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Supporting Social Movements: A Brief Guide for Lawyers and Law Students

JIM FREEMAN*

Introduction

In recent years, there has been a noticeable groundswell of grassroots activism, organizing, and coalition building around social, racial, gender, and economic justice issues in the U.S.¹ The Moral Mondays movement in North Carolina,² the multiyear campaign by the “Dreamers” to secure educational opportunities for undocumented immigrants,³ the nationwide strikes by fast food workers,⁴ the Occupy movement and the numerous off-shoots from it,⁵ the response to the

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1. See, e.g., Gene Demby, *The Birth of a New Civil Rights Movement*, POLITICO (Dec. 31, 2014), available at <http://www.politico.com/magazine/story/2014/12/ferguson-new-civil-rights-movement-113906.html#.VRA1Vbok87d>.

2. Moral Mondays are organized by the North Carolina NAACP (www.naacpc.org). For an overview of the movement, see Ari Berman, *North Carolina’s Moral Mondays*, THE NATION (Aug. 5-12, 2013), <http://www.thenation.com/article/175328/north-carolinas-moral-mondays>.

3. See UNITED WE DREAM, <http://unitedwedream.org> (last visited April 4, 2015).

4. See, e.g., Josh Eidelson, *Fast Food Strikes Hits Record Numbers, Span 190 Cities*, BLOOMBERG BUSINESS (Dec. 5, 2014), available at <http://www.bloomberg.com/bw/articles/2014-12-05/fast-food-strikes-hit-record-numbers-span-190-cities>.

5. See, e.g., *Two Years After Occupy Wall Street, a Network of Offshoots Continue Activism for the 99%*, DEMOCRACY NOW (Sept. 19, 2013), http://www.democracynow.org/2013/9/19/two_years_after_occupy_wall_street.

tragic deaths of Michael Brown in Ferguson, Missouri,⁶ and Eric Garner in New York,⁷ and the #BlackLivesMatter movement⁸ are among the many high-profile examples. But in every U.S. state there are ongoing grassroots-led campaigns to address mass incarceration and police accountability, protect public schools from defunding and closure, create living-wage policies, ensure a comprehensive and humane immigration policy, and protect against the deterioration of the social safety net, among many other worthy issues. This recent surge of grassroots energy creates new possibilities for generating positive social change, and lawyers are in a unique position to be able to support, strengthen, and magnify such social movements.

There is also a long history of lawyers playing a significant role in such efforts,⁹ and many “movement lawyers” continue to do so today, across a variety of practice settings, including legal services offices, non-profit advocacy organizations, and private practice.¹⁰ Perhaps more than ever before, lawyers are incorporating an analysis of structural disempowerment and oppression—and the effects of systemic racism, classism, and patriarchy—into their practice, and seeking to work with communities affected by those dynamics.¹¹ More lawyers are recognizing that many of the legal strategies used to promote social change in the past are no longer viable, or even permitted, and are thinking creatively about alternatives.¹² More of

6. See, e.g., Jelani Cobb, *A Movement Grows in Ferguson*, THE NEW YORKER (Aug. 17, 2014), <http://www.newyorker.com/news/news-desk/movement-grows-ferguson>.

7. See, e.g., J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES, Dec. 3, 2014, at A1, available at <http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

8. The #BlackLivesMatter name has been used nationally and internationally in support of various causes, most notably in protest of police brutality against Black Americans. See #BLACKLIVESMATTER, <http://blacklivesmatter.com> (last visited April 4, 2015). For a conversation about the creation and development of the movement, in one of the co-founder's own words, see Alicia Garza, *A Herstory of the #Blacklivesmatter Movement*, FEMINIST WIRE (Oct. 7, 2014), <http://thefeministwire.com/2014/10/blacklivesmatter-2>.

9. See, e.g., CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart Scheingold eds., 2006).

10. There are even government lawyers that incorporate some of the principles of movement lawyering into their practice.

11. One example of legal education responding to these dynamics is the new “Systemic Justice” class at Harvard Law School. Courtney Humphries, *New Harvard Law School Program Aims for ‘Systemic Justice’*, BOSTON GLOBE (Feb. 6, 2015), <http://www.boston.com/ideas/2015/02/06/new-harvard-law-school-program-aims-for-systemic-justice/> PeGBqIenWhqqCuJ37Y20kJ/story.html.

12. See, e.g., Purvi Shah & Charles Elsesser, *Purvi & Chuck: Community Lawyering, ORGANIZING UPGRADE* (June 1, 2010), <http://www.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering>

us are coming to the realization that even if the legal profession were somehow able to meet all of the discrete, individualized needs of oppressed people, we still would not have a just society.¹³ There is also greater recognition that the most significant challenges facing low-income communities, communities of color, and other politically marginalized communities are too large and complex to be addressed in any meaningful way by a legal strategy alone, and thus require a more comprehensive strategy.¹⁴ Thus, more lawyers are coming to the conclusion that rather than seeking to drive the change themselves, they should be helping oppressed communities become the leaders of large-scale, systemic change.

However, there is also a long history of would-be movement lawyers that inadvertently inhibit or destabilize movement-building efforts. Indeed, many—and perhaps most—grassroots base-building organizations have a generally unfavorable view of lawyers.¹⁵ Experienced grassroots leaders can typically cite numerous examples of lawyers that sought to help their efforts but ultimately produced far more harm than good.¹⁶ Rather than feeling supported, many grassroots movements have felt “used” by lawyers. The momentum of many grassroots-led campaigns has been slowed or even halted by lawyers’ involvement. Even when lawyers have avoided these pitfalls, the assistance they have offered has often been poorly matched with on-the-ground needs, or utterly insufficient to meet those needs.

So, in this historical moment so ripe with possibility and the

(“[T]he past decade has seen a dramatic retrenchment in the ability to bring social change cases into court. Simply getting past procedural challenges has become an almost impossible barrier. And substantive challenges then confront an increasingly hostile judiciary and legislature. Lawyers who do this type of work are looking for more alternatives, and looking again at some of the ideas that were considered secondary when the appellate courts were more supportive, where the federal courts were much more open, where you used to be able to go into court and obtain a hearing and have an impact.”).

13. This is in no way meant as a criticism of the providers of direct legal services to low-income communities, who provide an absolutely essential service under extremely difficult conditions. Many of these legal services lawyers were also among the pioneers of movement lawyering practice, and continue to be among the most effective practitioners today.

14. There is no example of litigation or set of legal strategies that can address the expansive and multifaceted set of consequences that current mass incarceration policies have had on many communities across the U.S.

15. In my own career, I have worked closely with dozens of such organizations, and engaged with well over a hundred, and a negative history with lawyers was a universally shared experience among them. For additional perspectives, see William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994).

16. The source of most of the examples of lawyers’ missteps included below is my own 10+ years of working closely with grassroots leaders, who have been unfailingly generous in helping me learn from my own mistakes as well as those of other lawyers.

opportunity for lawyers to make valuable contributions, how can we best use our knowledge, skills, and energy to support grassroots-led efforts? First, we must recognize that most legal education and training does not prepare one for effective movement lawyering. On the contrary, in many respects it produces or reinforces a set of traits that we must recognize and resist if we are to successfully support social movements.¹⁷ Instead, we must enhance and expand upon our training by adopting different approaches to addressing legal or social problems, embracing a broader collection of advocacy strategies and tactics, acquiring new skill sets, and being willing to discard those aspects of our formative legal education that hinder our efforts.

Of course, movement lawyering is not monolithic, and in fact must not be if it is to meet the diverse needs of different communities, across multiple sectors of work, and within various practice settings. However, within that diversity of movement lawyering practice, there are five essential elements that must be present to avoid the mistakes of the past and maximize our contributions to social movements.¹⁸

17. See, e.g., Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 54 (David Kairys ed., 3d ed. 1998), available at http://duncankennedy.net/documents/Legal%20Education%20as%20Training%20for%20Hierarchy_Politics%20of%20Law.pdf; see also Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 *CLINICAL L. REV.* 195 (2002).

18. The following has been compiled over the years from a variety of sources, including: the invaluable lessons imparted to me by my teachers during law school and in my time working at Advancement Project; my observations of other civil rights and social justice lawyers over the years; the experiences of the many lawyers and law students I have had the privilege of supervising or teaching; my own experiences working to help build and support grassroots-led social movements across the country; and the many written pieces that have informed all of my work over the years. Among the pieces I would recommend to anyone interested in deeper engagement with the issues raised here are the following: Charles Elsesser, *Community Lawyering: The Role of Lawyers in the Social Justice Movement*, 14 *LOY. J. PUB. INT. L.* 375 (2013); William P. Quigley, *Ten Questions for Social Change Lawyers*, 17 *PUB. INT. L. REP.* 204 (2012); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 *CLINICAL L. REV.* 541 (2006); William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 *WASH. U. J.L. & POL'Y* 101 (2006); PENDA HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES, AND THE STRUGGLE FOR JUSTICE* (2001), available at <http://www.racialequitytools.org/resourcefiles/hair.pdf>; Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 *UCLA L. REV.* 443 (2001); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 *COLUM. HUM. RTS. L. REV.* 67 (2000); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 *HARV. C.R.-C.L. L. REV.* 407 (1995); Anthony V. Alfieri, *Practicing Community*, 107 *HARV. L. REV.* 1747 (1994) (reviewing GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992)); Quigley, *supra* note 15; MYLES HORTON & PAULO FREIRE, *WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE* (Brenda Bell et al. eds., 1990); Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 *WIS. L. REV.* 699 (1988); Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE*

Five Essential Elements of Movement Lawyering

I. Dedication to Building the Capacity and Power of Oppressed Communities

Legal and policy victories can be important contributions to movements for social, racial, gender, and economic justice. Often, they are necessary to fulfill the goals of a movement. However, they are never going to be sufficient by themselves to address the inequitable power structures that created the need for the movement.¹⁹ Thus, movement lawyers must see beyond their professional bailiwick and focus their energies on helping oppressed communities build the power and capacity they need to protect their interests and advance their priorities more broadly.

Unfortunately, too often the contributions of lawyers have the opposite effect: we sap the energy and potential power from grassroots movements. Common examples include:

- Lawyers often act paternalistically and treat grassroots organizations and leaders as troops on the ground, there to accelerate or deepen our work.
- We frequently advocate for strategies and tactics that are inappropriate or poorly timed with respect to the goals of grassroots-led advocacy campaigns (as is frequently the case with litigation due to the typical length of the process as well as the often disempowering effect of ceding control of an issue to a court).²⁰
- We attempt to advance our own conflicting interests in addition to, or instead of, those of the community (such

L.J. 470 (1976); PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Ramos, trans., 1970).

19. Even the quintessential example of a legal victory creating social change—*Brown v. Bd. of Ed.*, 347 U.S. 483 (1954)—required decades of organizing, policy, communications, and additional legal efforts to enforce it, and there are still active school desegregation cases today. See, e.g., *Judge Sets Hearing in Long-Running School Desegregation Case*, SUN-HERALD (Biloxi, MS) (Mar. 7, 2015), http://www.sunherald.com/2015/03/07/6108285_judge-sets-hearing-in-long-running.html. Nevertheless, there are some issues—such as gay marriage—in which the primary obstacles to full equality in recent years have been discriminatory laws, and legal efforts to overturn them have been unusually impactful. See also Richard Socarides, *The Growing Impact of the Supreme Court's Gay-Marriage Ruling*, THE NEW YORKER (Jan. 27, 2014), available at <http://www.newyorker.com/news/news-desk/the-growing-impact-of-the-supreme-courts-gay-marriage-ruling>. Of course, the broader agenda for LGBT equality goes well beyond this specific issue and any particular set of laws.

20. This is not to suggest that litigation is *necessarily* inappropriate in this context; on the contrary, it can often be highly effective in advancing the goals of grassroots campaigns.

as by using the opportunity created by a social movement to pursue an innovative legal strategy when it is unwarranted or by excessive efforts to parlay our contributions to a movement into broader acclaim or fundraising efforts).

- We distort the issues being raised by communities and diminish their potential power, such as when we take moral issues and make them legal or political issues (e.g., by shoehorning systemic issues into individual claims to meet procedural requirements).

Even when we succeed in avoiding these hazards, too often we fail to contribute in ways that advance sustainable change. For example, even some of the most devoted public interest lawyers frequently engage in “drive-by lawyering,” in which they are willing to address some discrete need for a grassroots campaign but then leave without ever engaging deeply enough with the community to create a meaningful difference. Of course, oftentimes that may be the only role the grassroots leaders want lawyers to play (typically because of their wariness due to past encounters with lawyers), and even such limited contributions can add real value to grassroots campaigns. However, movement lawyers should attempt to make themselves more useful than that to grassroots leadership, because far more robust results can be achieved when lawyers are willing and able to make deeper investments in achieving the long-term goals of social movements.

That starts by recognizing that all strategies and tactics should, first and foremost, serve the overarching goals of helping oppressed communities become stronger, with more internal advocacy capacity, enhanced bases of support, additional allies, more influence over policymakers, and improved ability to communicate their messages. Ultimately, that will lead to far more transformative and sustainable change than any legal or policy victory.

For example, while it is ultimately up to grassroots leadership how they want to strike the balance between short-term needs and long-term goals (and is also somewhat dependent on the exigencies that arise during a campaign), virtually every activity performed by a lawyer can be done in a way that contributes to organizational or community capacity building. Research can be done in a participatory fashion, trainings and workshops can be created to arm community members with data and relevant information, publications and written documents can be made more accessible and “community friendly,” legal and policy advocacy can be designed to prioritize community participation and decision-making, grassroots leaders can be prepared

as spokespeople for the campaign (instead of lawyers), and so on. Incorporating these strategies throughout a campaign is vital toward helping people experience the policy change process and develop their own leadership within the community. And if these techniques are applied consistently, communities can emerge from advocacy campaigns far better equipped to preserve the gains that they make, with substantially greater capacity to advance future policy priorities.

II. Willingness to Address the Root Causes of Structural Disempowerment and Oppression

Much of our legal training is dominated by an analytical approach that emphasizes the details of individual cases and the near total exclusion of the structural or systemic factors that produce those cases or that create the conditions that lead to mass suffering and oppression more broadly. While this pedagogical approach may be useful preparation for some professional duties, it severely limits would-be movement lawyers by producing an overly narrow and superficial analysis of social, political, and economic problems and dynamics. As a result, far too many lawyers are frequently unable or unwilling to address the issues of greatest importance to oppressed communities.

For example, most lawyers view injustice primarily in terms of laws that are broken. However, for many of the inequities being addressed by social movements, there is no clear legal violation.²¹ Moreover, these grassroots-led efforts are frequently trying to reimagine the policies and practices of society so that they can be made to produce more just outcomes. Such efforts require an analytical approach that is entirely foreign to most lawyers. Most of us spend our professional lives working within the rules as they are written, with only an occasional foray into pushing for an incremental adjustment to those rules, and certainly not advocating for the dramatic restructuring of them.

Additionally, while most lawyers are familiar with antidiscrimination law, the vast majority struggle to identify the structural or systemic factors that perpetuate the subordination of people of color, low-income people, immigrants, women, and the LGBT community, for which there are few meaningful legal remedies. Thus, the movement lawyer must become adept at recognizing and diagnosing such barriers to full inclusion, and assisting affected communities in crafting solutions to them.

Indeed, being an effective movement lawyer often requires questioning some of the foundational assumptions of our profession.

21. See Quigley, *supra* note 15.

For example, lawyers often operate as if our formal decision-making structures, such as the legislature and the courts, are accessible to all and effective for all. But of course they are not. So we need to have an understanding of the barriers that inhibit full and equal participation in such processes. We must also be able to identify whether those systemic barriers require that we employ different strategies, or if the oppression is so deep that there are activities that must be done beforehand for the broader community to even become aware of the problem.²²

None of this is to suggest that every grassroots-led campaign a would-be movement lawyer supports must necessarily address large, root-cause issues head-on. There is often considerable value in taking on smaller issues or less ambitious campaigns, particularly for communities that have not yet developed the power and capacity to wage more ambitious efforts. But as movement lawyers, we can be helpful in providing the analytical linkage between such campaigns and the deeper, underlying causes of injustice, while also assisting in structuring campaigns that can position communities to more aggressively address those root causes in the future.

III. Use of Knowledge, Skills, and Connections to Support Community Organizing and Movement-Building

History has repeatedly shown that while there are many strategies for creating social change, the foundation and lifeblood of any viable social movement must necessarily be strong grassroots organizing.²³ Simply put, if the people most affected by an injustice are not at the core of efforts to address it, it will be extremely difficult to achieve results, and impossible to achieve results that endure.²⁴

However, most lawyers simply do not understand organizing. They fail to appreciate its value, do not understand what it requires, are unfamiliar or uncomfortable with its strategies and tactics, and

22. White, *supra* note 18, at 760-66. For example, while the overuse of harsh school discipline practices and the "school-to-prison pipeline" are now nationally recognized problems, it took extensive public education to make it so, because within many affected communities there were large groups of parents and community members that believed the "get-tough" approach was appropriate and/or deserved, and were not aware of how unequally it was being applied.

23. See, e.g., Manuel Pastor & Rhonda Ortiz, *Making Change: How Social Movements Work—And How to Support Them* (Mar. 2009), available at http://dornsife.usc.edu/assets/sites/242/docs/making_change_full_document.pdf.

24. For example, lawyers can win a fantastic progressive policy change, but unless there is on-the-ground leadership to enforce and protect that victory, it will usually lie dormant or be rolled back at the first available opportunity.

cannot grasp how their work can fit within it. As a result, many highly skilled and successful lawyers that maneuver easily within courtrooms and legislatures are functionally useless within grassroots-led advocacy campaigns.

Movement lawyers need to accept that high-quality organizing takes time, and moves at a different pace than the advocacy to which most of us are accustomed. They must recognize that the goals of high-quality organizers are not to secure a one-time or one-issue win, but rather to challenge entrenched and inequitable power structures and create broad systemic change. So we must resist our impatience, fight the temptation to get ahead of the organizing process, and be willing to become a part of that process by working with organizers in support of community-building efforts and the nurturing of genuine grassroots leadership.²⁵

That requires, for most lawyers, engaging in deep learning about the communities we intend to serve, how they analyze community problems, and how they develop solutions. We must learn to think as organizers think. Then we must adapt ourselves and our work to them, not the other way around. If not, we will continually find ourselves as the proverbial square pegs trying to fit into round holes, frustrated at our inability to translate our knowledge, skills, and connections into broader social change efforts.

Movement lawyers must also become comfortable with a variety of strategies and tactics that politically marginalized people must use to challenge the existing power structure, and that are outside of our occupational norms. For example, lawyers are typically accustomed to abiding by the timelines, framing of issues, and protocols imposed by institutions. However, grassroots organizers and leaders often find those requirements to be disempowering and even a manifestation of the very injustice they are seeking to address. Indeed, sophisticated policymakers have become quite adept at using the instruments of bureaucracy to delay and devitalize community concerns until momentum for change is lost. Thus, many organizers and community leaders sometimes elect to resist or ignore the established "rules of engagement." Many lawyers are unsettled by such "unconventional"

25. See, e.g., Gary Bellow, *Lawyers for a Political Movement: California Rural Legal Assistance*, in *THE SOCIAL RESPONSIBILITIES OF LAWYERS: CASE STUDIES 24* (Philip B. Heymann & Lance Liebman eds., 1988) ("The worst thing a lawyer can do—from my perspective—is to take an issue that could be won by political organization and win it in the courts. And that is what legal services agencies did all over the country. They took the most flagrant injustices—the ones that had the potential to build the largest coalitions—and they took them into the courts where, of course, they won. But there was nothing lasting beyond that.").

demonstrations of dissent and assertions of power, but movement lawyers need to be able to find a way to reconcile their personal qualms and professional responsibilities with a clear-eyed analysis of the conditions facing the community they are serving.

IV. Commitment to Meeting the Full Array of On-the-Ground Advocacy Needs

As lawyers, we typically acquire a very high regard for legal solutions to problems. Indeed, our training typically consists of identifying lawyer-centric solutions to problems at the virtual exclusion of other available solutions (or, as discussed above, the examination of problems that have no clear legal remedies). So it can be deeply unsettling for lawyers to learn that there are dozens upon dozens of effective advocacy strategies that can help shine a light on an injustice, shift power dynamics, and/or produce change, and of those only a few are typically taught in law schools. Thus, while it is valuable to be proficient in those traditional legal tactics, if that represents all or even most of your advocacy abilities, you will be severely limited in the assistance you can provide to social movements.

Additionally, most grassroots-led advocacy campaigns are substantially out-resourced by their opposition, leaving them at a considerable disadvantage in influencing policymakers and the broader public. For most campaigns to even approach equal footing with their opposition and achieve their goals requires additional research, organizing, policy, communications, coalition-building, and legal capacity. While it is not necessarily the responsibility of lawyers to meet all of those needs, neither do we want to be in the position of watching meritorious social movements fail when there is more that could have been done to help them, especially when we, as highly trained, well-connected, and privileged supporters of those movements, are often in the best position to have done more to meet those needs.

Thus, to help grassroots leaders succeed more often, movement lawyers need to develop a more sophisticated understanding of how multiple advocacy strategies can be employed within a campaign. They should also develop a more expansive set of advocacy skills and be willing to use them, or at least be able to assist grassroots leaders in securing other resources to meet their needs. For example, many movement lawyers work with grassroots leaders to conduct significant research projects, perform data analysis, plan organizing strategies, secure individual and organizational allies, and develop and implement a wide variety of traditional media, social media, and other communications strategies. Of course, the needs of each grassroots-led

campaign will differ, requiring the movement lawyer to have the flexibility to fill in where needed and the creativity to be able to adapt their strategies and tactics in response to the conditions in that community, at that moment in time.²⁶ In other words, movement lawyers need to move beyond the game of checkers we were taught in law school to playing the game of chess that will allow us to support grassroots leaders in waging successful, multifaceted campaigns.

V. Professional Humility

Perhaps the greatest vice of lawyers who wish to participate in social movements is that they cling too fiercely to their identity as lawyers. In so doing, we frequently introduce unnecessary hierarchy, reinforce the subordination and dependency of oppressed communities, and further alienate the very people we want to help.²⁷ This occurs when we put too much distance between ourselves and the community, talk too much within movement gatherings, presume to have all the answers, use too much jargon, act as spokespeople more than is necessary, take excessive credit for successes, and most damaging of all, fail to respect the knowledge and leadership of grassroots leaders. Many movement lawyers have found their attachment to their professional status to be a major hindrance to their practice, and instead have discovered that they are most effective within social movements when: (1) people do not necessarily see them, first and foremost, as lawyers; and (2) they disabuse themselves of the notion that they, as lawyers, are *per se* any more important to the ultimate success of the effort than anyone else.²⁸

That is often a radical shift in self-identification for lawyers. We spend so much of our time in settings that exalt us for our skills and experience that being in a more inclusive and egalitarian space can be

26. In training new lawyers and law students to achieve the right mindset in supporting grassroots campaigns, I often half-jokingly advised them to “be like water.”

“Empty your mind; be formless, shapeless – like water. Now you put water into a cup, it becomes the cup. You put water into a bottle, it becomes the bottle. You put it in a teapot, it becomes the teapot. Now water can flow or it can crash. Be water, my friend.”—Bruce Lee

See Zekel Healthcare, *Be Water My Friend—Bruce Lee*, YOUTUBE (Feb. 12, 2013), http://www.youtube.com/watch?v=VqHSbMR_udo.

27. See generally Quigley, *supra* note 15.

28. Lawyers would be wise to heed the words of Ella Baker: “There is also the danger in our culture that, because a person is called upon to give public statements and is acclaimed by the establishment, such a person gets to the point of believing that he is the movement.” Memo Gracia Duarte, *Ella’s Voice: From “Me, Myself, and I” to “Us, Ourselves, and We,”* ELLA BAKER CENTER FOR CIVIL RIGHTS (Dec. 12, 2013), <http://ellabakercenter.org/blog/2013/12/from-me-myself-and-i-to-us-ourselves-and-we>.

disorienting and vexing. Of course, being one of many does not mean that lawyers cannot make themselves extremely valuable to movement leaders. But effective movement lawyers have learned not to expect, or want, any deference because of their professional status. They recognize that the ultimate success of any mass movement is far more dependent on the masses than it is on lawyers, and the other community members involved also typically have far more at stake in the success of the movement than we as lawyers do.

Thus, movement lawyers should strive to achieve an ego-less practice.²⁹ They must understand the impact that their involvement can have on power dynamics within a group, and thus be wise about when they speak, and be quiet far more often than is typical for lawyers.³⁰ They should strive to make technical and legal information broadly accessible, so that even the least sophisticated participant in a community meeting can understand it. They should recognize that there will inevitably be a massive amount of information they must learn about the communities they wish to serve and the challenges they face, and that this information is far more important to the success of the campaign than whatever legal knowledge they have. They must be willing to prioritize the community's needs over their own. And above all, movement lawyers must fully respect the wisdom, decision-making, and right to self-determination of the people within the communities they serve.³¹ Grassroots leaders need lawyers to be well-skilled contributors—not additional leaders, saviors, or heroes. Perhaps the most dominant message echoed by movement leaders across the country in discussing the role of lawyers is this: if we get

29. This is certainly much easier said than done, and, perhaps paradoxically, can become more difficult over time as lawyers gain recognition for their increasing skills and achievements.

30. See, e.g., HORTON & FREIRE, *supra* note 18, at 130-31 ("I have no problem with using information that experts have, as long as they don't say this is what you should do. I've never yet found any experts who know where that line is. If people who want to be experts want to tell people what to do because they think it's their *duty* to tell them what to do, to me that takes away the power of people to make decisions It can't be part of their experience, their experience of learning, and therefore be theirs, if you deny them to the right to make it theirs.")

31. FREIRE, *supra* note 18, at 60 ("The generosity of the oppressors is nourished by an unjust order, which must be maintained in order to justify that generosity. Our converts, on the other hand, truly desire to transform the unjust order; but because of their background they believe that they must be the executors of the transformation. They talk about the people, but they do not trust them; and trusting the people is the indispensable precondition for revolutionary change. A real humanist can be identified more by his trust in the people, which engages him in their struggle, than by a thousand actions in their favor without that trust."); *id.* at 178 ("Leaders who do not act dialogically, but insist on imposing their decisions, do not organize the people—they manipulate them. They do not liberate, nor are they liberated: they oppress.")

involved because we crave public recognition for our legal prowess, or hope to increase our own power or influence, or want to “save” poor people or people of color, then we are in the wrong place. However, if we are committed to working in a support capacity to lift up grassroots leadership and help them achieve *their* goals, then we can become very valuable allies to oppressed communities.

Conclusion

For many lawyers and law students, consideration of the elements discussed above may be far more appealing in theory than it is in practice. After all, if there is a discriminatory practice in effect in one’s community, it is far easier to find an affected person and file a lawsuit (assuming there are any viable legal hooks remaining) or submit an administrative complaint than it is to partner with a community-based organization representing marginalized residents, conduct participatory research on the effects of those practices, use those findings to organize more community members, conduct community trainings on the issue, develop a communications strategy to raise visibility of the issue and shift the public dialogue around it, perhaps develop a coalition around the issue, and *then* possibly file a lawsuit or complaint, but in a way that prioritizes community leadership and participation throughout the process. The latter approach is far more difficult and labor-intensive. Of course, its potential impact is also far greater.

Additionally, the reality is that those who benefit—and profit—from the status quo and oppose grassroots-led social movements enjoy huge advantages in virtually every category of resources,³² including access to large numbers of highly skilled lawyers. Grassroots leaders must continually address the challenges posed by that imbalance of forces to have a realistic chance of leveraging on-the-ground momentum into sustainable social change. Expanding the network of high-quality movement lawyers available to them would go a long way in leveling the playing field. Of course, we must be careful not to overstate the importance of lawyers, because movement leaders do not need our participation to be successful. But it is safe to say that more assistance from high-quality movement lawyers would make it far easier for grassroots leaders to: (1) ensure that whatever progress is made by existing social movements is not subsequently overturned by the powerful forces of systemic oppression; (2) build a sustainable infrastructure for future social, racial, gender, and economic justice movements; and (3) ultimately create a more equitable distribution of

32. With the notable exception of actual human beings.

political, economic, and social power that will translate into broader social change going forward.

Thus, adopting this movement lawyering approach is not just about being more effective in one's practice or finding a professional role that is more aligned with one's social, political, and economic analysis. Having more lawyers adopt this approach, and avoid the pitfalls that have continually impeded progress and undermined social movements in the past, will ultimately increase the odds that the potential for transformative social change that now exists can be maximized, and that a more just, equitable, and inclusive country can be created.