs and preference; by the age of 3, most children can communicate ideas and thoughts in words. The spirit of this right should be met by making sure that care providers (families, schools) are able to listen to children's views and take them into account.").

⁴² *Mission Core and Values*, GENERATION JUSTICE, <http://www.generationjustice.org/about/mission-and-core-values/> (last visited Aug. 1, 2016)

⁴³ *Victor's Victory*, GENERATION JUSTICE (May 16, 2010), <http://www.generationjustice.org/2010/05/16/victors-victory/>.

⁴⁴ *Our Community: From Cesar Chavez to Behavioral Health*, GENERATION JUSTICE (Mar. 20, 2016), <http://www.generationjustice.org/category/nmspeaks/our-community/>.

needed training from our youth partners in precisely what we regard ourselves as experts about: advocacy. We needed Generation Justice to teach us related ideas, skills, and sensibilities about using social media. Part of engaging young people involves understanding the new methods they have found to communicate – particularly their rather remarkable mastery of technology. Next generation thinking offers new and important ways of approaching social change, *Rebellious Lawyering 2.0*.

Working together across generations can be stimulating, demanding, and exciting – all in very particular ways. We do not always agree with young people about what the goals of our work should be or how to best reach those goals. This is true in individual case work, in group advocacy work, in organizing campaigns, and in developing and sustaining social movements. Relative time on the planet matters, but not always in favor of greater age. It is easy to dismiss the urgent calls for change from young people as unrealistic (whether change is articulated by an individual young person or by a collective group of young people). As with any collaborator, the friction between perspectives is the potential sweet spot.

In Chapter Four of *Rebellious Lawyering*, López describes the relationship between a lawyer and a lay lawyer, detailing how two radically minded people from different backgrounds work together, not always comfortably, yet committed to learning from each other. Working with youth, actively respecting the experience and expertise they routinely bring to the table, has helped Pegasus lawyers “redefine the boundaries between self-help, lay lawyering, and professional lawyering, in ways they themselves not only can’t always predict but frequently struggle with, even when the new boundaries appear to make all the sense in the world.”⁴⁵

Pegasus is committed to joining forces with young people whenever possible. Sometimes we get push-back from the youth we hope to support. Defending our various perspectives – and sometimes changing them – is a dynamic conversation. What makes working with young people risky is that both sides may be too willing to capitulate to the other based on age, limiting full consideration of ideas and perspectives. We have to be honest in our engagement with youth, not deferring when acceding makes no sense and, at the same time, not running roughshod over unfamiliar ideas outside our experience. Working with youth requires that we set aside ingrained ideas about age held by us and by the young people with whom we work, so that we can engage each other across generations to develop a shared un-

⁴⁵ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 329.

derstanding of how we can best work together to create positive community change.⁴⁶

*C. Education As a Case Study: We All Benefit When
Children's Needs Are Met*

Almost daily, we at Pegasus speak with parents who are struggling to help their children access education, as well as physical and mental health care, from governmental programs with legal obligations to provide these services. These families are seeking legal services because their problem solving efforts have not succeeded in getting their children the programs and services they need and may be entitled to.

A critical examination of advocacy directed towards improving education in New Mexico is a case study of trying and not yet succeeding on a large scale. The political landscape related to education is flooded with special interests like local school district politics, unions, and big money in curriculum and testing. From class action work aimed at ensuring sufficient funding,⁴⁷ to individual advocacy,⁴⁸ courts have often failed to act on behalf of children: unable or unwilling to understand recurrent patterns as abject system failures.⁴⁹

We learn from the experiences of our clients and then try to figure out how to translate what we learn into leverage for system change. Because our resources are limited, we regularly work with attorneys in the private bar who share our vision. I have worked with Gail Stewart for over a decade on education issues. She is a lawyer who is also the parent of a student (now an adult) with a disability. Through her experience as a parent whose daughter required special education, she knows the difficulty of creating short-term solutions in the face of long-term system failures. Having cajoled staff, provided the school with resources, described what her daughter needed in meeting after meeting, to little avail, she knows first hand why litigation is necessary. Like Martha, the young civil rights lawyer in Chapter 3 of *Rebellious Lawyering*, Gail and I struggle with the reality that

⁴⁶ *Id.*

⁴⁷ See, e.g., *Zuni Public School Dist. No. 89 v. Department of Education*, 550 U.S. 81 (2007).

⁴⁸ See, e.g., *Chavez ex rel. M.C. v. New Mexico Public Education Department*, 621 F.3d 1275 (10th Cir. 2010) (declining to find that the state Public Education Department had an obligation to provide direct services to a student with autism even though the school district failed to provide education to the student for eighteen months).

⁴⁹ See e.g., *Miller ex rel. S.M. v. Board of Educ. of Albuquerque Public Schools*, 565 F.3d 1232 (10th Cir. 2009) (denying admission of evidence showing systemic dysfunction in the delivery of "books on tape," which would have demonstrated that school would not or could not comply with its future obligations).

“[c]ivil rights litigation continues for many [including ourselves] to embody the possibility that we might reshape certain institutional arrangements and routines that influence every day life. That possibility is often remote and even illusory in many circumstances.”⁵⁰

Gail and I have tried many strategies to improve education across New Mexico for children eligible for special education. Representing students and families over years, we have come to some conclusions about what needs to change. New Mexico was the last state to accept special education dollars under the Individual with Disabilities Education Act.⁵¹ From our perspective, this is in keeping with the state’s recalcitrance to developing a system that actually meets the needs of children who receive special education services from the public schools. One of our primary goals in litigation has been to push the courts to grapple with the role of the New Mexico Public Education Department. Without the state government assuming more responsibility for ensuring a sensible structure in our education system, one that anticipates needs of the student body and deploys resources as needed, parents are left having to try to enforce their children’s rights.⁵² Even when these parents are successful, the solutions are too frequently one-off solutions.

Through our cases, we saw how ill-equipped schools are to meet the needs of children with non-conforming behavior. Over the last decade, we became increasingly aware that when teachers did not understand how to address student behaviors, the children were not safe. Instead of schools working with teachers to understand what children need, schools were resorting to restraint, seclusion, and corporal punishment. Student safety, keeping children’s bodies safe from assault by the adults that teach them, seems like a relatively low bar for educational reform.

1. *Ending Corporal Punishment in New Mexico’s Schools*

Pegasus worked with Gail and other rebellious practitioners to end corporal punishment in schools. New Mexico, like the rest of the country, sanctioned hitting children in school for a long time. One of my early education cases involved a middle school student in eastern New Mexico who had been paddled at school. Even at that time, about twenty years ago, I was surprised that school staff were not only allowed to hit children but that schools often had specific policies set-

⁵⁰ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 171.

⁵¹ *Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley*, 458 U.S. 176, 183-184 (1982) (stating that New Mexico is the only state not accepting funds).

⁵² See e.g., *Chavez*, 621 F.3d at 1289-1290.

ting forth when children could be hit, including the dimensions of the paddle. For example, as late as 2011 the Mora Public School District policy allowed authorized personnel to administer corporal punishment for any prohibited activity and for any violation of a school rule. The policy required that: “Corporal punishment may only be administered by the wooden paddle which is smoothly sanded and has no cracks or holes and which has the following dimensions: $\frac{3}{4}$ inches thick, 4 inches wide, 24 $\frac{1}{2}$ inches long.”⁵³

Corporal punishment was not a mere theoretical concern to Pegasus, it was grounded in our commitment to tie our policy work to our direct representation. This principle, accentuated by López, has been central to our work. “[F]or everyone, reflective, deliberative, and even contemplative thinking originates in and is made mandatory by the practical need to solve real problems.”⁵⁴ In 2010, Kelly Waterfall represented a child through Pegasus and learned that her young client, who had been removed from her family due to physical abuse, was traumatized by seeing a school staff hit a classmate. At the time, New Mexico was one of 20 states across the country where school corporal punishment was still legal.⁵⁵ Pegasus issued public records requests to all 89 school districts and determined that 36 school districts still allowed school staff to hit children.⁵⁶ In 2011, Kelly initiated a legislative effort to ban this practice in New Mexico, bringing in the New Mexico Council on Crime and Delinquency and Pegasus.

We found a strong sponsor for the bill, Rick Miera, a Representative who served in our legislature for over 20 years,⁵⁷ but getting support for the bill was much more difficult than we anticipated.⁵⁸ In one legislative hearing after another, elected leaders remembered being hit as children. The debate was ultimately not only about corporal punishment in school, it also raised concerns about parental rights and about local control of schools.

In response to the legislative resistance, we worked with parent organizations and other advocates to pressure our political leaders. We held a rally at the University of New Mexico. Generation Justice

⁵³ 2011 Mora Public School policy (on file with author).

⁵⁴ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 366.

⁵⁵ Zelig Pollon, *New Mexico Bans Spanking of Children in Schools*, *REUTERS* (Apr. 7, 2011), <http://www.reuters.com/article/us-spanking-newmexico-idUSTRE73648X20110407> (reporting that New Mexico joins thirty other states to ban corporal punishment in schools).

⁵⁶ Public records request and responses (on file with author).

⁵⁷ Carol A. Clark, *NM House Majority Leader Rick Miera to Retire Dec. 31*, *LOS ALAMOS DAILY POST* (Feb. 22, 2014, 8:46 AM), <http://www.ladaily.com/content/new-mexico-house-majority-leader-rick-miera-retire-dec-31>.

⁵⁸ N.M. STAT. ANN. § 22-5-4.3 (1978).

set up a virtual town hall blog.⁵⁹ We talked about corporal punishment on the Children's Hour, a local radio show. National attention magnified New Mexicans' efforts. Unlimited Justice, a national campaign to end corporal punishment in schools founded by Marc Ecko, sent staff to New Mexico who engaged the media by standing outside the state capital with oversized paddles. After the legislature narrowly passed the bill, there was national media attention. *The Huffington Post*, Reuters, and *The New York Times* covered what was happening in New Mexico. Governor Susanna Martinez ultimately signed the bill.⁶⁰

In a small way, we succeeded in momentarily accomplishing a grassroots mobilization as envisioned by López. Groups came together: "Not 'just' to get things done but to fully realize the local. To connect the local to the regional to the national. To link the grassroots to the government."⁶¹

2. *Keeping Children Safe In School: Stopping Restraint and Seclusion*

In contrast, advocating against the inappropriate use of restraint and seclusion in education is a case study in just how difficult it is to achieve even basic educational reform aimed at keeping children safe at school.

New Mexico does not prohibit the use of restraint and seclusion in schools.⁶² Gail and I have represented students who have been held down, tied up, or secluded in small rooms. We have tried multiple strategies to stop the practices that harm children, advocating in legislative forums, formally convening task forces, training educators and others. We talked to parents, individually and collectively, about the state of the law and what they could do to try to protect their children (and the limits of their ability to protect them under the current laws). We connected with national groups and supported national legislative efforts. In our individual case work, we asked to see the rooms where our clients were secluded. We took pictures of doors

⁵⁹ *Our Work*, GENERATION JUSTICE, <http://www.generationjustice.org/about/our-work/> (last visited June 10, 2016).

⁶⁰ Dan Frosch, *Schools Under Pressure to Spare the Rod Forever*, THE N.Y. TIMES, EDUCATION, (Mar. 29, 2011) http://www.nytimes.com/2011/03/28/education/30paddle.html?_r=0; Marc Ecko, *Thank You New Mexico for Banning Corporal Punishment in Schools*, THE HUFFINGTON POST, (Apr. 7, 2011) http://www.huffingtonpost.com/marc-ecko/new-mexico-corporal-punishment_b_846201.html; Pollon, *supra* note 55.

⁶¹ LÓPEZ, REBELLIOUS LAWYERING, *supra* note 3 at 368.

⁶² For a thorough review of state laws addressing restraint and seclusion in schools, see Jessica Butler, *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, THE AUTISM NATIONAL COMMITTEE (July 25, 2015), <http://www.autism.org/pdf/HowSafeSchoolhouse.pdf>.

that locked and blood on walls. And we have tried any number of strategies in individual cases.

Too often people glaze over when we talk about restraint and seclusion. They cannot imagine how restraint looks or how seclusion might impact children. The details matter but are not often known because generally people do not observe children in school, much less attend due process hearings, although many of our families decided to make their hearings public. Testimony from a New Mexico Due Process hearing provides an example of the practice of physical restraint in schools:

Q. And when you – when you restrain him, is it more than one person who’s assisting you, or are you doing it on your own?

A. It starts out with me. And then sometimes we usually have to call — I have to call for backup, because he’s kicking, and he’s head-butting and I can’t do it all.

Q. You have observed that the holding down increases his anxiety and hollering?

A. I’ve observed that.

Q. And is it correct that sometimes there’s up to four adults holding him down?

A. Four — three; usually three.

Q. And [the student] weighs about 40 pounds?

A. Yes.⁶³

Gail and I had long sensed that one of the obstacles to holding schools accountable and ending the use of restraint and seclusion was adults’ tendency to empathize with the adult staff person who is at his or her wits end with a student. In other words, many adults could easily imagine not knowing how to respond to an out of control child. Having experts testify was not effective enough.

In 2010, we brought a due process case on behalf of a nine-year old client who was eligible for special education as a student with autism. He had been restrained multiple times, sometimes by more than one adult and even within public areas of the school. After one such incident of restraint, the child was so distraught that he sat under his desk for 45 minutes and cried.

Telling the stories of children who are subject to restraint and seclusion in ways that move adult audiences has proven exceedingly difficult. Throughout *Rebellious Lawyering*, including within the book’s very structure, López highlights the importance of sharing our stories and understanding our audiences as central to problem solving. López demands us to be bold in our brainstorming about the problems we seek to solve and broad in mapping out possible audi-

⁶³ Due Process Hearing Testimony (on file with author).

ences who just might offer potential “sources of relief.”⁶⁴ Gail and I were actively seeking new ways to help decision makers grasp why physical restraint was harmful.

At the time, my own daughter was also nine and about the same size. One night at dinner she talked about seeing adults chase a child at her own school. I decided that maybe, if she were willing, she could come in when we examined the person who trained district personnel in the use of restraint and allow him to demonstrate the restraint techniques on her. We talked as a family about this strategy. She was willing. Watching a youngster get positioned off balance and immobilized by an adult is harrowing. Perverse as it may sound, I wish every adult were compelled to experience this technique being used on their own children. Or see the almost inevitable resulting “fight or flight” response.

In order to stop the use of restraint and seclusion, we need to develop a broader understanding of how these practices harm children. As the producer of a children’s radio show in New Mexico, Katie Stone is somewhat of a local celebrity. Pegasus has worked with her to politically mobilize against the use of physical restraint and seclusion in schools. As a parent, she learned how difficult it was to stop a school from resorting to restraint and all the ways school districts resist employing positive behavioral supports in place of seclusion and restraint. She became determined to make a difference for families – organizing parents, calling out district and state leadership in all types of forums, writing editorials, and meeting with politicians. For years, she has worked to get the legislature to pass a bill prohibiting restraint and seclusion in schools. Katie has done the heavy lifting of finding sponsors, educating legislators, making fact sheets, testifying during hearings, and using legislative advocacy to create understanding of the needs of marginalized students. Despite multipronged strategies, the reality that these practices are so disproportionately used against children with disabilities has made it difficult to prevail in the political process.

⁶⁴ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 191, 196-212. It was nearly a decade earlier, in 1984, that López initially introduced into the modern legal literature, particularly about lawyering, a deep and insightful account of stories and their role (together with category and argument) in the problem solving at the heart of human action and all professional practices like lawyering. See Gerald López, *Lay Lawyering*, 32 *UCLA L. REV.* 1-60 (1984). For just some of the literature about stories prompted by the publication of *REBELLIOUS LAWYERING* and *Lay Lawyering*, see the very first article published in this journal. Anthony Amsterdam, *Telling Stories and Stories About Them*, 1 *CLIN. L. REV.* 9 (Spring 1994); and see Ty Alper, Anthony Amsterdam, Todd Edelman, Randy Hertz, Rachel Shapiro Janger, Jennifer McAllister-Nevins, Sonya Rudenstine, and Robin Walker-Sterling, *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 *CLIN. L. REV.* 1 (Fall 2005).

Advocacy around the school-to-prison pipeline has exposed the ways in which our schools and our juvenile justice systems, as institutions, set children up for involvement in the criminal justice system. Seclusion, like solitary confinement, is inhumane.⁶⁵ Rather than teaching children the skills they need to participate in class with other students, our public school practices convey to particular students that they deserve to be marginalized and isolated. Schools are spending money to support these inhumane practices. We are paying people to design buildings with seclusion rooms and choosing to train our school staff to respond to children in ways that cause harm. We ultimately are paying a huge price for the harms these choices cause our children, their teachers, and other students who witness these practices.

Our strategies around restraint and seclusion have not been successful. We still represent individual children who are subject to restraint and seclusion in schools. We still actively work with others to try to pass legislation to stop these practices. It is easy to despair, to want to give up, to allocate resources to more winnable battles. *Rebellious Lawyering* does not equate winning a case or passing legislation with change; such moments might contribute to the change we seek, but disparity is more entrenched and persistent. *Rebellious Lawyering* recognizes that, given the powerful configurations of institutions and resources that support the political economies impacting marginalized communities, we will not always prevail in our efforts. López challenges us not to give up but to reassess our methods, to use innovative strategies, and to expand collaborations. In short, we have to continue to learn about the structures that uphold the practices we seek to shift and recalibrate in response to what we learn.

3. *Beyond Shifting Policy: The Education Justice Project*

The Education Justice Project (EJP), with a focus on working across multiple systems, is our most recent coordinated effort to address education in New Mexico. Pegasus does not represent children in delinquency cases, but in 2009 we resolved to investigate how we could help decrease the involvement of youth in the juvenile justice system. Because of our work in education, we realized we were uniquely situated to focus attention on the link between inadequate education and delinquency.

When addressing a student's behavior, schools and courts have historically focused on the student's mental health and there are important reasons to do so. According to a study released by the New

⁶⁵ David Weissbrodt, Willy Madeira, Daniel Stewart, and William Dikel, *Applying International Human Rights Standards to the Restraint and Seclusion of Students with Disabilities*, 30 *LAW & INEQ.* 287 (2012).

Mexico Sentencing Commission in February 2016, 86% of youth incarcerated in the New Mexico juvenile justice system in 2011 had experienced four or more past adverse childhood events, compared to 12% of individuals studied in the original adverse childhood events research.⁶⁶ Research demonstrates that youth with these levels of adverse childhood events are significantly more likely to have physical and mental health disorders as adults.

Yet, this focus on emotional and mental dysfunction as causes of children's misbehavior frequently overlooks the possibility that, in many cases, behavior may be worsened or even caused by failures in instruction. Reading is the currency of success after elementary school. Struggling readers face a daily battle in which they are always hiding, pretending, or failing. Frustration can look like explosive and nonconforming behavior. Longstanding research shows a strong connection between poor reading skills and involvement in the juvenile and criminal justice system. A 1997 National Center for Juvenile Justice study found that, "While poor reading skills and poor academic performance are not direct causes of criminal activity, adolescents who have deficits in these areas are disproportionately represented in correctional institutions."⁶⁷

At the same time, research also shows that students with reading disabilities can learn to read with proper, evidence-based reading instruction.⁶⁸ Unfortunately, in our experience, many public schools in New Mexico lack secondary level teachers trained in evidence-based reading instruction.⁶⁹ Schools and teachers assume that students learn to read in elementary school. Unfortunately, many students are trying to negotiate the social and emotional challenges of middle and high school while coping with the stress of knowing they also lack the fundamental skills to succeed academically. These students start out being undesirable because they lack reading skills and later their rule violations, based on the students' own frustration, only confirm their

⁶⁶ Yael Cannon, George Davis, Andrew Hsi and Alexandra Bochte, *New Mexico Sentencing Commission, Adverse Childhood Experiences in the New Mexico Juvenile Justice Population*, (Feb. 2016), available at <http://nmsc.unm.edu/reports/2016/adverse-childhood-experiences-in-the-new-mexico-juvenile-justice-population.pdf>.

⁶⁷ Howard N. Snyder and Melissa Sickmund, *National Center for Juvenile Justice Juvenile Offenders and Victims: 1999 National Report* (1999).

⁶⁸ Robert E. Slavin, Alan Cheung, Cynthia Groff, and Cynthia Lake, *Effective Reading Programs for Middle and High Schools: A Best Evidence Synthesis*, 43(3) *READING RESEARCH Q.* 290 (2008).

⁶⁹ Julie Greenberg and Sandy Jacobs, *Preparing Tomorrow's Teachers: Are New Mexico's Education School's Graduates Ready to Teach Reading and Mathematics in Elementary School Classrooms?* *NATIONAL COUNSEL ON TEACHER QUALITY 2* (2009) available at http://www.nctq.org/dmsView/Preparing_Tomorrows_Teachers:_New_Mexico_NCTQ_Report (stating that New Mexico does not require teacher preparation programs to prepare teachers in the science of reading instruction).

undesirability.

By 2012, Pegasus had started looking for national funding to support development of a project that would help families, students and courts look at educational needs of youth in the juvenile justice system. We were not able to entice any national foundations to help us. However, working with Disability Rights New Mexico and the Native American Disability Law Center, in 2015 we were able to obtain a small grant from United Way of Central New Mexico to start the EJP.

The project pilot is located in Sandoval County. Project staff work with the court, the juvenile public defenders, the district attorneys and representatives from the Children, Youth and Families Department to learn about how to best connect with youth and their families. Developing capacity based on the specific needs of a defined geographical region, we can identify and connect with “multiple, overlapping communities” linked to students in Sandoval County.⁷⁰ With this focus, we can refine our advocacy in response to what we learn from the young people, their parents, and the many people and institutions touching the juvenile justice system in this area.

This project is designed to increase awareness of the link between an inadequate education system and delinquency, such that addressing a student’s educational needs is seen as an intervention that can prevent juvenile justice involvement. Matthew Bernstein, a relatively new lawyer with Pegasus, was a teacher before becoming a lawyer. He has taken ownership of the EJP, talking to families caught up in the system, talking to judges and lawyers, going to task force meetings, talking to legislators, and learning about what happens in preliminary inquiries and delinquency hearings. The EJP is premised on the hope that, through engaging our partners in the legal system as well as parents, youth, and other stakeholders, the unmet educational needs of our youth will be exposed and can hopefully yield a positive impact in those individual cases. In addition, over time the project expects to increase the awareness of professionals in the juvenile justice system and the education system about positive strategies that can be put in place in schools to support these student.

IV. REFLECTIONS

The basic methodology described by Professor López over twenty years ago in *Rebellious Lawyering* – reconsidering what we routinely do and doing our best to examine what we take for granted – withstands that test of time. Examining my own work, and studying Rebel-

⁷⁰ See LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 232 (Rebellious practitioners act as sophisticated ethnographers, doing their best to understand the ins and outs of the communities with whom they work, knowing that their knowledge is always provisional.)

lions Lawyering after two decades of practice, I have reflections as well as questions that I hope challenge our status quo.

A. Demand Our Best –From Ourselves and From Each Other

Over the years, many of my colleagues have become some of my dearest friends. I have been privileged to work with countless other rebellious practitioners whom I admire and respect. Relationships over time matter. These informal webs of connection are often vital to the success of our more formal efforts, both by connecting us to individuals or organizations that will help individual clients and by creating political juice to support large change efforts. Rebellious practitioners must commit (and recommit) to institutionalize how we work together – through routine sharing with each other, memorializing both the formal and informal work done with others, analyzing the players, cataloguing the scope of work of each organization – so that we have capacity to quickly mobilize our best partners.

Yet, I also think we have to be willing to question the very relationships that we credit ourselves for sustaining. There is no doubt that our work at Pegasus has been strengthened by our deep connections to other devoted child advocates and organizations: the word that comes to mind is “cozy.” The very strength of relationships over time may hurt us if we are not cognizant of the need to challenge each other to continue to rethink, reimagine and create new narratives, much less to defend the work that we think will actually help us move forward. Our long term partners, if they are willing, can give us a particular understanding about how we can improve based on their knowledge of our work over time. Caring about the work, and actually caring about each other, requires that we place rigorous demands on each other.

Actively seeking interactions with new people is critical, too. We might be more likely to learn, shift, and grow if we see a new face or encounter a novel perspective. People completely outside our circle may be more willing to challenge our core ideas about how we describe the current state of affairs, what factors we see and value, and they may be willing to directly confront our methods. Strangers might even question or reject our work or our role in the work, jolting us to reexamine our approach, possibly even challenging us to defend why we should be at the table at all (a question we should be regularly asking ourselves).

Getting this right – working with others – is key to a rebellious practice:

Central to the rebellious idea of lawyering . . . is an ambiguous and relatively open-ended interaction of people and groups. These peo-

ple and groups share a range of experiences, knowledges, and aspirations, but they share them imperfectly and incompletely. They adjust, extend, resolve, accommodate, overcome, and otherwise contend with these differences within a context of partly shared assumptions, concepts and commitments. Thus their collaboration, in many ways, foreshadows the politics they would put into action in those very same communities they fight to change.⁷¹

Are we asking our partners and others to challenge us even in the domains in which we think we are experts? Are we willing to risk conflict with others to help them improve too? Are there new or different ways to be joining with others, those we routinely work with and more?

B. Stay Curious and Keep Learning

As a student in Rebellious Lawyering, I have a vivid memory of Professor López being exasperated at a rookie mischaracterization of Rebellious Lawyering. We were having a discussion in which some of us were arguing against “regular” lawyering in favor of non-traditional approaches, suggesting that *only* such deviation was acceptable in a rebellious tradition. López could not believe we had gotten it so wrong. Of course he was training us to be lawyers and excellent lawyers – and not for a moment did he imagine us relieved from the discipline implicated by this pursuit. Patiently, he methodically described the dangers we all face when professional lawyering is so privileged within the status quo – not least that we and others place far too much value on our legal expertise and neglect to question whether our ideas about the problems or solutions are even useful. López was providing an entirely different definition of excellent lawyers as part of offering a radically alternative vision of practice.

Because I love children’s law, I think about it all the time. I read every sort of article I can find related to children, child development, education, youth empowerment, youth mental health, disability, health, children’s poverty, and more. I work hard to understand national and international policy solutions. I read fiction, non-fiction, hard research, and blogs related to children. Whenever I can, I listen to experts – in person, through podcasts, and, yes, Tedtalks. My children’s law muscle is strong, and I have a good understanding of the many disciplines that shed light on what children need. This is the lens I reflexively use when I am analyzing issues impacting children.

Yet by maintaining this focus, not only may I miss other ways to frame the issues facing children, but I am also susceptible to an easy blindside. I remember participating in a meeting about the Medicaid

⁷¹ LÓPEZ, REBELLIOUS LAWYERING, *supra* note 3 at 273.

mental health system for children. We were advocating for requirements that would hold the managed care organizations accountable for safeguarding the rights of children. One of the administrators voiced concern about a specific proposed requirement and explained that the requirement would mean a significant change in the way the company did business. The administrator went on to let us know that, frankly, it would be easier for the organization to build the proposed penalty into the cost of doing business rather than comply with the proposed requirement. I was so focused on “the substance” (meaning my idea of what mattered) that I had utterly failed to consider all the ways that institutions can move, cover and evade. There is, of course, a vast literature about how organizations might well internalize costs, and about how capitalism demands just such thinking.⁷² The administrator gave me a painful but huge gift in that meeting – her perspective.

It is a mistake not to develop an awareness about potentially hidden interests related to the work we care so much about. This requires being willing to learn what is entirely unfamiliar, especially attitudes difficult to contemplate. As advocated by López, we must be modern day anthropologists, actively questioning what others take for granted. López’s rebellious vision understands the “ethnographic” demands of law practice, describing a young rebellious lawyer as:

the very best modern anthropologists and the most able streetwise activists, [a rebellious lawyer] senses the need to position and reposition herself constantly in an effort to understand [the community with which she works]. She seems to know . . . how to formulate questions, how to revise them throughout the course of inquiry, and how to expect in the end to emerge with yet a different set of ques-

⁷² Consider only the idea of “cost benefit” analysis, now so utterly normalized that most fail ever to understand the concept on its own terms, to question its aims and methods, and to trace its origins. For discussion of cost-benefit analysis, mainly from the perspective of those who produce and support such methods and data *see generally*, RICHARD L. REVESZ AND MICHAEL A. LIVERMORE, *RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH* (2008); MATTHEW D. ADLER AND ERIC A. POSNER, *NEW FOUNDATIONS OF COST-BENEFIT ANALYSIS* (2006); ANTHONY E. BOARDMAN, DAVID GREENBERG, AIDEN VINING, AND DAVID WEIMER, *COST-BENEFIT ANALYSIS* (3d ed. 2006). For a compelling articulation of the indeterminacy of cost-benefit analysis, particularly as formulated by many modern economists, including many of the early founders of law and economics and many other liberal law and economic thinkers, *see* Duncan Kennedy, *Cost-Benefit Analysis of Entitlement Problems: A Critique*, 33 *STAN. L. REV.* 387 (1981). Contemporary cost-benefit analysis originates in early technocratic efforts (especially by economists and engineers) to devise methods for how to decide whether or not to build dams, highways systems, and the like; *see e.g.*, ROLAND N. MCKEAN, *EFFICIENCY IN GOVERNMENT THROUGH SYSTEMS ANALYSIS, WITH EMPHASIS ON WATER RESOURCE DEVELOPMENT* (1958); E. J. MISHAN, *ECONOMICS FOR SOCIAL DECISION: ELEMENTS OF COST-BENEFIT ANALYSIS* (1973).

tions about the cultural institutions and practices she's studying.⁷³

I wish I could say that this was an easy practice to put into play but the very nature of being “blindsided” assumes we can be hit without seeing it coming. While I am not a football fan, the analogy does capture what I want to convey – we need to rely on others to clue us into what we cannot see and we need to discipline ourselves to anticipate what *may* be outside of our normal field of vision. Although these other interests can undercut our best efforts, by revealing them we might actually discover new alliances, strategies and resources.

How can we best start mapping out the interests that we already see but have not yet investigated? How can we hold each other accountable for learning about other fields that might not have obvious intersections with our work? How do we find the different partners who bring new knowledge to the table?

C. Carefully Evaluate Our Own Work

Everyone professes to endorse the importance of knowing whether our work actually has its intended effect. Funders and others want us to be able to document the outcomes of our work. When I think about outcomes, I battle with my own resistance. I worry that we are pushing ourselves to find causal correlations between our legal work and the state of our clients' lives that will not hold up.⁷⁴ For example, I think that helping a teen parent negotiate a custody, child support and visitation order does help that young person make agreements with the other parent about very important aspects of raising a

⁷³ LÓPEZ, *REBELLIOUS LAWYERING*, supra note 3 at 212-213.

⁷⁴ We currently live in a world where the pronounced tendency, perhaps even the overwhelming insistence, is that everybody (including Pegasus) should produce measurable outcomes to define success concretely, including identifying quantitatively supported and evidence-based strategies and results. As with cost-benefit analyses, outcome evaluations have proven to be far more actively promoted and demanded than deeply understood, critiqued, and improved. How a study defines success determines how outcome gets measured. And these definitions can express ideological, theoretical, and methodological divides. Whatever data are then produced invite contrasting and even contradictory interpretations, and those interpretations themselves most often reflect the same ideological, theoretical, and methodological disagreements that expressed themselves in deciding what outcomes should be studied, why, and how. For only a tiny illustration of these issues in the medical field, see NANCY D BERKMAN, P. LINA SANTAGUIDA, MEERA VISWANATHAN, & SALLY C MORTON, RTI INTERNATIONAL-UNIVERSITY OF NORTH CAROLINA EVIDENCE-BASED PRACTICE CENTER, *THE EMPIRICAL EVIDENCE OF BIAS IN TRIALS MEASURING TREATMENT DIFFERENCES* (Sept. 2014) (evaluating bias in scientific research trials); Haya Rubin, Peter Pronovost, and Gregory Diette, *The Advantage and Disadvantages of Process-Based Measures of Health Care Quality*, 13(6) *INT. J. QUAL. HEALTH C.* 469 (Dec. 2001) (comparing benefits of process and outcome measurements); and JUDITH SAMUELS, WENDY SCHUDRICH, AND DEBORAH ALTSCHUL, *TOOLKIT FOR MODIFYING EVIDENCE-BASED PRACTICE TO INCREASE CULTURAL COMPETENCE* (2008) (describing how to work with communities to modify evidence based practices).

child together. The process may even help firm up important ground rules that will, if all goes well, enable them to better parent together. But I do not think it is accurate for us to confidently assert – or even believe – that successful short-term legal intervention necessarily creates a long-term benefit over time.

As a lawyer who has devoted her career to social change for the last two decades, I strive to be facile at moving between acting as an advocate for social justice, collaborating with clients (who are generally coming to us because they need help resolving some type of conflict), and being a technician who utilizes legal tools to positively impact decision makers in support of my clients. I can calculate numbers of people served. I can point to policies we participated in changing. I can point to favorable hearings and settlements. But I can also count heartbreaking losses. And without minimizing how critical it is to assess the reasons behind those losses, I believe there is value in taking on fights that we cannot yet win. Given my vision, success cannot be defined simply by wins and losses – it must be viewed in the context of how we work together and make gains over time.

López warns against equating action with production, when what is most needed is the “slow, painstaking involvement that the politically oppressed most need.”⁷⁵ We need to keep refining our definition of success. Redefining success should accommodate new and better ways of doing the work itself.

To give life to [our] rebellious aspirations, [we] must learn to carry through systematically on our impulse to regard subordinated people and their allies co-eminent problemsolvers; [We] must learn to work with and not just for them, and [we] must learn to make space, in more than just [our] thoughts, for what they bring to the collaboration in the way of experience, know-how, and strategic sense.⁷⁶

And given that we have a limited pool of data, we have to be cautious about drawing conclusions based on our particular experiences.

In part, since I do not know how to clearly assess our impact, after a case is done I am more likely to tell myself that moving to the next case or project is more important than reflecting on the work I just finished. And I justify this response by focusing on the tremendous pressure I feel to keep the work moving – on a variety of levels. Yet, assessing our impact is a necessary task to keep the work moving in the right direction. We all have a stake in improving our ability to analyze whether our methods and activities contribute to the change we seek.

The whole business we’re in can sure feel confusing and uncertain.

⁷⁵ LÓPEZ, REBELLIOUS LAWYERING, *supra* note 3 at 320.

⁷⁶ *Id.* at 213.

You often don't know what to fight against. You usually don't know how best to fight. Then things get muddier still. You start to understand that the relationships and organizations through which you struggle frequently frustrate as much as they advance your aims. You even begin to realize that you yourself present part of the problem, not just part of the solution. Just what we need ugh? Something more to think about, something more to work on.⁷⁷

Are we consistently revisiting our basic assumptions about whether our work is effective? In the big and little ways as imagined by López? Even if we decide some legal strategies are effective, are we sufficiently connected to other rebellious problem solvers (not just lawyers) who are coming at change from different angles? Are we capturing the problems people bring to us so that we can review and test what we are doing, to make sure we are meeting community need?

D. What We Do Every Single Day Matters

Time is one of our most prized (and predictable) resources, so we have to be intentional about how we spend our time. It is critical that we document not only what we do and how we do it, but also the ideas, feelings and impressions that emerge based on the work we do:

Making the time to record activities, impressions, reactions, and half-formed thoughts helps in evaluating the current work, in framing future projects, and in building a sort of "institutional memory" others may also find valuable. Choices over time take on a more deliberate and refined quality rather than principally reflecting mindless or routine patterns.⁷⁸

When I was thinking about the value of time, a dear friend reminded me of the famous Annie Dillard quote: "How we spend our days is, of course, how we spend our lives."⁷⁹

Are we paying attention to what we are in fact doing with our days? Did our day's work help us achieve any of our aims? Are we documenting and reviewing what we do on a regular basis and changing course when needed?

E. Appreciate the Cost of Business as Usual

New Mexico's endless mantra that it is too poor of a state to care for its children illustrates just how critical it is to develop sophisticated understandings about how accepted structures restrict our ability to see opportunities for change. Make no mistake, New Mexico spends

⁷⁷ LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 3 at 327.

⁷⁸ *Id.* at 280.

⁷⁹ ANNIE DILLARD, *THE WRITING LIFE* 32 (1989).

money. We need to make explicit how we are setting priorities for how we spend our money. Our most dominant narrative, “we do not have money,” hides our choices about how we are spending the financial resources we do have.

As a state, New Mexico has made choices to pour money into our criminal justice system, including increasing spending related to law enforcement even in 2015 when so many safety net programs were subject to financial cuts.⁸⁰ In New Mexico, we also have a penchant for stockpiling money. Our state auditor recently identified \$4.4 billion in unused agency funds.⁸¹ We have one of the three largest permanent endowments in the United States: \$20 billion.⁸² The claim that New Mexico is such a poor state that it cannot invest in its people is at best misleading.

Are we critically assessing how we spend money? Are we demanding that our government spends the money it has for the purposes the funds were earmarked? Are we questioning whether some of the money saved, if invested directly in our children, would yield untold benefits by enabling our youngest citizens to have the skills they need to become productive adults?⁸³

F. Call Out Abuse of Power.

Abuse of power can be seen at every level of society, in all levels of government, in private companies and in families. New Mexico is a small state. We have become accustomed to corruption by high ranking officials – as they steal money, engage in pay-to-play politics and gamble away our state dollars. Our state government dismantled our Medicaid behavioral health system for children by withholding public funds from providers due to alleged billing fraud. Years later, with careers tarnished and businesses bankrupt, the New Mexico attorney general cleared the providers. We know retaliation of all sorts, including retaliation from small-town powerbrokers, like the “mob of people” in House, New Mexico that showed up to the town church to confront the Superintendent and express their discontent with his de-

⁸⁰ Victoria Velarde, *Gov. Susana Martínez Signs New Mexico State Budget*, KRQE NEWS 13 (Feb. 29, 2016), <http://krqe.com/2016/02/29/new-mexico-governor-agrees-to-trim-state-spending/>.

⁸¹ New Mexico Office of the State Auditor, *Fund Balance Report: State Agencies, Fiscal Year 2015*, GOVERNMENT ACCOUNTABILITY OFFICE (Feb. 2016), http://www.saonm.org/media/uploads/Fund_Balance_Report_-_State_Agencies_-_FY15U.pdf.

⁸² *What Is the SIC?*, NEW MEXICO STATE INVESTMENT COUNCIL, <http://www.sic.state.nm.us/message-from-the-state-investment-officer.aspx> (last visited Aug. 3, 2016).

⁸³ Many New Mexicans have been advocating for a constitutional amendment to allocate some monies from the Permanent Funds to support early childhood education. *E.g.*, INVEST IN KIDS NOW!, website at <http://investinkidsnow.sks.com/default.aspx> (last visited June 10, 2016).

cision to fire an employee.⁸⁴ Or retaliation can take the form (used by some school districts) of referring parents and/or their children to law enforcement, child protective services or juvenile justice agencies, when those parents advocate against the schools.⁸⁵ Or it may coerce the silence of teachers – afraid to openly discuss the problems they know about in students’ school programs (problems perhaps even shared with parents) – for fear of informal retaliation at work.

What steps can we take to protect each other from abuse of power? Will we risk retaliation ourselves when we stand behind more vulnerable New Mexicans? What can we do to demand that our government treat its citizens with respect? Are we up for the fights that would hold our government accountable?

V. FINDING OUR WAY FORWARD

Without doubt, pervasive, multi-generational poverty, with extremely restrictive economic prospects creates a nearly inescapable narrative of hopelessness. In New Mexico, being at the bottom of every list is our comfortable old hat. It is our context.

Being poor is our story. We are a poor state and the harms that flow from poverty seem intractable and ever-present. In New Mexico, we claim that our fate, as we understand it, is bound inextricably to the price of oil, boom or bust.⁸⁶ Worse, many of us retool this desperate narrative over and over. In fact, it has become the bedrock foundation for the work we do as we recycle the consistent scripts we use as background for our advocacy and for more funding. We might change the numbers a bit up or down in a given year, but rather than scouting our way out, we keep circling in.

I hope it is not lost on you that this essay offers up fast-facts to help you begin to grasp the horror that is too ever-present in New Mexico. These facts are undeniable, and you would be justified to find them appalling; at least I certainly hope you do. At best, these facts can and should serve as a call for action. Still, they paint a woe-fully incomplete picture, leaving out so much that is rich and resilient about New Mexico. Worse, too often we begin to convince ourselves that there are not sufficient resources that could be redistributed. Without renewing our vision, we clip our own wings.

⁸⁴ See Kelly McFarland, *School Board Allowed Mob to Rule*, QUAY COUNTY SUN (May 10, 2003), <http://www.qcsunonline.com/2003/05/10/school-board-allowed-mob-to-rule/>.

⁸⁵ Katy Barnitz, *APS Accuses Kindergartner of ‘Felony,’* ALBUQUERQUE J. (Feb. 13, 2016), <http://www.abqjournal.com/723615/news/aps-accuses-5yearold-of-biting-incident-felony.html>.

⁸⁶ Dan Boyd, *State Revenues Lag Despite Rebound in Oil Prices*, ALBUQUERQUE J. (Mar. 21, 2016), <http://www.abqjournal.com/743851/nm-budget-in-fragile-shape-as-energy-production-slows.html>.

A. *Look for Who/What is Working*

There are many, many people who, every day, often quietly and without fanfare, endeavor to change the state of affairs in New Mexico, working with dedication and brilliance. Gerald López and other rebellious practitioners have long urged others to appreciate the ways in which all kinds of players successfully change power dynamics, in large and small ways, even within the very institutions that we are seeking to transform. In his Epilogue, López directly prompts us to take notice:

In any event, my best advice is pretty straightforward: Check out what's around you. It's been my experience that if you look hard enough, you'll find people of all sorts lawyering in rebellious ways. You'll find them reshaping law practice right in the midst of battle, usually through small, everyday details and not through, large, pie-in-the-sky manifestos. You'll find them preserving in the face of skeptical inattention, no less hurtful for all its familiarity. And you'll find them wherever you now live, and wherever you're soon headed – in urban centers, in small towns, in rural areas, in large offices, in small offices, in no offices at all.⁸⁷

When we find those people or practices, it is critical that we ask ourselves how we can best nurture them, emulate them, or at least stay out of their way.

Transforming the political economies affecting children will not come solely from policy-level changes. Rebellious practitioners understand that it is only by working with subordinated communities and mobilizing for solutions embraced by those communities, that we can hope to create lasting change for families. One example is the Native American Community Academy (NACA), a public charter school in Albuquerque which has created a path to success for many of its students. When you walk into NACA, unlike many schools in New Mexico, you (and thus the students) see paraphernalia from first rate colleges hanging on the walls. Also on the walls are posters with Native American images and inspirational quotes, alongside student art. The founder, Kara Bobroff (Navajo/Lakota), along with the students, teachers, school providers, parents, tribal communities, and other partners, have worked tirelessly to create a school environment that embraces high academic standards and honors and sustains students' identities, cultures and traditions.⁸⁸ By any measure, NACA has

⁸⁷ LÓPEZ, *REBELLIOUS LAWYERING*, supra note 3 at 382.

⁸⁸ Native American Community Academy's mission is "To engage students, educators, families, and community in creating a school that will prepare our students to grow from adolescence to adulthood and begin strengthening communities by developing strong leaders who are academically prepared, secure in their identity and healthy." *Mission and Vision*, NATIVE AM. COMMUNITY ACAD., <http://www.nacaschool.org/about/mission-and-vi>

shown results: its students attend University of New Mexico, Brown University, Pomona College, Yale University, Institute of American Indian Arts and many more of our nation's best post-secondary institutions.

Are we doing all we can to actively support people who are making a difference? Are we putting our talents and resources behind those people, organizations, and practices in New Mexico that brilliantly shine as we encounter them daily?

B. Find the Hope in the Midst of Despair

Our time on this earth is short. I have been so lucky to be able to meet with families and children throughout New Mexico, learning how people live and how they love and care for their children. Bryan Stevenson, a lawyer who defends individuals who are sentenced to death, does not shy away from the terrible horrors facing his clients. He recognizes that "Injustice prevails when hopelessness persists."⁸⁹ As one of many possible anecdotes, he urges us to get proximate to people who are disenfranchised. Children in New Mexico are disenfranchised. They need us to connect to them, to love them, hold them gently, watch over them, and support their dreams.

VI. A CALL TO ACTION

Any real change implies the breakup of the world as one has always known it, the loss of all that gave one an identity, the end of safety. . . . There is never time in the future in which we will work our salvation. The challenge is in the moment, the time is always now.⁹⁰

You can scan any New Mexican newspaper and the headlines will point to poverty, a dismantled mental health care system, poor educational outcomes, addiction, teen pregnancy, crime, corruption and more. And living in New Mexico, we know that these headlines have real meaning. People are being held up at gun point just going about their day, our governmental leaders are gambling in casinos with public money, and police are shooting citizens with mental illness. Television shows like "Breaking Bad" (about a high school science teacher turned drug dealer) and "Better Call Saul" (about a corrupt lawyer) are our largest city's claim to fame. Sadly, it is not just outsiders that think these shows depict some truths about New Mexico, local do too. The crisis is in front of us. The crisis is within us.

I worry that we are too often failing to push ourselves and each

sion/ (last visited June 10, 2016).

⁸⁹ Timothy C. Ervin, *Bryan Stevenson Names 'Four Steps to Create Justice,'* ALA. ST. U. (Nov. 13, 2015), <http://www.alasu.edu/news/news-details/index.aspx?nid=2647>.

⁹⁰ James Baldwin, *Faulkner and Desegregation*, PARTISAN REVIEW 568 (Winter 1956).

other outside of our comfort zones. The problems seem so big it is difficult to know how to prioritize our actions. And too often, we know that solutions that seem far-reaching, big-dollar shifts, do not amount to much on the ground. Conservatives are correct: we cannot just throw money around hoping that additional financial resources alone will provide solutions. But they're dead wrong to think that we do not need to radically redistribute resources, not least of all in ways that ensure that all children in New Mexico have their basic needs met. In any event, I know some of us retreat, hoping to do just what we know how to do and what we have usually done as a way to weather the storm. If ever that was acceptable, it is no longer.

How do we help other people see the value of the children in New Mexico? How can we make sure our children can imagine a future with possibilities? How can you – yes, *you*, likely far beyond our borders – help *us*? With fresh questions, ideas, feelings? With examples we're unaware of or perhaps forgetful of? And yes – about how we must create the revolution we need?

The well-being of New Mexico's children matters to all of us. It is time for New Mexicans who care about children to say: if you're not with us, you're part of what we're rebelling against.

