Spring 2009


Corey S. Shdaimah

Follow this and additional works at: https://repository.law.uic.edu/lawreview

Part of the Civil Rights and Discrimination Commons, Human Rights Law Commons, Law and Politics Commons, Law and Society Commons, Legal History Commons, Legal Profession Commons, and the Organizations Law Commons

Recommended Citation

https://repository.law.uic.edu/lawreview/vol42/iss3/3

This Symposium is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.
LAWYERS AND THE POWER
OF COMMUNITY:
THE STORY OF SOUTH ARDMORE

COREY S. SHDAIMAH

As an educator I need to be constantly "reading" the world inhabited by the grassroots with which I work, that world that is their immediate context and the wider world of which they are part. What I mean is that on no account may I make little of or ignore in my contact with such groups the knowledge they acquire from direct experience and out of which they live. Or their way of explaining the world, which involves their comprehension of their role and presence in it.

(Paulo Freire)

I want to applaud the Editorial Board of THE JOHN MARSHALL LAW REVIEW for creating a forum for community organizers, public interest lawyers, and scholars from law schools and other parts of the academy to engage in dialogue. Saul Alinsky might find this gathering either ironic or offensive. He had little patience for academics and was suspicious of professionals who possessed the keys to gates and kingdoms that kept other people—"lay people"—out. Both lawyers and researchers often claim professional neutrality that distances them from the messy world of non-professional activism. Many have claimed that such neutrality is

1. Many thanks to fellow members of LMVUE who helped me envision a more nuanced and dynamic role for lawyers working with community organizers. Lynn Brandsma, Regina Brown, Sarah Caroll, Judy Diehl, Sharon Eckstein, Anastasia Frandsen, Kate Galer, Ivan Haskell, James Herbert, Anne Levy, Marlon Pugh, Mary Mikus, Jennifer and Chris Milani, Marlon Pugh, Liz and Aaron Williams, Maureen O'Leary, Jim Speer, and Stefanie Thompson have provided the best education for my children through their commitment, in word and deed, to community. Thanks also to our lawyer, David Arnold; to Briana Walters and Brooke McEntyre for assistance with references; and to Judie McCoyd for sharing her passion and ideas about academia and activism.


3. Alinsky, however, did engage in dialogue with some scholars who were grappling with theories of social change and social organization such as C. Wright Mills. C. WRIGHT MILLS, LETTERS AND AUTOBIOGRAPHICAL WRITINGS 59-63 (Kathryn Mills & Pamela Mills eds., 2000).

4. See generally Roland Stahl & Corey S. Shdaimah, Collaboration
unattainable;\(^5\) Alinsky also considered it undesirable. In an introduction to a revised edition of his classic *Reveille for Radicals*, Alinsky wrote:

I still feel the same contempt for and still reject so-called objective decisions made without passion and anger. Objectivity, like the claim that one is nonpartisan or reasonable, is usually a defensive posture used by those who fear involvement in the passions, partisanship, conflicts, and changes that make up life; they fear life. An "objective" decision is generally lifeless. It is academic and the word "academic" is a synonym for irrelevant.\(^6\)

Alinsky wanted community organizers to learn from people affected by social problems and oppression. To me, this means that despite his rhetoric, he certainly would have contemplated sitting with a group of academics and lawyers if he thought that it might be useful and that we could be successfully controlled.

Participating in a forum with outsiders, Alinsky might even find that community organizers, just like academics and lawyers, have much to learn from a critical eye that shines a light on the challenge of disempowering, if well-intentioned, paternalism that often comes with the imposition of leadership and organization and their links to power. There is no small measure of manipulation and paternalism in Alinsky's methods for organizing communities. Just one illustration is the story, meant to be exemplary, from an organizer's report of how he got "prominent leader" George Sherry to join the People's Organization. The organizer came up with a plan whereby members of the People's Organization would act secretively in front of Mr. Sherry in order to pique his curiosity and play to his pride, in a ploy to goad him into joining the cause. This was accomplished through deception and not through persuasion grounded in the merits or substance of

---


the organization.\textsuperscript{7} Vignettes such as these evoke elitist strains of Marxism. Lenin developed the idea of a vanguard, which called for groups of elite intellectuals who would be able to show the masses how they had been duped.\textsuperscript{8} The vanguard, as its name implies, is a necessary fore-runner to a mass movement. Such perspectives see ordinary people as incapable of comprehending their subordination and the forces that work to constrain their choices. In \textit{Reveille for Radicals}, community organizers sometimes seem like the vanguard that will awaken community members to their shared interests in challenging various establishment organizations and practices.

Today, forty years after Alinsky wrote the words quoted above and fifty years after the publication of his first edition of \textit{Reveille for Radicals}, we sit here together and think about his legacy and what it means for social change in our own times. We must remember that Alinsky was both a visionary and a product of his times. As sociologist C. Wright Mills has famously described, we are all influenced by the intersection of our individual and social circumstances, what he refers to as "biography" and "history," which we cannot completely transcend.\textsuperscript{9} Community organizing has been enriched by Alinsky's vision and methods, but it is, like all social change projects, a work in progress. In this Article, I outline some of the discussion surrounding the relationship between law and community organizing. Following that, I tell the story of our community organizing efforts in South Ardmore, in order to set the stage for a case study analysis of South Ardmore as illustrative of the way that grassroots community organizers think about whether or not to employ legal strategies and lawyers. Finally, I try to move us to a more fluid way of thinking about such collaborations that recognize the knowledge, experience, and wisdom of indigenous community organizers, whatever their social status, and about the ways lawyers can partner with them for effective social change while avoiding the kind of cooptation and disempowerment that Alinsky fought in his organizing efforts.

\textsuperscript{7} Id. at 107-10.
\textsuperscript{8} V.I. LENIN, \textit{WHAT IS TO BE DONE?}, \textit{in} \textit{LENIN'S COLLECTED WORKS} 347-530 (Foreign Languages Publ'g House 1961) (1902); \textit{see also} C. WRIGHT MILLS, \textit{WHITE COLLAR THE AMERICAN MIDDLE CLASSES} 300 (1951) (explaining that more recent pessimism focuses on the limitation that the U.S. worker had the ability to recognize his interests as different from those in power). Mills and Alinsky lived at the same time, and although there appears to have been some correspondence and a mutual respect between them, they never met or developed this further. C. WRIGHT MILLS, \textit{supra} note 3.
I. BEWARE: LAWYERS MAY BE HAZARDOUS TO YOUR COMMUNITY ORGANIZING

Susan Stall and Randy Stoecker define community organizing as:

the 'craft' of building an enduring network of people, who identify with common ideals and who can act on the basis of those ideals. In practice, it is much more than micromobilization or framing strategy. Community organizing can, in fact, refer to the entire process of organizing relationships, identifying issues, mobilizing around those issues, and building an enduring organization.10

Social movement scholars Scott Hunt and Robert Benford identify four components of collective identity that are central to the creation and sustenance of social movements and social movement organizations, which in turn feed collective identity: (1) "the collaborative work that individuals do on behalf of a social movement or social movement organizations,"11 (2) solidarity or "esprit de corps,"12 (3) commitment or staying power,13 and (4) a "shared sense of we-ness and collective agency."14

Conventional wisdom states that engagement with lawyers is dangerous to community organizing. Many of the critiques center on the threat that legal action and lawyers pose to the areas of collective identity and agency that are so critical to organizing and sustaining community organizations and grassroots social change efforts. Lawyers tend to take over, disempower, or re-channel precious energy and other resources away from important activities in which community organizations engage.15 Much legal work is done by professionals rather than laypeople and thus does not provide opportunities for collective action and agency. Empirical studies show a general picture of lawyers who subordinate their clients’ interests to a variety of professional and workplace exigencies, goals, and interests.16 Lawyers often

---

12. Id. at 439.
13. Id. at 440.
14. Id. at 440-41.
disrespect their clients and treat them poorly.\textsuperscript{17}

Some view lawyers as almost inherently detrimental to organizing efforts. Steve Bachman has written widely on the subject as a lawyer for the national group the Association of Community Organizations for Reform Now ("ACORN"). He portrays lawyers and legal strategies as removed from those who are fighting for a cause.\textsuperscript{18} Lawyers diffuse movement energies and consume precious resources. They are also tied to the establishment in various ways, which can make their motivation (and advice) suspect. Lawyers need to be seen as "normal" to establishment figures. In order to operate in legal arenas, other lawyers and judges must view them as legitimate: "We are the lawyers for controversial, often militant clients. Our primary objective is to serve them effectively. We cannot do this if judges and other attorneys see us as hirsute hippies."\textsuperscript{19} Others have noted that the professional role separates lawyers and their clients, whether these are social movements, organizations, or individuals. Lawyers' professional role, one that must be assumed in order to be of value to the clients, alienates them from these groups in a way that is often distressing to lawyers who align themselves with their clients politically and philosophically.\textsuperscript{20}

Critics paint the law and legal tactics as the worst possible combination of power and impotence. Critics of legal action envision lawyers as a death knell to social movements through the ineffectiveness of legal remedies, particularly those that are court based.\textsuperscript{21} One of the more famous critiques of litigation for social change was put forth by Gerald Rosenberg, who tracks the failure of Supreme Court victories to achieve meaningful change. According to Bachman,

\begin{itemize}
\item \textsuperscript{17} Id. at 62-63; see also Corey S. Shdaimah, Not What They Expected: Legal Services Lawyers in the Eyes of Legal Services Clients, in THE CULTURAL LIVES OF CAUSE LAWYERS 359 (Austin Sarat & Stuart Scheingold eds., 2008) (describing the legal clients whom she interviewed as experiencing the respect and consideration with which they were treated by their lawyers as anomalous).
\item \textsuperscript{18} Steve Bachman, Lawyers, Law and Social Change, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984-1985); see ACORN Law Practice, supra note 15, at 33-34 (explaining that effective ACORN lawyers must abandon the way they were taught to think in law school and focus on the people as the ultimate reality).
\item \textsuperscript{19} ACORN Law Practice, supra note 15, at 41.
\end{itemize}
What the lawyers do is less important than whether and how various social groups organize themselves. Despite mythologies that have developed, the lawyerly approach did not implement, in any significant way, the meaningful social changes that have occurred in the United States during the twentieth century.\textsuperscript{22}

Ineffectiveness of the law is part of what adds to its danger. Legal action is often drawn-out and expensive. It takes steam out of other avenues of protest and change and may lull people into false hope and complacency. If it does not bring about desired changes, resources might be better spent elsewhere.

It is important to note, however, that the ineffectiveness of the law is not an entirely uncontroversial point. Certainly, any change that makes a difference to even a small number of beneficiaries makes a difference to those people, and what we measure as change will go a long way to informing our understanding of success.\textsuperscript{23} Sociolegal scholarship has also pointed to the role of symbolic change, as exemplified in David Engel and Frank Munger's study of the importance of the Americans with Disabilities Act to individuals with disabilities and potential and current employers, regardless of whether or not they planned to litigate claims under the law.\textsuperscript{24} Frances Raday has noted that the increasing proliferation of lawyers may also be due to failure of other state and social institutions in upholding the rule of law and insuring justice. In other words, despite the recognition that the law falls far short of its potential, as do those who wield it, lawyers might be able to help community organizers blast inroads through otherwise unresponsive bureaucracies or systems.\textsuperscript{25} In this view, it is more the failure of other venues of change than the promise of the law that makes lawyers and their tools appealing.

The law and legal forums where lawyers practice can be confusing, even hostile, to laypersons. Indeed, most people do not encounter the law voluntarily; they are either prompted by unfortunate circumstances to invoke the law, or the legal process is forced upon them by other individuals or by the state. Law

\textsuperscript{22} Bachman, supra note 18, at 11.
\textsuperscript{23} See Shdaimah, supra note 20, 44-46, 62-65.
\textsuperscript{25} Law Professor Frances Raday made remarks to this effect as a respondent to Marc Gallanter, Keynote Address at the Israeli Law and Society Association International Conference: More Lawyers Than People: The Global Multiplication of Legal Professionals, to the Israeli Law and Society Meetings (Dec. 24-26, 2008) (on file with author). Stanford Law School's Clinic Director Lawrence Marshall, a respondent in the same forum, also expressed more optimism than pessimism for the rising number of lawyers and their potential role in progressive causes.
professor David Dominguez described the experience of the low-income community members' served by his law school clinic. They were "tentative, if not paralyzed, in their actions due to second guessing themselves constantly in a world of restraining orders, divorce proceedings, child removal hearings, custody claims, domestic violence calls, and other family based legal actions." Dominguez's clinic clients and local agencies shared a frustration "with a society prone to finding answers in legal claims." Dominguez and his law students helped clients and agencies collaborate to find ways to scale back the intrusive presence of the legal system. Dominguez pushes away from the law, arguing that conciliation and dialogue is better for marginalized groups. But what if no one is listening or engaging in dialogue? Dominguez calls for a reduction in use of the law (and the lawyer) from community organizing. At the same time, however, he employs law students, and likely the power of the law school in which the clinic is housed, to engage other agencies and accomplish his goals.

Recent voices call for and envision a role for lawyers in social struggles, even as they remain cautious of engaging lawyers in community organizing efforts. Proponents of what poverty law scholar Gerald López has famously called "rebellious lawyering," a model which is designed to eliminate some of the pitfalls of "regnant lawyering" for social change, warn against the dangerous potential for disempowerment, cooptation, and re-inscription of inequality. In many ways, the chief weapon that rebellious lawyering models provide is their knowledge of the potential harm that lawyering poses, which allows them to be alert to such dangers and consciously work against them. Accordingly, rebellious lawyering models remain highly skeptical of lawyers' roles and the risks that lawyers pose to community organizing and social change efforts. Cause lawyering literature suggests a

27. Id.
28. Id.
29. Id.
30. Id. at 49.
31. Id.
32. See generally GERALD LÓPEZ REBELLIOUS LAWYERING: ONE CHICANO'S EXPERIENCE 11-82 (1992) (providing descriptions of rebellious and regnant lawyering that he lays out in chapter 1); Janine Sisak, If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation, 25 FORDHAM URB. L.J. 875, 876-81 (1998) (providing a succinct overview of this concept in theory and in practice drawing on some of the extant literature).
greater fluidity of power.\textsuperscript{34} Many people use the law strategically for their own goals,\textsuperscript{35} including as a tool to challenge dominant identities and narratives and what the law condones as acceptable and possible.\textsuperscript{36} Our relationship with the law and whether and how we should employ legal tools are under constant negotiation.

In an article unusual in its focus on the experience of the organizers, William Quigley interviewed three seasoned, savvy organizers on the use of lawyers and the law.\textsuperscript{37} They viewed lawyers and legal processes as almost inherently disempowering, but necessary.\textsuperscript{38} Those who have relatively little power are often unable to choose the arenas where they fight or even to choose the parameters of their fights. Powers of the weak are never optimal and always contain their own dangers; this is how the so-called choice to work with lawyers is viewed by many organizers.\textsuperscript{39} Those who approach lawyers and the law with trepidation point to the need to control the process and their lawyers. Using the oft-quoted maxim, Quigley advocates models in which lawyers are “on tap rather than on top.”\textsuperscript{40} These models, which we might call Control Models, maximize laypeople’s active participation in external and internal decision-making processes and representation. Control can be imposed, as in the case where the community organization hires the lawyer and acts with the power of its purse. Control can also be voluntary, when lawyers share the goals of the community or subscribe to a model of lawyering

\textsuperscript{34} AUSTIN SARAT \& WILLIAM L.F. FELSTINER, DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND MEANING IN THE LEGAL PROCESS 18-23 (1995) (suggesting that power dynamics are much more complex and fluid than is suggested by the model that lawyers as experts wield power over clients, even when the clients are not more socially and economically powerful than the lawyers).


\textsuperscript{36} ENGEL AND MUNGER, supra note 24, at 41. While Engel and Munger, as well as the works cited in notes 9 and 10, focus on individuals, MichaelMcCann examines these dynamics in the collective realm of the pay equity movement. See MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 50 (1994) (discussing the grassroots pay equity movement that engaged significant numbers during the 1980s and the eventual judicial recognition of “systemic discrimination” that provided a direct catalyst for the movement).


\textsuperscript{38} Quigley, supra note 37, at 492-93.

\textsuperscript{39} See SHDAIMAH, supra note 20, at 29 (referring to the work of Linda Gordon, who drew on James Scott’s concept of “powers of the weak”).

\textsuperscript{40} Quigley, supra note 37, at 474.
where the community organization takes the lead. These types of control are not mutually exclusive.

In my research with legal services lawyers and clients, I found that lawyers and clients were well aware of many of the pitfalls of the lawyer-client relationship. Nevertheless, they conceived of the work that they did together as important and necessary and developed an ethic that obligated lawyers and clients to make use of available legal tools, despite the dangers. Lawyers and clients can work to create change within the constraints of any given reality. This requires getting beyond the paralysis that the fear of using imperfect tools invokes. It means taking action while doing the best they can to mitigate negative consequences. It also requires reflection and rethinking as lawyers and clients move forward together, so they can amend and change their actions as necessary.

Scholars who share the view of lawyers as a necessary evil focus on how communities can work with lawyers while minimizing their potential to harm organizations, communities, or movements. For example, Bachman explores when and how community organizers should employ the services of a lawyer. Bachman's rather prescriptive advice is grounded in one model of organization and one model of lawyering. He delineates specific situations when organizations should use lawyers. His chief concern seems to be how best to set up a system where the community organizers retain control of the legal process, once an organization determines that recourse to a lawyer is appropriate.

One common theme that appears in the Control Model is that organizations should seek lawyers who are open to organizers and sympathetic about issues and concerns that organizers deem relevant. This makes it more likely that lawyers will subordinate goals and strategy to organizers or community members. For Bachman and ACORN, this was accomplished through constructing a client-professional relationship akin to an in-house counsel whereby Bachman worked chiefly for ACORN, although this model went through a number of iterations.

In a review of socio-legal scholarship that examines lawyers and clients in different practice areas and settings, Lynn Mather

41. SHDAIMAH, supra note 20, at 165-71.
42. Bachman, supra note 18, at 31; Martha Minow, Political Lawyering: An Introduction 31 HARV. C.R.-C.L. L. REV. 287 (1996); Quigley, supra note 37, at 293-95; Sisak, supra note 32, at 878-80.
43. ACORN Law Practice, supra note 15, at 33. Bachman notes that ACORN only proceeds with lawsuits under three circumstances: (1) if litigation will contribute to organizing, (2) when ACORN has its back against a wall, or (3) when an organization needs an exit from an unproductive campaign. Id.
The John Marshall Law Review

corroborates a trend of dominance and takeover by lawyers. Client success at pushing back to retain control and differences in lawyer domination appear to vary with different levels of client savvy, participation, and direction as well as different levels of deference that have to do with power dynamics. Money and dependence make a difference; “lack of a working relationship between lawyer and client, or an imbalance of power between them, affects how lawyers approach the task of client representation.” Mather’s examples, including references to Susan Olson’s study of disability rights organizations, show that community organizations can be on the powerful side of this differential. In their description of the balance of power, they are similar to what Bachman describes in his work with ACORN and what Scott Cummings shows in union organizing to oppose Wal-Mart. All portray well-educated, savvy organizers who are working with deferential lawyers, in which both groups were willing to think creatively and strategically about what kind of law to use and the goals of the legal strategy. It is important to note, however, that these are organized and existing groups that already have some power and cachet. This makes them stand out as different from more nascent or less organized community groups and interests that might be more vulnerable to lawyer domination.

Focusing on the other side of the equation, lawyers can also take steps to inflict minimal damage. Deference and the lawyer’s willingness to be open to her clients’ directions also seem to be a function of the lawyer’s approach to lawyering. Lawyers who subscribe to a participatory model are, not surprisingly, more likely to be deferential to clients even when power dynamics do not weight representation in this direction. Other factors that might decrease the dangers of lawyer domination and increase the likelihood of complementarity between the work of lawyers and organizers are a sense of affinity or altruism, or benefits that

45. Id. at 1083.
48. Indeed, the literature I review here that provides advice to community organizations on how to control their lawyers is written by lawyers rather than community organizers.
49. For a discussion in the section entitled “Poverty and Civil Rights Lawyers,” see Mather, supra note 44, at 1078-80.
accrue to the lawyers. The merits of a case, the name recognition that publicity might afford, or coherence with other goals (including political goals) might also help clients retain control of their lawyers and legal strategy.

Alicia Alvarez suggests that lawyers and community groups engage in a process of lawyering with a broader shared vision or goals in mind. This provides a framework for mutual commitment. While this may ensure a better working relationship, lawyers with such a larger goal in mind may be even more likely to abandon the desires of individuals and local groups who engaged them in pursuit of a larger goal. Classic examples of these are the NAACP's Legal Defense Fund regarding the plaintiffs in school desegregation cases and Sarah Weddington's representation of Norma McCrae in Roe v. Wade. Money and power, in this case, might ensure better compliance with movement goals and strategies than altruism, particularly when the lawyer and client disagree over their understanding of what strategies best serve the lawyer's own goals.

Community organizations may be well-situated to appreciate the difficulty in effectuating change outside of legal venues. Organizations that have faced opposition or have not been heard may desire lawyers and legal action to increase their leverage. In his review of the essays published in a 1985 special issue of Law and Policy Review devoted to law and community organizing, Rick Abel noted "common emphases" among the articles. He criticized the first such emphasis, as follows:

First, law must be subordinated to other modes of activism and other disciplines; indeed, legal means of resolving problems should be avoided whenever possible, for they tend to reinforce the client's

50. See ACORN Law Practice, supra note 15, at 39-40 (alluding to the benefit that working with well-established clients can provide the lawyer). In my own work, lawyers have discussed the way that work with clients provides them with satisfaction and commitment that helps sustain them in difficult work. See generally Corey S. Shdaimah, Intersecting Identities, in CAUSE LAWYERS IN SOCIAL MOVEMENTS 220-245 (Austin Sarat & Stuart Scheingold eds., 2006). These may also provide leverage for community groups in helping to control and direct lawyers; and they may also be a factor that ensures that lawyers will be deferential without the need to force them to be so. See also Cummings, supra note 47, at 1947.


experience of powerlessness. The difficulty with following this precept is that clients (especially individuals) consult with lawyers in the first place because they have been trained to defer to and depend on professionals, and it is difficult, in a few brief encounters, to overcome a lifetime of socialization in the culture of professionalization.55

In this model, which we might call the Relative Control Model, community organizers and lawyers are more concerned with their lack of power and control over external forces. They opt to use lawyers not out of naïveté about the legal process or lawyers but as a strategic decision. Community organizers have perceived that they are likely to have more control over their lawyers and legal strategies than they are to control their opponents.

Here, I use a case study to discuss some of the ways in which the synergy of lawyers and community organizations is less a zero sum game and the ways in which they can enhance or amplify work toward, rather than take away from, community organizing goals. In doing so, I originally intended to draw on empirical research that I conducted with legal services clients and lawyers as well as on collaborations between social science researchers and community organizations. As this Article was unfolding, however, I had the opportunity to experience the relationship of community organizing and lawyers as a community member myself, who is trying to organize and lead a sustainable grass roots campaign against a local government agency. In taking this perspective, I find that much of the discussion around disempowerment, domination and controlling lawyers is less central to my experience as a community member and as an indigenous organizer. This is not so much because my community or I have any better understanding of the legal and social situation in which we find ourselves. Indeed, I believe that the literature does not give sufficient credit to the savvy and knowledge of communities and indigenous organizers56 nor to their perception of relative powerlessness when weighing the use of legal tools.

As an indigenous organizer, my perspective is different than that of a lawyer or of a professional organizer, the model that Alinsky espoused.57 As such, we were less concerned with building a formal organization or developing a particular strategy or approach, than we were with nurturing a sustainable community and addressing issues of importance to us. While some might believe that such perspectives are short-sighted, there are models of organizing that view them as more conducive to fundamental

55. Id. at 9-10.
56. See also Shdaimah, supra note 17. My experience resonated much more with the experience of clients that I presented here.
57. Stall & Stoecker, supra note 10, at 743.
change and more sustainable over time.\textsuperscript{58} This perspective is often absent from discussions of community organizing and the use of lawyers, which are largely authored by and for professional organizers or lawyers, and it is the perspective of those purported to be served by these professionals that is reviewed here.

In the tradition of much of legal scholarship, I share the story that has helped me think differently about the relationship of lawyers to social change. I believe that the disjunction between what I read and our community's concerns is instructive. While every mobilization effort is unique, each story can offer a valuable strand to the ongoing discussion. As our small group of neighbors contemplated and ultimately pursued legal action, being on this side provided a humbling and valuable vantage point from which to explore collaborations between lawyers and grass roots organizers of social change mobilization efforts.

II. Redistricting in the Lower Merion School District ("LMSD")

I live in a neighborhood where our public schools were redistricted.\textsuperscript{59} Over the past forty years, five redistricting plans have been debated, adopted, and implemented. According to residents, four of the five have adversely impacted South Ardmore. A neighborhood elementary school and a neighborhood middle school were closed under consolidation of school populations, eliminating schools in the South Ardmore community that were within walking distance and were attended by those living in that community. Later, redistricting split up South Ardmore, the community with the highest racial and ethnic minority population rates. A line drawn down the middle of the community sent half of South Ardmore to one elementary and middle school; the other half was sent to another elementary and middle school. This zoning also split the groups of students into LMSD's two high schools, Harriton High School ("Harriton") and Lower Merion High School ("LMHS"). Despite the rezoning, because LMHS was a neighborhood high school approximately one mile from the farthest point of South Ardmore, students zoned for Harriton could choose to attend LMHS, allowing the entire high school community of South Ardmore to attend school together.

\textsuperscript{58} Id. Stall and Stoecker use a women-centered model to draw distinctions with the Alinsky model. \textit{Id.}; see Mark Warran, \textit{Dry Bones Rattling: Community Building to Revitalize American Democracy} 43-47 (2001) (discussing the limited sustainability of some of Alinsky's efforts and the way in which other organizers of his school attached greater importance to indigenous community perspectives and beliefs).

What LMSD saw as desegregation might have been initially viewed as beneficial. But many members of the African American community now believe that the bifurcation of the community and dilution of students dispersed among the schools is detrimental to the African American community regardless of the benefits that might accrue to the predominantly white school population. Further, a consistent achievement gap has led many to distrust the School Board's commitment to any kind of meaningful integration or addressing the needs of a diverse student population. For these reasons, the open high school attendance option was highly valued as a bright spot in the otherwise bleak landscape of school zoning policies created by the Lower Merion School Board ("School Board").

The 2009 redistricting effort was deemed necessary following a School Board decision to equalize enrollment between LMHS and Harriton, both of which are being entirely rebuilt. Because of district density, Harriton is farther away for the majority of district residents than is LMHS.\(^{60}\) In the final stages of planning, my community, which represents half of South Ardmore, was targeted for busing four and half miles away to Harriton. LMHS is an easy walking distance of six-tenths of a mile from my house.

The complaints were many. The neighborhood of South Ardmore crystallized opposition to Plan 3,\(^{61}\) which eliminated the walk option. Initial opposition to Plan 3 focused on the hypocrisy of the school district seeking credit for building environmentally friendly schools\(^{62}\) while eliminating a walk zone for 150 high-school students.\(^{63}\) The two communities most impacted by the plan, North Narberth and South Ardmore, are the two primary

---

61. See Map in Appendix A.
62. The School Board is seeking LEED certification from the U.S. Green Building Council for its two new high school buildings, which would entitle it to additional state funds. U.S. Green Building Council, LEED Rating Systems, http://www.usgbc.org/Default.aspx (last accessed on Apr. 7, 2009). According to the School Board, as corroborated by the LEEDS program administrators, credits toward LEED certification are not affected by whether or not students who are given the option or encouraged to walk to a neighborhood school. While the School Board saw no problem here, opponents of the plan claim that it violated the spirit if not the letter of the program. It also violated the School Board's own policy of creating walk zones within 1 mile of each of the two high schools. Lower Merion School District, District Policies, http://www.lmsd.org/sections/about/default.php?m=9&t=board&p=board_policy (last accessed on Apr. 7, 2009) [hereinafter District Policy].
63. This number is approximate and is based on figures provided by the LMSD School Superintendent. The numbers actually changed from meeting to meeting, with one estimate closer to 200. Here, I take the more conservative figure of 150.
The Story of South Ardmore

communities where many people choose to live due to the accessibility of train transport and a town area accessible on foot. South Ardmore is also a community with the least socio-economic resources in the District; one of the few with families that do not have cars because they cannot afford them and the one with the highest percentage of children eligible for subsidized school meals. The option to attend LMHS helped students and their families in these areas because that high school is within walking distance, and there is public bus service from Ardmore to LMHS. Harriton is accessible neither by public transportation nor on foot.

Concerns over fairness of the process were also raised. South Ardmore and Narberth felt that they were being asked to bear all of the burdens of the redistricting while reaping no benefits—a pattern that has been consistent across redistricting efforts that have taken place since the 1970s. While most of us are by no means poor, the combination of academics, blue collar workers, and low-income families that make up my neighborhood believe that the allocation of burdens and benefits in the final plan was not coincidental. In the wake of prior redistricting, community members opposed the plan on the grounds that our community is once again being “used” to diversify a district that is otherwise racially and socioeconomically homogenous. Many saw LMSD slideshows introducing Plans 1, 2, and 3 (see below) that contained percentage breakdowns of low-income and minority students as evidence of this intent.

The neighborhood of South Ardmore as a whole, and the African American community in particular, has felt intermittently targeted and ignored over the past forty years, according to whatever is most convenient to LMSD’s all-white School Board, none of whom hail from our neighborhood. In one particularly poignant testimony, a South Ardmore parent recounted his own difficult experience as “the only black child” in his class, noting that one of the reasons he moved to South Ardmore is that he did not wish this experience for his children. Another community member, recounting similar childhood experiences, compared the dilution of the African American community to a “sprinkling of pepper” into “two soups” and said that pursuing diversity so that

---

64. See Appendix B.


"you can feel better about your white high schools" was unfair to racial and ethnic minorities.67

In a letter to the Philadelphia Inquirer, one white resident summed up the feelings in the neighborhood about the redistricting process and the plan that emerged from it:

Some would argue that since both high schools in the Lower Merion redistricting plan are good schools, there should be no room for complaint. This completely misses the point and comes dangerously close to blaming the victim.

A white school board, by a 6-2 vote; a white superintendent; and a white consultant carve a line through a small, historically African American community. Although one school is within walking distance, those on one side of the line will be bused to another school several miles away. And yet, the African American community is to be grateful. It is unconscionable. It's time for the Lower Merion School District to address its race-relations problem.68

Some raised the claim that opponents of the redistricting plan complaints are petty in light of the fact that the District is creating two state-of-the-art high schools where learning conditions are excellent in comparison with those of other districts.69 This implies that we should consider ourselves lucky. While the merits or even the import of the claims are debatable, I am less interested (for the purposes of this article, at least) in whether or not they are objectively verifiable or of merit. Here, what are important are the perceptions of organizers and their assessment of organizing tactics.

III. ORGANIZING OPPOSITION TO PLAN 3

Opposition to the plan from the affected community in South Ardmore was vocal and sustained. A number of community efforts were made to organize. Residents who saw this as a pattern linked it to other past community efforts. They created a coalition that would work to address what we saw as institutionalized, if not intentional, racism as well as other forms of inequity exposed by the redistricting process. In organizing efforts over email and at neighborhood meetings in homes and public venues, such as our local library, we considered a number of actions. One of the

67. See id. (testimony of North Narberth Surge Ghosh).


actions we debated was legal recourse.

Similar to the low-income legal services clients that I have written about (and their lawyers), our community was not naive about the legal process, nor did it have some vision of the law or the lawyer as a savior. On the other hand, the skepticism (or realism) with which we approached the legal process came as an advantage. We knew that legal remedies can be lengthy. In our case, this meant that for people with older children any remedy that might be achieved would come too late, which likely made people more hesitant to invest resources toward legal tactics. We knew it would be costly perhaps to the point of being unsustainable. Many of those proposing legal action saw it as a leveraging tactic, hoping that the threat of legal action would induce the School Board to make concessions, thereby allowing us not to pursue legal action very far into the process. We also knew that, like any tactic, it might not work.

Legal action was hotly debated among opponents of redistricting, a group that eventually organized officially as Lower Merion Voices United for Equity in Education ("LMVUE"), for some of the reasons that have been cited in the literature as well as others. In spite of what the literature suggests, LMVUE members and others have continued to organize opposition to redistricting and advocate in other areas, even after we hired a lawyer. Those who agreed with legal action viewed it as one tool among many, although those who were skeptical of the School Board and the redistricting process viewed it as one of the few tools likely to succeed. Actions that continued even as we began to work with a lawyer included: attending school board meetings, providing oral testimony at school board meetings that was also

---

70. Shdaimah, supra note 17.
71. In this Article, for the sake of readability, I will generally refer to LMVUE. However, LMVUE incorporated only after the January 16th School Board vote, and the members of LMVUE did not include all those who participated in organizing against the plan for a variety of reasons, including reasons related to our decision to work with a lawyer. Due to the necessity of swift action, organizers worked ad hoc, coordinating via a number of listservs and community meetings. When legal action was first initiated, we became Concerned Ardmore Parents (evoking the Concerned Black Parents who had mounted prior challenges to LMSD). When it became clear that the opposition was about more than this one redistricting decision, and that the community wanted to continue to address more long term problems of equity in the district, we decided to incorporate. Incorporation provided a better mechanism for raising funds for legal action and gave us more control over messages to the School Board and other elected and administrative officials, to the media, and to potential allies. See www.lmvue.org for information on the organization's mission and activities.
72. Quigley, supra note 37, provides a comprehensive review of the literature.
broadcast on local television, disruping School Board meetings, reaching out to local news print and television media that led to media coverage, letter-writing, picketing of the township and school board meetings, lobbying of individual school board members, outreaching to other elected officials, ongoing efforts to support candidates running against incumbent School Board members for the next School Board election, and pro se filing of complaints with the Department of Education’s Office of Civil Rights and the Pennsylvania Human Rights Commission. In the section that follows, I write about the advantages and disadvantages that we, as parents and organizers (some of whom are also academics), viewed when considering legal action. I raise considerations that have not been prominent in the literature but nevertheless may be important to community organizing efforts and can shed light on further considerations that we all must weigh.

IV. DEBATING LEGAL ACTION

Whether or not to retain a lawyer was a contentious decision among community members. Disempowerment, however, was not the focus of our concern. Contrary to what the literature suggests, we were not concerned about a lawyer “taking over” our efforts. Many of us would have been relieved to hand over what had become a time-consuming, frustrating, and seemingly unwinnable task of convincing the School Board through other channels. Even though many of us do not face the bone-wearying challenges that poverty brings, the responsibilities of jobs, children, and other

---

73. Over 225 residents provided oral testimony in the combined two meeting comment period for the recently approved plan, the overwhelming majority in opposition. The School Board reported receiving hundreds of email comments, both in opposition and in support of the proposal.

74. Community members kept disruption to a minimum but brought signs to meetings and would show solidarity through standing or clapping, even though we were asked not to clap. During the final vote, one community member stood up and shouted at the School Board in protest and then stormed out of the meeting. A break was called; upon returning, the School Board reminded the audience of civility codes, noting that disrupters would be asked to leave. When the school board posted video of the proceedings, as they do of all meetings, this five minute segment was removed. After negative media coverage, LMSD reversed the decision. In a letter to school district parents dated January 17, 2009, Superintendent McGinley noted that while he had the authority to censor the video (a point over which there was some controversy), it was an improper decision and that the censored section would be restored that evening. See Bonnie L. Cook, L. Merion Board Will Restore Trimmed Video, PHILA. INQUIRER, Jan. 16, 2009, at B02.

community activities made it difficult for us to devote time to fighting the School Board. Most people came to meetings at someone's house after a long day (and for one, before a long night) of work; there were always logistics of babysitting, whether we were leaving children at home or hosting. Those of us who desired legal action were most worried that we would not be able to find and afford a lawyer willing to represent us.

Opponents of legal action cited a number of concerns. Some thought it was naïve to rely on legal action, with one person (who identified herself as a former lawyer) chiding the email list for envisioning an Erin Brockovich scenario, in which the legal action saves the day. Opponents felt that legal action would be long, drawn out, and ultimately unsatisfying. Concerns were raised about whether this was the best use of resources. We did not have enough money to retain a lawyer to mount a full-fledged fight, and it was clear that legal action could only be an adjunct to our work. If legal action became protracted, we were unsure whether we could raise money to sustain it. LMSD has a reputation for being litigious and for drawing out legal action. This was based on anecdotal knowledge gleaned from discussions with attorneys and the experiences of community members who had resorted to legal action to advocate for a variety of district services, such as accommodations under individualized educational programs ("IEPs") mandated by law. Community knowledge helped us to assess our opponent in contemplating legal action.

Another twist on the funding of legal action is the concern that we would pay for any legal action twice. The first time, we would pay directly to our lawyer. Should LMSD choose to respond, we would again be paying as LMSD funds legal services with our tax dollars. Not only would this be burden that might come back to haunt us, but we also feared it would engender hostility of other communities in the school district.

V. CONCILIATION OR CONFLICT POLITICS

What came through in much of the debate regarding whether to resort to legal action is that community members had different opinions about the value of conflict versus conciliation, either generally or as a strategic matter. As a strategic matter, there was debate about what tactic was most likely to be successful. Some wanted to wait until the School Board had voted before pursuing legal action. Waiting would portray opponents to the redistricting plan as well-behaved, cooperative, and having faith in the democratic process and in the integrity of School Board members. Legal action might make School Board members who were wavering in our favor ignore our concerns or doubt the merit or worthiness of our "citizenship." Classic social movement literature recognizes the importance of persuading those who
might be neutral or even somewhat sympathetic to join a cause.

Social movement scholars John McCarthy and Mayer Zald\textsuperscript{76} provide a helpful analytical framework for understanding the strategic hesitation in seeking legal action that might be viewed as contentious and un-neighborly. According to McCarthy and Zald, "adherents" are those people or organizations that believe in goals set out by social movement actors;\textsuperscript{77} these would include LMVUE members, who have officially signed on to the mission of the organization, as well as individuals who testified in opposition to the various plans. We also sought to persuade people to provide resources, material or otherwise, to support our cause; individuals or organizations so converted are referred to as "constituents." We reached out to the Ardmore business community, who had an interest in local high school students who frequent their establishments (and are part of their labor force), and township residents who we believed would oppose the redistricting on a variety of grounds, including potential tax implications and environmental concerns. Some of these individuals, businesses and organizations provided funding or support in other forms, such as communicating with the School Board and local elected officials on our behalf. We believed that adherents and constituents, who identified with the interests of organizations, were less likely to be persuaded or dissuaded by legal action. The Ardmore business community had a history of litigation with the township, a further indication that legal tactics would not be anathema. In fact, some members of the business coalition counseled us that based on their own experience legal action would be our only chance of success. We were more concerned with "bystander publics,"\textsuperscript{78} who are undecided individuals that have not taken a stand and are potential adherents or even constituents (or opponents). As noted above, the concern that legal action would alienate potential allies within the School District and future alliances regarding other School Board decisions was especially important in light of the history of redistricting, which indicated that the current redistricting would not be the end of inequitable School Board actions.

Proponents of legal action largely advanced arguments based on skepticism that our voices would be heard and considered by LMSD and the School Board, which was ultimately borne out by the School Board decision. We had inside information that despite the testimony and forums for community input, the School Board members had already decided. The School Board also seemed to


\textsuperscript{77} \textit{Id.} at 1221.

\textsuperscript{78} \textit{Id.}
be impervious to picketing, critical print and television media coverage, and to behind-the-scenes efforts of other elected officials including a State Representative and two township Commissioners who intervened on our behalf. Many felt that the threat of a lawsuit might persuade the School Board. Most were also skeptical as to whether the threat would be sufficient and envisioned that only legal action would be able to force an unresponsive School Board to change their decision. Such signals even came from some of the elected officials involved in the process.79

In an oft-cited quote, Frances Fox Piven and Richard Cloward conclude their historic analysis of poor people's movements in the United States with the observation that “a placid poor get nothing, but a turbulent poor sometimes gets something.”80 This applies not only to the poor but to those who are relatively powerless. Good behavior and obediently following the process laid out by the School Board, many told us, had also gotten South Ardmore absolutely nowhere in prior redistricting. Ultimately, those people who advocated for legal action did so because they had lost hope in the process. Crossing into the territory of conflict politics, which would include legal tactics, appeared to most of us as necessary. Proponents of legal action believed that fellow opponents to Plan 3 who counseled conciliatory action as the best strategy were largely deluding themselves.

It would be a mistake, however, to assume that those who opposed legal action did so only for strategic concerns. Another concern was for community. If our actions caused another group in the district to be treated unfavorably, then this would engender bad feelings. Whatever the outcome, there were also concerns about alienating School Board members and other people in the School District. Our immediate community of reference is South Ardmore, but our children attend school with children from other parts of the District. These children are on the same soccer teams, belong to the same religious and social communities, and are friends. Members of LMVUE who interacted at school and social events with School Board members who voted for the plan and with friends who supported the plan noted their discomfort in these interactions, which interfered with existing social networks. Legal action seemed to ratchet up the conflict, and many worried that it would create further, perhaps irreparable, fissures among families in the School District. This meant that even those who supported legal action as strategically feasible, even desirable,

79. Because this was offered in an informal discussion as advice, I will not identify by name or role in order to protect confidentiality.
were hesitant to embrace it and sought a step-by-step process accompanied by community outreach to explain our position and our understanding of why legal action was necessary in order to mitigate potential alienation.

VI. PUBLIC INTEREST OR PRIVATE LAWYERS

When we initially considered legal action that required lawyers, we saw ourselves as having two options. One option was a non-profit public interest law firm. The Public Interest Law Center of Philadelphia ("PILCOP") is a well-respected nonprofit organization that fights for equity in education, among other causes. PILCOP had a pending class action lawsuit against LMSD. *Blunt v. Lower Merion School District* was filed on behalf of individual students and their parents together with the NAACP and a local advocacy organization, Concerned Black Parents, regarding the tracking and segregation of African American students with disabilities from the general school population. PILCOP was attractive for a number of reasons. The first, and initially the most important, was that representation by PILCOP would be free. Representation by PILCOP would mean that we would bear some onus of time and effort, particularly regarding fact gathering, but these were activities we engaged in at that time for our other organizing efforts, and they drew on then existing expertise within the group.

A second advantage of working with PILCOP was that, in our minds, there was overlap between our cause and the *Blunt* litigation. Although most of the plaintiffs in *Blunt* were anonymous, we believed that they most likely came from the affected area. We had been in close contact with the head of the local NAACP chapter regarding organizing efforts. We also had some indication from PILCOP that the suits might strengthen each other. PILCOP was sympathetic to the case, and representatives spent many hours with us, in individual meetings and in town-hall style meetings at the local library. Lastly, as I discuss in greater detail below, as a well-respected organization, we believed that PILCOP's involvement would validate our claim; as a nonprofit, PILCOP would not be pursuing the claims for financial reward but because of intrinsic merit. We believed that this had moral appeal that might be persuasive to the media, the School Board, and other district residents.

Our second choice was a private attorney. Initial attempts to find a private attorney in our community who could and would

---

take the case pro bono failed. The perceived need to act did not allow us the luxury of a full blown search and interview process, and we found one lawyer who was willing to work with us. Identified through the family of an involved parent, this attorney specialized in special education cases and had successfully sued the LMSD under the Individuals with Disabilities Education Act ("IDEA"). Although he lived in the district, his children attended private school. That meant that he was familiar with the problems we faced as well as the legal and bureaucratic apparatus we were up against, but he had personal distance from the outcome. He was willing to act quickly and had a good track record as far as we knew, but he did charge us. Together, we decided to take legal action on a step-by-step basis, reviewing the merit of continuing legal action at each decision-making point.

Subsequently, we realized that there were many benefits in choosing a private attorney, despite PILCOP's advantages. Perhaps the most important one is that we were his client, rather than the larger cause that circumscribed PILCOP's willingness to act on our behalf. PILCOP did write a six-page letter to the School Board just prior to making its final decision on the proposed Plan 3, advising it to consider the discriminatory implications that its decision might have. While PILCOP's lawyers told us that they sympathized with us and that our case had merit, they worried that the argument would be lost or misinterpreted. After the School Board decided in favor of Plan 3, amended in what was called Plan 3R to include a slightly increased walk zone, PILCOP decided not to represent LMVUE. It did not want to be portrayed as standing against diversity, a value that PILCOP held and promoted. For us, this confirmed what we knew in theory—we were not their only clients, even if they would take the suit. Their broader mission and goals, rather than our desires as clients, would always inform their decisions. Even if they had agreed to

83. Our lawyer had to charge us for expenses, but he did place a cap on fees. The attorney relied on fee-shifting provisions of the Civil Rights Act that would allow him to recoup fees from LMSD, should we succeed. It is important to note that without his willingness to risk losses, should we fail, and without the provision in the law that allows for this, costs of pursuing legal action likely would have been prohibitive. I thank Laura Beth Nielsen, who also participated in this Symposium, for pointing out the importance of procedure that can impede or facilitate the pursuit of social justice claims. See also Paul D. Reingold, *Requiem for Section 1983*, 3 DUKE J. OF CON LAW & PUB. POLY. 1 (2008).


85. *See* PILCOP, *supra* note 81:

The Law Center's mission is to advance the Constitutional promise of equal citizenship to all persons irrespective of race, ethnicity, national origin, disability, gender or poverty through the provision of legal and
represent LMVUE, our discussions with them brought home to us that their mission and choice of tactics might constrain and inform their action in other ways that we felt would hamper LMVUE. For example, PILCOP's lawyer had told us that it might be willing to settle if the LMSD agreed to reduce the area that was being bused, which we believed would further isolate a small minority and exacerbate the problem for that group. We found this condition unacceptable.

PILCOP were cause lawyers who, by definition, advocate in the service of a cause. These causes have primacy over and above their lawyering and their commitment to one particular client. Parallels to portrayals of cause lawyers who are willing to sacrifice their clients to benefit their cause did not extend to the nature of the relationship with PILCOP, which was much more like the relationships that Austin Sarat and William Felstiner portray in their study of divorce lawyers and clients. Sarat and Felstiner noted that the interactions they observed were far more negotiated than prior conceptions of lawyer-client relationships indicated. I have also noted mutuality in lawyer-client relationships in my study of legal services lawyers and their clients where legal services lawyers will consider their relationships with ongoing clients in making decisions about representation and strategies. Our relationship with PILCOP was negotiated. By this I mean that the discussions about representation were characterized by open dialogue. Although PILCOP did not represent us in the law suit, they engaged with the community before making that decision and they offered advice and assistance in other forms. There was also a measure of mutuality and interdependence, as we provided PILCOP with further information and insights on a community that may be useful in their current case. PILCOP, for their part, wrote a technical assistance. We use public education, continuing education of our clients and client organizations, research, negotiation and, when necessary, the courts to achieve systemic reforms that advance the central goals of self-advocacy, social justice and equal protection of the law for all members of society.

86. STUART SCHEINGOLD & AUSTIN SARAT, CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 118 (1998) note that: [C]ause lawyers are focused on the broader stakes of litigation rather than on the justiciable conflict as such or on the narrow interest of the parties to that conflict. Cases have significance to cause lawyers not as ends in themselves but as means to advance causes to which the lawyers are committed. Cause lawyers choose cases, clients, and careers according to what they stand for. The essential question is whether there is something at stake in which the cause lawyers believes and is, thus, worth fighting for.).

87. SARAT & FELSTINER, supra note 34, at 26.

88. Id.

89. See generally SHDAIMAH, supra note 20.
strongly worded six page letter to the School Board and the LMSD attorney immediately prior to the School Board decision, although they did not do so as our official representative. The latter was based on legal research and referenced the most recent case law that clearly evidenced an expenditure of resources by PILCOP. They also provided us with informal advice on other legal strategies, gave their assessment of our chances, and offered their assistance in facilitating conversation with the LMSD.

VII. CONSTRAINTS ON ADVOCACY AND PROTEST BEHAVIOR

While we were not concerned with being disempowered or co-opted by lawyers or the legal process, engagement in the legal process did place constraints on those involved. There was some concern among LMVUE members that African American members of the community most affected were not participating in protest activities. While there were minority members in our group, the majority of those most visibly engaged were white. We were informed that this stemmed from a number of sources. African American community members told us that they had tried to mount similar challenges in prior redistricting processes and felt ignored. They essentially lost faith in the process and did not think that there was any reason that the School Board would act differently this time around. We also heard that the Blunt plaintiffs were told by their lawyers not to address the school board publicly or take a public stand. The pending Blunt litigation might have thinned our numbers and so hurt the stand of LMVUE. It also silenced people who otherwise might have spoken out and said their piece.90

LMVUE members on the legal committee, who agreed to be plaintiffs and on whose behalf our attorney wrote his initial letter to the School Board, were also advised not to speak with the Superintendent. On our part, it was not clear where the lines were. The vague sense that public actions might jeopardize our future status as plaintiffs made some of us hesitant to reach out to elected officials, School Board members, or to the LMSD Superintendent; we carefully considered what we should say to the news media. In some cases, there was listserv discussion about whether these activities were permissible; we sensed that it might be necessary to check with our lawyer and that hampered the freedom we had felt earlier in making such decisions. This was burdensome to our organizing efforts. It led to confusion and created a lack of confidence in our ability to make decisions on our own. On the other hand, it also led the group to be more cautious in our public interactions.

Whether or not such restraint is beneficial or detrimental to organizing is debatable; judicious behavior that is tamed can work against conflictual behavior that may be more likely to lead to change. On the other hand, if community organizers are aware of the ramifications of their actions, they can make more conscious choices about the level and type of conflict that suit their strategic needs and be better informed about the potential consequences of choosing particular options. Where legal knowledge is required and might affect the outcome of the case, the hesitancy to speak can be handy. Advocates can choose to follow their lawyers’ advice or not; this may depend on how invested organizers are in the legal tactics and their goal for such tactics. If legal action is largely symbolic, or if advocates and organizers do not believe that it will succeed, then perceived jeopardy to legal action might have little relevance or import. If, on the other hand, the group is invested in the legal strategy or the outcome of the case or other product of legal action, a lawyer’s judicious counseling and the impact of other movement strategies on the legal action will (indeed, should) receive greater consideration.

Constraints on organizing behavior were substantive as well as strategic. Substantive constraints may in fact be more concerning from a movement perspective because they cannot necessarily be reasoned by informed decision making once legal action is initiated. These are in the form of the legal arguments themselves, which are often circumscribed by the forum and the rules of that area of law. In our case, we opted for a suit against the School Board. In consulting with the private attorney and PILCOP, both informed us that the main thrust of a credible legal argument must be either in a recognized category of discrimination or cause for children and their families who were under provisions of the Individuals with Disability Act. Our claims against the School Board were much broader. We felt that the School Board’s discrimination was also based on socioeconomic differences, but this is not a recognized category of discrimination. This was certainly something we could and did raise in our testimony and organizing efforts, but it would effectively be shut out of the legal action as irrelevant.

Additionally, both of the legally recognized causes of action split our group of members. One group had a recognized legal cause of action and could participate in litigation. The other members would, at best, be recognized by the courts and the legal establishment as constituent supporters but not as full-fledged members of the affected group. The splitting of LMVUE according to which members had a cognizable legal claim and which did not felt artificial to us. It seemed to imply that those claims that were not legally recognized were somehow less legitimate and less important, evoking comparisons and hierarchies, and there was
some concern that the splitting would impact our solidarity. If LMSD offered concessions to settle the suit, then the group who had legally recognized claims would be able to benefit while others would perhaps not reap the benefits of the settlement. The School Board had been known to use divide and conquer tactics before. As a group, LMVUE and its predecessor Concerned Ardmore Parents settled this potential concern internally. It recognized the legal right of those families who could sue. We were also willing to bear the risk to the organization and to support those families (financially and otherwise) with the understanding that further discrimination and unfair treatment should be rectified, even if the remedies were partial. Despite our conscious decision, we continued to be troubled by reinforcement of the racial lines of identification and the singling out of children and families with special education needs who made up a disproportionately high percentage of the affected area of South Ardmore. This is what we believed that the School Board had done to the detriment of our community; legal constructions and the legal action that relied upon them reified these categories.

What constituted a feasible legal argument was divisive in other ways as well. One concern that was shared across the township regarded the fairness of the redistricting process. In all of the proposed redistricting plans, the School Board ignored plans created by an independent third-party consultant (paid for with our tax dollars), choosing instead to put forth its own plans. The plans, particularly plans 3 and 3R, also violated officially published School Board policy (such as a one mile walk zone for high school students)\(^1\) as well as a set of “non-negotiables” that the School Board had established after soliciting community input prior to devising the redistricting plans.\(^2\) This meant that there was potential for an administrative law complaint based on the capricious behavior of the School Board. Such a complaint would likely appeal to the broader community, many of whom had felt unfairly targeted at various stages in the process. The appeal, we felt, would more likely persuade bystanders to become adherents or even constituents, and might galvanize a broader segment to act for change, for example, in electing new School Board members. But legal advisors counseled against an administrative law claim. PILCOP was not interested in this claim, as it was not compatible with their mission and their decisions regarding the allocation of precious resources, in contrast to the race-based discrimination argument. Our private attorney, on the other hand, thought that this argument was not likely to have much traction as the School Board enjoys a high level of discretion.

\(^{91}\) District Policy, supra note 62.

\(^{92}\) See School Board Meeting, supra note 66.
Even if it would, he counseled that this would be a lengthier process and harder to prove and time did not work on our side.

VIII. LEGAL ACTION AS CONFERRING LEGITIMACY

Although this is not always a stated goal of legal action, one advantage is the way it can appear to legitimize claims. In the case of South Ardmore, it appeared to give credence to our claims by elevating them above what might otherwise be seen as personal gripes. It did so in several ways. First, it provided an acknowledgement that someone outside of our community viewed our claim as having some merit. The subjective sense of unfair treatment and the disparate impact on racial and ethnic minorities and those of lower socioeconomic standing are deeply troubling, particularly in light of the historic targeting of these groups in prior redistricting. The imprimatur of PILCOP, which was highly selective in the cases it took and had been supported in part by a grant from the California based Impact Fund in the Blunt litigation, gave additional weight to claims of racism. Such claims have been viewed as highly suspect in an area that is largely liberal, with a majority Democratic School Board. Even opponents of Plan 3 were careful in asserting that it did not believe that the School Board members were intentionally racist. PILCOP's involvement was also viewed as supporting the arguments of South Ardmore residents because of PILCOP's representation of African American residents of South Ardmore in the Blunt litigation. The aggregation of cases added substance to

93. This changed over time. Opponents of Plan 3 pointed out the disparate impact of the Plan, relying on statistics, but received no response from the School Board. Many felt that even if initial intentions were not racist, ignoring claims of institutional or unintentional racism shifted the responsibility and imputation of intent onto the School Board. The most explicit expression of this was in the testimony of Maureen O'Leary, who noted that:

the facts are that under this plan—and these facts are from the LM website most recent data—that 204 students are being redistricted, 41 percent of those students are minorities; the district is less than 20 percent minority and 41 percent of the people being redistricting are minorities. 24 percent are on the school lunch program and the district is only between 5-7 percent on the school lunch program, depending on how you look at it.... I talked with many of you, and I know you didn't set out to do this, but here we are. And if you vote for this today, you are voting, fully informed, you are voting for a plan that has a disproportional impact on minorities and on low-income families. You are informed—you know this; by voting yes today you are saying this is okay for our district.

Id.

Aaron Williams, in his testimony, exhorted the board to "Google" the term "institutionalized racism", asking, incredulously, "You drew a line through the black community and you that that was right?" Id.

94. Public Interest Law Center of Philadelphia,
community claims. Although PILCOP did not ultimately represent the residents officially, submission of a written opinion and its continued counsel helped us, as residents, to continue believing in the validity of our claim. PILCOP, for its part, was also strengthened by the emergence of a pattern. There has been some overlap in the interested parties, and many believed that institutional, if not intentional, racism is evidenced in what they saw as a pattern, which also belies the notion that the complaints were petty. I have documented similar phenomenon among legal services lawyers and clients, in which each side helps to construct a narrative of right and wrong that is legitimate in the eyes of the public through their mutual creation and support of cognizable legal claims.95

Legal action has also been seen by social movement actors as a way to force public discussion where it has otherwise been shunted aside. As reported, LMVUE members believed that the School Board was not listening. After their decision had been made, appeals and protest to the School Board were arguably exhausted. Print and television media coverage had not had an impact, nor did editorials, picketing, or outreach to elected officials, and we received no acknowledgement by the School Board. Media coverage had also moved on, other subjects came up to be covered, and no new arguments were being made. Legal action was seen as an opportunity to force a court to hear our case. It was also a way to force the School Board to engage with us, even if it was in a mediated setting. This is similar to the process that early advocates of same-sex marriage used in the late 1970s, when the public agenda was not focusing on same-sex marriage, nor would gay rights organizations touch it for strategic reasons. Couples wishing to marry engaged private lawyers to bring suit. The courts had to engage with the substance of the argument; the relevant government officials were called to give an accounting, and gay men and lesbians and their advocates across the country were able to reference these cases.96 The cases had symbolic importance for participants as well as for others seeking similar redress across the country.

The symbolic importance of legal tactics is also in its galvanizing potential. In our community interest was flagging after the redistricting decision had been made. This was due in part to our lack of success. It was also a product of limited

http://www.pilcop.org/supps.html (last viewed Feb. 2, 2009) (noting that Blunt vs. Lower Merion School District was filed by the Public Interest Law Center of Philadelphia, individual African American students and their parents, the NAACP, and the local advocacy group Concerned Black Parents. The litigation has been supported, in part, by a grant from the Impact Fund. Id.
95. SHDAIMAH, supra note 20, at 33-38.
96. SARAT & SCHEINGOLD, supra note 53, at 84.
resources that indigenous community efforts often have, with no paid organizers, no resources, and no organizational infrastructure. Time had also drained organizing efforts in other ways. Specifically, the School Board decision affects children who are transitioning from middle school into high school—this process was beginning at the same time as the decision was made. This left some parents who had been adversely affected in the unfortunate position of having to make decisions based on the adoption of the slightly amended Plan 3R and counsel their children on a reality that they opposed. Some preferred to stop fighting in order to have certainty for their family and their children. Many also felt the need to expend any extra efforts that they might have in trying to understand how the transition would work. They also feared that their input into transition would be stymied if they were viewed by the School District as troublemakers. Some were just plain tired of fighting. We hoped that legal action would give rise to renewed media coverage, provide some hope for recourse, and validate the work of community activists. Legal action was viewed as a way to bide us a bit more time to regroup and gain necessary inspiration.

IX. COMMUNITY ORGANIZING AND LEGAL TACTICS: 
COMMUNITY VOICES

John Calmore asks whether “fluency with the law” is helpful or harmful. He and his students “struggle with this question.” I believe this question has no one answer. Like any other tool, law can be used to the benefit of community organizing or to its detriment; it may often be both simultaneously. We have different visions of what benefit is, to whom, and over what time frame. This can be the crux of the matter. Social movements and social movement organizations, particularly at the local community level, vary in power, homogeneity of participants, goals, and comfort with methods. Our group was not poor, but it did have limited fiscal and time resources. It was also relatively powerless vis-à-vis the establishment it challenged and thus shared much in common with other community organizations portrayed in the literature.

97. Robin S. Grenier & Morag C. Burke, No Margin for Error: A Study of Two Women Balancing Mothering and Ph.D. Studies, 13 THE QUALITATIVE REP. 581, 593-98 (2008) discuss how commitments push the “margin” that people have for managing workload; people who already have responsibilities such as child-regarding have a more limited margin of power (and time) to manage the “load” that new responsibilities bring.
99. Id.
In this analysis, legal action has more in common with community organizing than it does in most portrayals written by lawyers. Community organizing in the Alinsky model seeks to understand and then leverage power in support of a cause. It is conflictual more than conciliatory. It is more strategic than ideological in choice of method, insofar that community organizers seek to examine what will most benefit the cause rather than eschew certain forms of playing politics if they deem these, overall, to be to their benefit. Most community organizing efforts employ power analysis, which involves assessing where the levers of power are in a given struggle and how might these most effectively be pushed. The case study and analysis presented here suggest that those indigenous community organizers who chose to use legal actions are equally strategic. Whether and how a community organization engages lawyers are decisions likely to be considered carefully and strategically; they should not be assumed to be the product of a naive or ill-informed understanding of the legal process. Although our group may not be representative, the proliferation of inventive and resourceful strategies suggests that community organizations can think creatively about how to shape legal action. Reports of lawyers who wish to engage with community organizers in these endeavors, such as those described by Sameer Ashar in the work of innovative clinics at law schools, point to the readiness of lawyers to accept the challenges of working with community groups in a changing social, economic, and legal landscape. These reports recognize that lawyers and community organizations can work together to challenge power, and that community groups are more attuned to complex power dynamics and opportunities for resistance than has been previously acknowledged.

Community organizers need to know the way in which conflicting interests might constrain the activities of lawyers and what goals and commitments might compete with their interests as individual clients. Lawyers can assist advocates by informing them of such commitments. Advocacy groups, if they are fortunate to have choices, should weigh the extent to which they are willing to risk the clash of goals when hiring a lawyer. It should be noted that while such clashes might be most likely to occur with public

100. C. WRIGHT MILLS, supra note 3.
interest law practices, they can also occur with lawyers in private practice who may be acting as cause lawyers, as was the case with Sarah Weddington's representation of Norma McCor in *Roe v. Wade.* Lawyers and organizers should be cognizant of the potential for mutually beneficial relationships and willingness to explore possible payoffs. Lastly, organizers and lawyers can envision different strategies to assist each other that may stop short of official representation. These can contribute to more long-term working relationships that enhance mutual benefits over time.

Many of the portrayals of lawyers in the literature pay more attention to dependence on lawyers than to the mutual benefit that lawyers and community organizations can provide each other. There is too much focus on the power struggle as if that is always the biggest problem between lawyer and client, when it might be more fruitful to explore the collaborative work of lawyers and clients to challenge injustice and oppression. How can they use mutual power or how can they benefit each other? We should not underestimate what community groups can do for lawyers. Lawyers who envision their work as part of some greater good derive sustenance and inspiration from their work with community organizations or social movements, even dormant or nascent ones. Groups that are well-established can provide lawyers with a training ground and a respected clientele; a "real movement" provides lawyers with credibility. Nor should we underestimate the savvy of community groups and their strategic understanding of why they need a lawyer, as well as the dangers that lawyers and legal tactics present. Just because groups turn to lawyers does not mean that they believe that the law can solve problems. Indeed, many may agree with legal scholars that law may not be the best solution.

As an academic and educator, it is tempting to offer a neat and well-organized summary of recommendations. Many of the articles cited here offer creative suggestions that provide a useful repertoire of practices and approaches. Instead, I offer an anti-summary that refuses to give pat suggestions and models but forces us all to reflect deeply on the impact of legal tools when used in community organizing. From the perspective of a community member, the only rule that makes sense is a willingness to suspend any rules or preconceived notions of what kind of lawyering or collaboration is appropriate. This may even mean accepting a practice that appears to work against the goals

of community organizing in some broad or theoretical sense. Instead, we must ask: What makes sense to this community? What makes sense in this context? The largest source of disempowerment and oppression might be outside, not within, the relationship of a community organization's work with a lawyer. The context of indigenous community efforts makes a difference to the community that continues to exist after the problem is resolved. The community itself must be sustainable in the face of conflicts between indigenous organizers and others within their community. Indigenous community organizing perspectives demand critical examination of the dynamics of power, strategy, risks, benefits, and goals in any particular organizing effort. This is a democratic project with no clear end point; all decisions must be viewed as provisional as well as open to continuous reexamination and renegotiation.
APPENDIX A:
A BRIEF HISTORY OF THE PLANS FOR SOUTH ARDMORE.

Available at
http://www.narberthwalkstogether.info/2009/01/07/a-brief-history-of-the-plans-for-south-ardmore/

But we need more minorities at Harriton....

Plan 1

Plan 2

Plan 3

Plan 3R
APPENDIX B:
SIGNIFICANT EVENTS IN LOWER MERION SCHOOLS SINCE 1960.

Shaded Area indicates the community is adversely affected.

<table>
<thead>
<tr>
<th>Event</th>
<th>Year</th>
<th>Community (Median Household Income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ardmore Ave School closes</td>
<td>1963</td>
<td>Gladwyne ($160k)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Merion ($114k)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Wynnewood ($110k)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bala Cynwyd ($86k)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bryn Mawr ($80k)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ardmore* ($71k)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>North Narberth ($60k)</td>
</tr>
<tr>
<td>PA state mandated Narberth/ Lower Merion school district</td>
<td>1966</td>
<td>consolidation</td>
</tr>
<tr>
<td>consolidation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Narberth, Ardmore, Byrn Mawr, Ashland and Bala Schools</td>
<td>1978</td>
<td>closed</td>
</tr>
<tr>
<td>close</td>
<td>1981</td>
<td></td>
</tr>
<tr>
<td>Ashland School re-opens as Belmont Hills</td>
<td>1998</td>
<td></td>
</tr>
<tr>
<td>Harriton High School enlarged</td>
<td>2009</td>
<td></td>
</tr>
</tbody>
</table>

*This income combines North Ardmore and South Ardmore. North Ardmore residents have significantly higher property values, which
may raise the median income level, although it is likely a more accurate reflection than average income. South Ardmore has the highest proportion of students receiving subsidized school meals—another indicator of relative socioeconomic disadvantage. This chart was also prepared for Narberth Walks Together! http://www.narberthwalkstogether.info/, but it does not appear on the website (source on file with the author).