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Working for Justice in an Unjust System: Moving Beyond the Legal System, 55 UIC L. Rev. 251 (2022)

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WORKING FOR JUSTICE IN AN UNJUST SYSTEM; MOVING BEYOND THE LEGAL SYSTEM

KATHLEEN KERSH* & MATTHEW N. CURRIE**

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I. INTRODUCTION

We live in a world with unjust systems and structures; the traditional legal means—attorney-led litigation to address systemic issues or individual cases—to remedy such injustice are inadequate, by themselves, to create just systems and structures.¹ For example,

* Senior Attorney and Project Director at Advocates for Basic Legal Equality (“ABLE”) in Dayton, Ohio. Thank you to the organizations and individuals from the Coalition on Public Protection for your leadership, and for including ABLE in this process. Thank you to Ellis Jacobs and Matthew Currie for their mentorship in this work.

** Managing Attorney of the Housing and Community Economic Development Practice Group at ABLE and Adjunct Professor of Law at the University of Dayton School of Law. Thank you to the community leaders and organizations who allow me to work with them in addressing the issues discussed in this article, Kathleen Kersh for her friendship and collaboration, Jesse Carbonaro and the UIC Law Review for their review and edits of this article, and Leslie King whose ongoing support makes everything I do possible.

fifty years after Congress passed the Fair Housing Act “to put an end to inequities in our housing system and eliminate racial segregation in American neighborhoods – and guarantee that all people in America have the right to obtain the housing of their choice, free from discrimination” resulting from state-sanctioned policies, such inequities, and racial segregation remain.² Despite the fact that “some progress toward residential desegregation has been made” between 1970 and 2010, using one measure, “some metropolitan areas ceased being hypersegregated but others became hypersegregated[,]” with twenty-one cities remaining hyper-segregated in 2010.³ One of those cities is Dayton, Ohio, where the community lawyering work discussed in this article takes place.

Environmental justice through enforcement of Title VI of the Civil Rights Act of 1964 (“Title VI”) by the U.S. Environmental Protection Agency (“EPA”) is a second example that shows the failures of attorney-led advocacy to address historic inequity.⁴ When “racial discrimination and sociopolitical explanations . . . best explain present-day inequities” of hazardous polluting facilities more to communities of color, the law may naturally be looked at to provide a remedy.⁵ “Yet the [EPA], the lead federal agency in the environmental sector, has failed to enforce Title VI[.]”⁶

Access to health care and public housing desegregation are other examples of where the traditional legal means to remedy injustice have been inadequate. A Title VI alleging race-based discrimination failed to stop the closing of a hospital in a majority minority community in Dayton, Ohio.⁷ Even a favorable court decision does not necessarily create lasting change. For example, in

1. Matthew N. Currie, *Social Ecology and Lawyering in the Anthropocene*, 45 UNIV. DAYTON L. REV. 401, 405-07 (2020) (discussing how a community lawyering approach as an advocacy framework for lawyers concerned with social justice and our collective future community social change).

2. 42 U.S.C. § 3601 (2021); Proclamation No. 10177, 86 Fed. Reg. 19775, 071 (Apr. 11, 2021), www.whitehouse.gov/briefing-room/presidential-actions/2021/04/11/a-proclamation-on-national-fair-housing-month-2021/. [perma.cc/DJC3-KDZU]; See also RICHARD ROTHSTEIN, *THE COLOR OF LAW* (Liveright 2017) (Discussing the history of how the government and our courts upheld racist policies to maintain the separation of whites and black, and how the Federal Fair Housing Act provided modest enforcement to prevent future discrimination but did nothing to reverse or undo a century’s worth of state-sanctioned violations).

3. Douglas S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52(3) DEMOGRAPHY 1025, 1031-32 (2015).

4. See Marianne Engelman Lado, *No More Excuses: Building a New Vision of Civil Rights Enforcement in the Context of Environmental Justice*, 22 U. PENN. J. L. & SOCIAL CHANGE 281, 295-306 (2019).

5. *Id.* at 283.

6. *Id.* at 282.

7. Currie, *supra* note 1, at 406 (describing how a Title VI complaint filed with the Department of Health and Human Services to, in part, stop the demolition of a hospital in minority community failed to stop its demolition).

1985, a federal court in Toledo, Ohio ordered a public housing authority to adopt an Affirmative Action Plan (“AAP”), with a goal of remedying past public housing discrimination, as part of a consent decree in a case brought under the Fair Housing Act.⁸ While this ruling seemed like a victory at first, the judicial solution to remedy the racial segregation in public housing has been inadequate; as in the most recent court decision on the case, the court, itself, acknowledged that the goals of the AAP may never be reached.⁹

A pure litigation approach is also time-consuming and without clear, positive outcomes for the client and impacted community. In Dayton, a class action lawsuit was filed on September 16, 2008,¹⁰ to address contamination of a large groundwater plume of volatile contaminants, tetrachloroethylene (“PCE”) and trichloroethylene (“TCE”), impacting the McCook Field Neighborhood.¹¹ Trial in Federal District Court is not scheduled to begin until July 25, 2022,¹² while the ground water is still contaminated, and the impacted community is still dealing with clean-up of the

8. *Jaimes v. Lucas Metro. Hous. Auth.*, 1985 U.S. Dist. LEXIS 12980 (N.D. Ohio, Dec. 10, 1985).

9. *Grayson v. Toledo Metro. Hous. Auth.*, 2012 U.S. Dist. LEXIS 126483, *16-7 (N.D. Ohio, Sept. 6, 2012). The class representative filed a motion to modify the Affirmative Action Plan to address the realities defendants are now facing, and that full progress has not been made towards racial integration in the local public housing, a stronger focus on administering the housing choice voucher program, the racial makeup of public housing tenants has changed, and the public housing authority is rebuilding and repurposing inner city housing projects that were central to the original racial segregation. *Id.* at *2-3. The court denied the motion finding the Plaintiff could not show “progress toward the goal of desegregation is not being met.” *Id.* at *17. The court did state the Plaintiff

has shown that the AAP is not well suited to contemporary realities. The 3:1 and 1:1 ratios [in the AAP] are long outdated. Furthermore, the practical application of waiting lists, resident preference, and LMHA’s shifting focus (to [the housing choice voucher program] and to rebuilding troubled projects) likely means that LMHA could act in a completely fair, non-discriminatory, and non-segregationist manner and still never reach the point where every project’s ratio was within 2.5% of the system-wide ratio.

Id. at *17.

10. Amended Complaint at 2, *Terry Martin v. Behr Dayton Thermal Products, LLC*, 2011 U.S. Dist. LEXIS 103245 (S.D. Ohio, Sept. 16, 2008) (No. 3:08-cv-00326).

11. *Behr Dayton Thermal System VOC Plume Dayton, OH*, U.S. ENVTL. PROTECTION AGENCY, www.cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Healthenv&id=0510164 [perma.cc/4RCA-FK7S] (last visited Feb. 14, 2022) [hereinafter “Behr”].

12. *Martin*, *supra* note 10, Order granting Joint Motion for Scheduling Clarification Doc. 337 (July 8, 2021) (available on Pacer).

contamination and its impact on their lives.¹³

Legal systems have also failed to provide redress for communities facing police misconduct and other civil rights violations. Claims for damages for constitutional violations by police and other government actors are increasingly unwinnable as a result of the Supreme Court's expansion of the qualified immunity defense.¹⁴ Administrative complaints filed with federal agencies such as the U.S. Department of Justice are only effective if the presidential administration with authority over these administrative agencies will investigate them.¹⁵ Consent decrees—court orders directing a police department to make policy, training, or other changes without an admission of guilt or liability—are also subject to the political will of the presidential administration who must enter into and enforce them.¹⁶

13. See Section III. B., *infra*, at 38-42 ; see also *Behr*, *supra* note 11.

14. In order for a government actor to successfully assert the defense of qualified immunity, a court must determine: 1) whether “the facts that a plaintiff has alleged or shown make out a violation of a constitutional right,” and 2) whether the constitutional right was “clearly established” at the time of the defendant’s alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). The Supreme Court has increasingly narrowed the requirements a plaintiff in a civil rights case must meet to establish the second prong of the test: that the conduct of a government actor violated clearly established law. In *Wilson v. Layne*, the Supreme Court held that a plaintiff must point to either “cases of controlling authority in his jurisdiction at the time of the incident” or “a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful.” 526 U.S. 603, 617 (1999). In 2015, the Supreme Court further narrowed this definition, finding that an officer only violates clearly established law where an officer’s actions are unreasonable “beyond debate” under existing precedent. *Mullenix v. Luma*, 136 S. Ct. 305, 309 (2015) (finding a state trooper’s gunfire in a high-speed car chase that killed the driver was factually distinct from the cases cited by plaintiff, and thus not a violation of a clearly established right). In 2021, the Supreme Court found that even established circuit court precedent could not necessarily create a clearly established right. See *Rivas-Villegas v. Cortesluna*, 595 U.S. __ (2021) (per curiam) (slip op. at 5) (reversing the Ninth Circuit’s denial of qualified immunity to a police officer who placed his knee on a suspect’s back while handcuffing the suspect and removing a knife from his pocket because neither the plaintiff nor the Ninth Circuit identified Supreme Court cases that addressed facts similar to the plaintiff’s case.)

15. Kimberly Kindy, *With Federal Oversight in Short Supply, State AG’s Step in to Probe Troubled Police*, WASH. POST (Nov. 24, 2021), www.washingtonpost.com/politics/state-attorneys-general-pattern-practice-investigations-police/2021/11/23/e64642de-4191-11ec-a88e-2aa4632af69b_story.html [perma.cc/P2ZY-5H7K]. The Obama administration launched twenty-five investigations to determine whether a law enforcement agency’s conduct demonstrated a pattern or practice of race-based policing. *Id.* The Trump administration suspended these investigations. *Id.* The Biden administration resumed the pattern or practice probes in the spring of 2021. *Id.*

16. For example, the U.S. Department of Justice completed an investigation in 2017 finding the Chicago Police Department engaged in a deadly and unreasonable use of force, but the Trump administration declined to move forward with a consent decree. *Id.* In November 2018, Jeff Sessions “narrowly tailored” the federal government’s authority to pursue consent decrees, stating

Advocates for Basic Legal Equality, Inc. (“ABLE”) in Dayton, Ohio¹⁷ has endeavored to use all of these traditional legal tools, often with mixed results. One of the authors poured hundreds of hours litigating two racial profiling cases against state police only to lose on qualified immunity and other grounds. None of these legal avenues center the perspectives and leadership of impacted communities, and none of these avenues attempt to change a system that disproportionately victimizes Black, Latinx, and Native American people.¹⁸

In the immigration context, traditional legal remedies, such as applications for visas or deportation defense litigation, fail to address a fundamentally unjust immigration system. Antiquated immigration laws in desperate need of reform render many individuals—including those with significant family and community ties to the United States—ineligible for lawful immigration status.¹⁹ Many immigrants who are eligible for a visa or lawful permanent residence are stuck in lengthy administrative processing or visa backlogs that can last for decades or even a century.²⁰ As a result, many immigrants, particularly those without

that the power to resolve civil lawsuits against state or local government entities should rest with those entities. *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Government Entities*, U.S. DEPT. OF JUST. (Nov. 7, 2018). See also Joe Davidson, *Justice Department has a Tool to Make Police Forces Better. It's Not Using It*, WASH. POST (June 2, 2020), www.washingtonpost.com/politics/justice-department-has-a-tool-to-make-police-forces-better-its-not-using-it/2020/06/02/96caf940-a451-11ea-8681-7d471bf20207_story.html [perma.cc/5ECR-PJ4B] (discussing the Trump Administration’s narrowing of the federal government’s authority to engage in consent decrees with local police departments and the benefits of training requirements imposed by consent decrees).

17. ABLE is a non-profit regional legal services organization that provides high-quality legal assistance in civil matters to help low-income individuals and groups in Ohio. ADVOCS. FOR BASIC LEGAL EQUAL., INC., www.ablelaw.org [perma.cc/N3B8-25QC] (last visited Jan. 25, 2022). ABLE aims to help individuals and groups achieve self-reliance, equal justice, and economic opportunity. *Id.* ABLE is headquartered in Toledo, Ohio, and has offices in Dayton and Defiance, Ohio. *Id.* ABLE advocacy is organized by practice groups. *Id.* The work in this article is part of the Housing and Community Economic Development practice group. *Id.*

18. Taryn A. Merkl, *Protecting Against Police Brutality and Official Misconduct*, BRENNAN CTR. for Just. 3 (Apr. 29, 2021), www.brennancenter.org/our-work/research-reports/protecting-against-police-brutality-and-official-misconduct [perma.cc/2P4C-TPE6].

19. Section 201(c) [8 U.S.C. § 1151(c)] of the Immigration and Nationality Act enumerates visa categories for family-based petitions, but there are no visa categories for some immediate and closely related extended family members, such as a lawful permanent resident’s married child, grandchildren, or grandparents. 8 U.S.C. § 1153(a) (2021).

20. In 2019, the Cato Institute reported that more than 100,000 immigrants—twenty-eight percent of the family-sponsored and employment-based lines with quotas—waited a decade or more to apply for a green card in 2018. David J. Blier, *Immigration Wait Times from Quotas Have Doubled: Green Card Backlogs are Long, Growing, and Inequitable*, CATO INST. (June 18, 2019),

lawful immigration status, who are longstanding members of local communities, remain trapped in a cycle of poverty, forced to work in low-wage jobs with little access to public benefits or affordable healthcare.²¹ Yet Congress remains unable to pass legislation to reform this unjust system. The last broad sweeping immigration reform legislation was passed in 1986.²² With no real chance of a solution by the federal government, some immigrant communities and their allies have launched organizing campaigns to regain local power.²³

In the environmental context, the existing legal remedies have also proven inadequate to address the health and safety harms faced by low-income communities.²⁴ Existing legal frameworks failed to adequately address nearly all social justice issues, from the climate crisis to the closing of banks branches and hospitals.²⁵ The COVID-19 pandemic has further highlighted inequality and the

www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long#projected-future-wait-times [perma.cc/R6XU-KGHV]. In 2018, the Cato Institute reported that Indian workers admitted to the United States on an E-2 visa, an employment-based visa for individuals with advanced degrees, will have to wait 150 years to become lawful permanent residents based on the number of pending applications and the annual statutory visa allocation numbers for the E-2 category. David J. Bier, *150-Year Wait for Indian Immigrants With Advanced Degrees*, CATO INST. (June 8, 2018), www.cato.org/blog/150-year-wait-indian-immigrants-advanced-degrees [perma.cc/7RRN-LZE2].

21. The Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants, WHITE HOUSE COUNCIL OF ECON. ADVISORS (Sept. 17, 2021),

www.whitehouse.gov/cea/written-materials/2021/09/17/the-economic-benefits-of-extending-permanent-legal-status-to-unauthorized-immigrants/ [perma.cc/B3FV-KP2T].

22. Immigration Reform and Control Act of 1986, PUB. L. NO. 99-603, S. 1200, 99th Cong.

23. See Sibora Gjecovi et al., *Immigrant-Led Organizers in Their Own Voices: Local Realities and Shared Visions*, CATH. LEGAL IMMIGR. NETWORKS 2 (2006), www.cliniclegal.org/file-download/download/public/5184 [perma.cc/ZBL4-RQVS] (report on the organizing accomplishments of seventeen subgrantee organizations of the National Immigrant Empowerment Project, and discussing best practices for immigrant-led organizing campaigns, including leadership development, partnerships, and methods to track outcomes). For example, the Austin Interfaith Sponsoring Committee successfully organized immigrants to form an “education action team,” which led to a local referendum expanding access to affordable community colleges. *Id.* at 25. The Alliance of Citizens and Immigrants in Amityville, New York organized and advocated for the acceptance of a membership card as photo identification for a local bank, improving local community access to banking. *Id.* at 2. The Workplace Project in Hempstead, NY successfully organized a campaign to combat unpaid wages for day laborers. *Id.* at 29.

24. Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L. Q. 619, 620-21 (1992) [hereinafter Cole I]; see also Engelman Lado, *supra* note 4 (discussing why environmental laws and Title VI are inadequate to address racial disparities).

25. Currie, *supra* note 1, at 406.

limits of the legal system in remedying such growing inequality with social determinants of health, such as housing, occupation, and education, income, wealth gaps and other factors being “associated with more COVID-19 cases, hospitalizations, and deaths in areas where racial and ethnic minority groups live, learn, work, play, and worship.”²⁶ These realities should cause social justice attorneys to rethink their approach to achieving lasting social change.²⁷

The article uses a case-study approach to explain how the authors, both legal services attorneys at ABLE, have intentionally incorporated community lawyering tactics, heavily influenced by Luke Cole’s environmental justice advocacy, to support community-led advocacy initiatives. In describing specific case examples, the authors hope to give examples of specific strategies and tactics they employed, as well as share challenges they faced. The authors do not share these stories as perfect examples of community lawyering practice, but rather as tangible examples of how community lawyering tactics can be implemented, and to share lessons they have learned for future practice. These case examples show how attorneys can use community lawyering strategies to support client-identified and client-directed advocacy to build power in systems—policing and environmental justice—that historically fail to engage the communities they impact.

This article will first introduce the concept of client-empowerment and community lawyering and compare how these strategies differ from the traditional legal services model. Part III will then provide case examples of how the authors have used these models and principles in their client representation, using examples from the authors’ advocacy. Finally, Part VI of this article will discuss steps ABLE has taken to promote a community lawyering approach to legal services delivery.

II. BACKGROUND

A. Moving beyond the legal system to promote community empowerment

Community lawyering is a decades-old strategy stemming from the realization that the traditional legal framework does not change systems that oppress our client communities. Community lawyering is a legal services delivery model that addresses systemic inequality for vulnerable groups in our legal system by centering those vulnerable client groups in legal advocacy.²⁸ Attorneys may

26. *Health Equity Considerations & Racial & Ethnic Minority Groups*, CDC, www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html [perma.cc/5PGM-G3TJ] (last visited Feb. 1, 2022).

27. Currie, *supra* note 1, at 408-09.

28. Charles Elsesser, *Community Lawyering – The Role of Lawyers in the*

provide traditional case representation services, but the goal of the attorney's representation is to address community-identified issues and to assist the community group to build long-lasting capacity to identify, lead, and advocate on its own behalf.²⁹

Luke Cole³⁰ provided a foundation for many social-justice lawyers who realize that the law reinforces societal constructs of racism, poverty, xenophobia, and sexism that oppress our client communities.³¹ Cole wrote:

Poor people and people of color also understand that most problems faced by their communities are not legal problems, but political and economic ones. Even if the law is "on their side," unless poor people have political or economic power as well, they are not likely to prevail Using a legal strategy, rather than a political one, would likely fail these communities: a legal victory does not change the political and economic power relations in the community that led to the environmental threat in the first place.³²

Community lawyering leaders like Cole and Charles Elsesser have long criticized the efficacy of traditional litigation and other affirmative advocacy techniques in bringing about social change.³³ They challenge the legal services paradigm where the lawyer advocates for clients through litigation or policy advocacy designed to fix a specific, narrow legal problem, without any complementary advocacy to address the systemic issues and help the impacted community build power.³⁴ Of course, assisting individual clients in their cases is important. For example, a legal services attorney may notice clients coming to their office with consumer legal issues related to a predatory payday lending business. The attorney may assist those clients in resolving their consumer law issues, which is important to those clients. However, a reliance purely on individual "lawyer-centric" case representation means that community members remain dependent on legal services organizations' ability to take these cases—on an existing legal system that may not help the consumer and does not build community power to address future problems.³⁵

Social Justice Movement, 14 LOY. J. PUB. INT. L. 375, 376 (2013).

29. *Id.* (recognizing that a central tenet of community lawyering is "a recognition of the importance of leadership by organized constituent groups within the communities served").

30. Cole I, *supra* note 24, at 619.

31. *Id.* at 642. Laws reinforce oppression and disenfranchisement of vulnerable groups—including poor people, people of color, immigrants, women and others—in a variety of ways. *Id.* For example, Cole writes that environmental laws are not designed to protect impacted communities, and that "Environmental statutes actually legitimate the pollution of low-income neighborhoods." *Id.*

32. *Id.* at 648-49.

33. Cole I, *supra* note 24, at 667; Elsesser, *supra* note 28, at 381-82.

34. Cole I, *supra* note 24, at 668; Elsesser, *supra* note 28, at 382.

35. Elsesser, *supra* note 28, at 383-86; *see also* Luke W. Cole, *Macho Law*

In contrast, a community lawyering approach could work with client communities to support a campaign to address predatory payday lending practices, perhaps through a combination of coalition-building, organizing, policy or legislative advocacy, and impact litigation. In this model, the community drives the advocacy, identifying problems and deciding legal solutions. They build relationships with local officials, journalists, and others interested in championing issues for this community. Successful advocacy would not only address predatory payday lending practices but would also build advocacy capacity in the community to address other injustices.

Community lawyering, at its core, believes an organized, impacted constituency must lead advocacy to achieve meaningful change.³⁶ Social change, therefore, occurs “when people without power, particularly poor people or oppressed people, organize and recognize common grievances[, and] can only be lasting when it is lead and directed by the people most affected.”³⁷ Client groups lead the advocacy by identifying the issue, identifying their goals and desired outcomes, and working with the support of the attorney to build strategies and tactical decisions.³⁸ Litigation or other legal recourse is one type of a myriad of tactics client groups may use, and other tactics, such as organizing and media pressure, may be more impactful in achieving the client group’s goals.³⁹

*B. Cole’s Framework for Community Lawyering*⁴⁰

While community lawyering is not a new strategy, evolving societal understandings of systems that oppress our clients (such as racism, sexism, and xenophobia), as well as new technology and other tactics available to clients, bring new opportunities and challenges for a community-lawyering practice. Nevertheless, the essential questions for attorneys remain: first, how do we identify

Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy, 14 VA ENV. L. J. 687 (1995) [hereinafter “Cole II”] (discussing three models for advocacy and notes the how the “‘professional model’ concentrates power, decision making and activities in the attorney[]” compared to the “participatory model” and the “power model,” which center the community).

36. Elsesser, *supra* note 28, at 376.

37. *Id.* at 384.

38. Cole I, *supra* note 24, at 668.

39. *Id.*, at 667. “Environmental poverty advocacy can only be called lawyering for social change. Its practitioners see environmental issues as opportunities to build broad social movements that will ultimately address other issues. Its goal is not solely to win the battle at hand, but to empower the client community.” *Id.* at 661.

40. *See id.* (Discussing the centrality of client-group empowerment, education, and community-driven, movement-based, systemic advocacy to effectuate meaningful environmental legal changes in low-income communities).

cases and clients that will be successful within a community lawyering framework? And second, if we do identify those cases, how do we work with client groups to develop strategies and tactics that center client communities at the heart of the advocacy, rather than slipping back into the traditional attorney/client power differential? Cole provides a road map for responding to these two questions when discussing how to practice environmental poverty law, stating “environmental poverty lawyers must embrace three central tenets: client empowerment; group representation; and law as a means, not an end.”⁴¹ Drawing on three questions activists for social change have relied on when evaluating prospective strategies and tactics, Cole poses three questions for attorneys to address when considering potential strategies and tactics in community lawyering work:

Will it educate people?

Will it build the movement?

Will it address the root of the problem, rather than merely a symptom?⁴²

The first question is a complicated one, particularly for legal services attorneys.⁴³ Education and outreach have been at the center of the work at ABLE for decades. Many state, federal, and private grants require an educational or outreach component.⁴⁴ Many advocates have given know-your-rights presentations on a variety of topics. But these client education efforts traditionally involve a one-way education flow where a lawyer arrives at a community center or church to present legal information to clients and answer questions. Sometimes the attorney will give out pro-se forms so the attendees may use their knowledge to represent themselves as ABLE cannot do so. These educational workshops are important because they seek to provide resources for people to represent themselves where there are simply not enough legal services attorneys to represent them, but they do not necessarily empower clients to change a system. And while an attorney often times will learn about issues client communities face while conducting an educational presentation, the goal of these presentations is for the attorney to inform the clients about legal

41. *Id.* at 661. While Cole frames these tenets in terms of practicing environmental poverty law, they are applicable to any practice of lawyer for social change. *Id.*

42. *Id.* at 668.

43. *Id.*

44. *See, e.g.*, U.S. DEP'T OF J., OFF. OF VIOLENCE AGAINST WOMEN, OMB No. 1122-0020, OVW Fiscal Year 2022 Legal Assistance for Victims (LAV) Grant Program Solicitation (Jan. 25, 2022) www.justice.gov/ovw/page/file/1465596/download [perma.cc/CB3M-MH33] (identifying improving “outreach services” as a priority area for the Office of Violence Against Women).

rights and remedies, not for client communities to recognize and organize around common grievances or to discuss issues and strategize solutions with the attorney in a supporting role. Such a “Know-Your-Rights” approach can also fail to provide the support needed to build a movement that will create the lasting change legal services attorneys seek.

Cole’s second question, which addresses the importance of using legal representation to build a movement for change, is similarly not part of the typical legal services case acceptance calculus.⁴⁵ Of course, legal services attorneys wish their legal services representation will help clients overcome unjust societal and legal systems, such as racism, sexism, and xenophobia as they manifest in housing, public benefits, family law, and immigration cases. But the purpose of individual case representation is to find the best outcome in the current legal system for the client. Even successful impact litigation—litigation that aims to change law or policy and have an impact on a large number of people⁴⁶—is only valuable when favorable outcomes are actually enforced, and benefit affected communities. And without community involvement in the identification of the issue, litigation planning, and campaign building around the litigation, impacted communities’ power is not improved by the litigation outcome.

Most legal services attorneys well understand that traditional legal work addresses the symptoms of a problem and not the root cause, as Cole suggests with his third question.⁴⁷ Many legal services attorneys see their clients return with the same legal issues, and even realize that the legal victory in a client’s case did not improve their circumstances as much as they had hoped.⁴⁸ For example, based on the experience of the authors, an attorney may assist a tenant in fighting an eviction, only to have another eviction filed against him several months later. Another example, based on the authors’ experience, an attorney may assist a non-citizen in obtaining lawful immigration status and work authorization, but for a variety of reasons, the client is forced to stay in the same low-wage job and remains in poverty.

ABLE has always supported new and innovative approaches to how its advocates deliver services. And community lawyering is not an exception. However, it was not until 2017 with the creation of the Community Development Legal Corps (“Legal Corps”) that ABLE attempted to institutionalize this approach. This effort, and the legal work that resulted, recognizes the need to be responsive to community needs and to remain relevant.⁴⁹ In response to the

45. Cole I, *supra* note 24, at 668.

46. *Id.* at 664, n. 195.

47. *Id.* at 668.

48. Elsesser, *supra* note 28, at 380.

49. See Currie, *supra* note 1, at 412-13 (Discussing how, using the community lawyering approach, an attorney can successfully ensure their

funding opportunity from the Ohio Access to Justice Foundation for foreclosure prevention and community redevelopment grant, the Legal Corps is an attempt to provide advocacy that supports the efforts of neighborhood associations and community groups using a community lawyering approach.⁵⁰ This was ABLE's first formal acknowledgment of its support for community lawyering as a service delivery model and its attempt to institutionalize it within ABLE's practice group structure with the Legal Corps within the Housing and Community Economic Development Practice Group. The Legal Corps has adopted community lawyering as its service delivery model.⁵¹

There are important reasons for continuing to represent clients in individual cases, and many clients do benefit greatly from this representation.⁵² Addressing the “root cause” of an issue can feel overwhelming, particularly when our clients' problems are rooted in major cultural systemic issues like racism, xenophobia, and sexism, and the systems that drive these norms—governments and other large institutions—have far more resources and institutional stability than client groups. But this is all the more reason that client empowerment—“building the capacity of clients to take control of decisions affecting their lives”⁵³—should be the center of our lawyering work.

III. CASE STUDIES

A. *Case Study 1: Surveillance Technology Oversight Ordinance*

1. *Building the Coalition*

One example of community-driven advocacy involves diverse coalition building and community-led local legislative advocacy around surveillance technology affecting predominately Black and

organization remains relevant when responding to community identified legal needs; specifically, how responding to the legal needs to protesters after the police killing of John Crawford led to legal work to address food apartheid in a Dayton neighborhood).

50. ABLE Foreclosure Prevention and Community Redevelopment Grant Proposal to the Ohio Legal Assistance Foundation, at 3 (Jan. 17, 2017) (on file with author).

51. Section IV, *infra*, at 43-7.

52. Individual representation can also inform community lawyering work. Theresa Zhen writes about the importance of the “multi-modal model” at East Bay Community Law Center, where individual cases “directly inform our litigation and policy advocacy and generate a feedback loop whereby our clients' collective experiences actually create broad-based change.” Theresa Zhen, *Community Lawyering: Direct Legal Services Centered Around Organizing*, 9 CAL. L. REV. ONLINE 29, 30-31 (2018).

53. Cole I, *supra* note 24, at 657.

Latinx neighborhoods in Dayton, Ohio.⁵⁴ The work first started in the spring of 2020, right after the COVID-19 pandemic began in the United States. One of this article's authors, Kathleen Kersh, who had worked in the Latinx community for several years and was trusted by many community leaders,⁵⁵ received a series of calls regarding challenges the community was facing with the city agencies' COVID-19 protocols, which most agencies had not translated into Spanish.⁵⁶ Kersh and several Latinx community leaders began weekly zoom meetings to discuss their concerns and other COVID-related challenges the Latinx community was facing.⁵⁷

In these meetings, community leaders identified two "root" problems that were barriers to community advocacy: (1) a lack of grassroots advocacy capacity in the Latinx community⁵⁸ and (2) a lack of Latinx community participation, input, and influence over local government processes.⁵⁹ While several organizations already provided direct educational, faith-based, and social services to the Latinx community in Dayton, which resides predominately on the east side of the city,⁶⁰ none of them were specifically dedicated to

54. See Mawa Iqbal, *City of Dayton Working With Activists On Police Surveillance Tech Ordinance*, WYSO (Mar. 22, 2021), www.wyso.org/news/2021-03-22/group-works-with-city-of-dayton-on-police-surveillance-tech-ordinance[perma.cc/4MYB-WVER] (discussing the community-based coalition who advocated for the oversight ordinance, the history of surveillance in Dayton neighborhoods, and the ordinance process for approval of surveillance technology items).

55. Kersh directs a neighborhood-based community lawyering project at ABLE, Neighborhoods B.U.I.L.D. Dayton. Kersh built trusting relationships with many of Dayton's Latinx community members after years of conducting "Know Your Rights" presentations in Spanish at various community centers. She also represented many community members in individual immigration cases for over seven years. Most recently, she had co-counseled litigation successfully challenging the Ohio Bureau of Motor Vehicles's policy to deny driver's licenses to children of undocumented parents. As a result, many community leaders approached Kersh when Latinx youth were wrongfully denied driver's licenses, and some of the leaders began to trust her to listen to their concerns about issues with local and state agency policies.

56. For example, leaders voiced concerns from Spanish-speaking community members who had traffic court hearings scheduled but did not know whether they were supposed to attend the hearing because none of the court's COVID protocols had been translated into Spanish.

57. See email from Mary Alice Ordoñez to author (Mar. 31, 2020) (on file with author) (discussing COVID-19 related community concerns in Dayton's Latinx communities); email from author to Martha Jeannette Rodriguez et al. (Mar. 30, 2020) (on file with author) (planning a community COVID-19 response meeting and referencing a Spanish-language COVID-19 resource sheet to distribute to local grocery stores).

58. Latinos Unidos Board, Minutes for May 8, 2020 Meeting (on file with author).

59. Actualizades Locales En Respuesta A Covid-19/Coronavirus (Local Resources in Response to COVID-19/Coronavirus) (Mar. 3, 2020) (on file with author).

60. In 2020, the center of Dayton's Latinx community was St. Mary's Church

advocating for the civil rights of Latinx community members. These leaders incorporated Latinos Unidos, a former program from Dayton's immigrant-friendly city initiative, as a non-profit corporation. The group sought to provide a structure for the Latinx and other immigrant communities to identify and foster new leaders. They also wanted a forum to advocate for initiatives that would break the cycle of poverty and promote civil rights in the Latinx community.⁶¹

Kersh assisted the community leaders in filing articles of incorporation with the state of Ohio.⁶² She also assisted Latinos Unidos's executive board in drafting and passing bylaws that reinforced the grassroots focus of the organization.⁶³ By providing direct representation for this group in their incorporation and bylaws drafting, she helped the group build their movement to create the capacity to advocate for their community. This transactional representation further built trust between Kersh and Latinos Unidos. The attorney was invited to attend regular board meetings where community leaders-turned-board-members identified specific advocacy areas and issues they wanted to address.

in the Twin Towers neighborhood, which offered mass in Spanish and housed the Hispanic Catholic Ministries social services program. ST. MARY CATH. CHURCH, www.stmarydayton.org/parish_staff.php [perma.cc/KH34-TH3E] (last visited Feb. 12, 2022). El Puente, an educational center for children of Spanish-speaking parents, was also located on the church grounds. See EL PUENTE EDUC. CTR., www.elpuentedayton.org/ [perma.cc/WG6U-C3S6] (last visited Feb. 12, 2022) (stating that mission of El Puente is to serve as a "connection point for Latino students and family members to...increased integration into the Dayton community"). The church is also across the street from Ruskin Elementary, the only public school in Dayton that offers a dual language English/Spanish program. Lewis Wallace, *In Dayton, A Dual Language Program Helps Students With Limited English*, WYSO (Apr. 13, 2015), www.wyso.org/news/2015-04-13/in-dayton-a-dual-language-program-helps-students-with-limited-english [perma.cc/DRW9-N3KF].

61. Dayton's Latinx and immigrant communities are not monoliths and are represented by individuals with varying educational, professional, and socioeconomic backgrounds. The goal of the Latinos Unidos board was to build advocacy capacity for those Latinx individuals and families living in poverty in the City of Dayton. U.S. Census data shows that in 2018, approximately sixty-three percent of the Hispanic or Latino population in and around the Twin Towers neighborhood live in poverty, compared to forty-three percent of the White/not Hispanic or Latino population. See 2018: American Community Survey 5-Year Estimates (ID: B17020H, B17020I), U.S. CENSUS BUREAU (last visited Mar. 1, 2022) (showing numbers of White Hispanic/Latino and White Alone, Not Hispanic or Latino residents in Census Tract 22 whose income is below the poverty level).

62. LATINOS UNIDOS DAYTON, ARTICLES OF INCORPORATION (Jul. 24, 2020), <https://bizimage.ohiosos.gov/api/image/pdf/202020504258>.

63. LATINOS UNIDOS DAYTON, BYLAWS (2020) (on file with author).

2. *Advocating for Police Accountability*

One area in which Latinos Unidos identified as an advocacy focus was the relationship between local law enforcement and the Latinx community. Later in the Spring of 2020, Dayton Police Department (“DPD”) started a pilot surveillance program, deploying approximately thirty fixed-site license plate reader cameras in the Twin Towers neighborhood.⁶⁴ DPD chose the Twin Towers neighborhood because of resident enthusiasm over increased surveillance as a means to combat property crimes.⁶⁵ Latinos Unidos board members, many of whom worked, lived, or worshipped in the Twin Towers neighborhood, were incensed that they did not know of any Latinx community leaders who had been consulted, even though Twin Towers was the historic center of the Latinx community in Dayton.⁶⁶ The board was also concerned about with whom the police department shared the data, particularly since other cities had shared automated license plate reader (“ALPR”) equipment with immigration authorities to track and arrest undocumented individuals.⁶⁷

The Latinos Unidos board met with the city commissioner and chief of police who were instrumental in Dayton’s immigrant-welcoming initiative.⁶⁸ After the meeting with Latinos Unidos, the Chief ordered the cameras to be taken down.⁶⁹

While Latinos Unidos celebrated this “win,” the license plate reader cameras were a symptom of a larger issue the group had previously identified: a lack of Latinx community-based participation, input, and influence over local government decisions that directly affected their community. In fact, the root of this problem revealed itself weeks after this successful meeting, when the Dayton Police Department announced they had obtained approximately \$260,000 in funding to permanently install license plate reader cameras across the city.⁷⁰ Once again, Latinos Unidos

64. Parker Perry, *Police test license plate readers*, DAYTON DAILY NEWS (May 5, 2020), www.pressreader.com/usa/dayton-daily-news/20200505/281492163483677 [perma.cc/TA74-W9J4].

65. *Id.*

66. Sarah Holder & Fola Akinnibi, *Suburbs of Surveillance*, BLOOMBERG CITY LAB (Aug. 4, 2021), www.bloomberg.com/news/features/2021-08-04/surveillance-startup-brings-police-tech-to-neighborhoods [perma.cc/AE5U-QM7N].

67. Vasudha Talla, *Documents Reveal ICE Using Driver Location Data From Local Police for Deportations*, ACLU (Mar. 13, 2019), www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/documents-reveal-ice-using-driver-location-data [perma.cc/2FTD-9T46].

68. *See My Story: Chief Richard Biehl*, WELCOME DAYTON, www.welcomedayton.org/my-story-chief-richard-biehl/ [perma.cc/72EA-EVMG] (last visited Jan. 27, 2022).

69. Holder & Akinnibi, *supra* note 66.

70. Cornelius Frolik, *Neighborhoods want better safety, but license plate*

board members felt that the city—specifically, the police department—had made a major surveillance technology decision without proper influence or participation of the people who would be some of the most impacted by the technology.⁷¹

Meanwhile, on the west side of the city, many leaders in Dayton’s Black community shared similar concerns about the Dayton Police’s implementation of the ShotSpotter gunshot detection equipment.⁷² The equipment had been purchased in 2019 after several meetings with some community members.⁷³ However, in the years that followed, concern arose in the community about whether the ShotSpotter was ineffective at crime reduction and if this technology actually resulted in warrantless searches and seizures, largely of Black men.⁷⁴

When the City renewed its contract with ShotSpotter, it increased the funding to the program to install more devices throughout west Dayton.⁷⁵ The community was divided on the ShotSpotter expansion: one group of community members organized rallies, drafted a petition that received over 320 signatures, conducted media interviews speaking out against the funding increase, and testified against the ShotSpotter at

readers controversial, DAYTON DAILY NEWS (Nov. 13, 2021), [www.daytondailynews.com/local/neighborhoods-want-better-safety-but-license-plate-readers-controversial/BN63Q4RPWNFXFFTUI4ZLOUITUXI/\[perma.cc/E9Z4-C3EW\]](http://www.daytondailynews.com/local/neighborhoods-want-better-safety-but-license-plate-readers-controversial/BN63Q4RPWNFXFFTUI4ZLOUITUXI/[perma.cc/E9Z4-C3EW]).

71. Drew Harwell, *License plate scanners were supposed to bring peace of mind. Instead, they tore the neighborhood apart*, WASH. POST (Oct. 22, 2021), [www.washingtonpost.com/technology/2021/10/22/crime-suburbs-license-plate-readers/\[perma.cc/X3AS-FG8A\]](http://www.washingtonpost.com/technology/2021/10/22/crime-suburbs-license-plate-readers/[perma.cc/X3AS-FG8A]).

72. The ShotSpotter is a gunshot detection technology that uses acoustic sensors (microphones) to detect sounds that resemble gunshots. See Cornelius Frolik, *Dayton Approves Controversial Gunshot Detection System*, DAYTON DAILY NEWS (Nov. 24, 2020), [www.daytondailynews.com/news/dayton-considers-extension-for-controversial-gunshot-detection-system/AI7P2RO5IJGSDPQVTKC33JLMUQ/\[perma.cc/ZS3X-RYP3\]](http://www.daytondailynews.com/news/dayton-considers-extension-for-controversial-gunshot-detection-system/AI7P2RO5IJGSDPQVTKC33JLMUQ/[perma.cc/ZS3X-RYP3]) (discussing Black Lives Matter Dayton and other community members’ criticism that the ShotSpotter system in Dayton is “an unnecessary form of surveillance in predominantly Black neighborhoods that community members have not asked for and do not want”). The acoustic sensors are placed in a community and, when an alleged gunshot is detected, send police dispatchers alerts pinpointing the location where the alleged gunshot occurred so police officers may be dispatched to that area. *Id.*

73. *Id.*

74. *Id.*; see also Mawa Iqbal, *Shotspotter Generates Thousands Of Alerts In Dayton, But Officers Find Few Crimes*, WYSO (October 4, 2021), www.wyso.org/local-and-statewide-news/2021-10-04/shotspotter-generates-thousands-of-alerts-in-dayton-but-officers-find-few-crimes [perma.cc/924Y-ZB6L] (discussing the Dayton Police Department’s use of ShotSpotter technology in the Northwest Dayton area, a predominately Black community, and resident concerns over harassment by police officers out on ShotSpotter calls).

75. *Id.*

Commission meetings.⁷⁶ Opponents of the ShotSpotter criticized the City for ignoring “serious concerns” about the ShotSpotter from leaders of impacted, predominately Black communities in west and northwest Dayton.⁷⁷ In the end, four of the five commissioners voted in favor of the ShotSpotter expansion.⁷⁸

Latinos Unidos’s advocacy around ALPRs on the east side of Dayton, and community advocacy around ShotSpotter on the west side of Dayton are both examples of community organizing campaigns to effectuate change through organizing and grassroots advocacy. Individuals were mobilized around a certain “symptom” of a much larger problem but did not address the root cause, which was the lack of transparency, political accountability, and community participation in local government decisions around policing. Also, these previous campaigns were largely focused in neighborhoods on the east side *or* the west side of Dayton. Dayton is a hyper-segregated city. Up to this point, cross-city, community-based collaboration had been rare or nonexistent.⁷⁹ Community members identified the need for a broader, cross-city campaign that would build lasting community power.⁸⁰

76. Frolik, *supra* note 72.

77. Jared Grandy, *Petition: Dayton Says NO to ShotSpotter – Stop Over-Policing Us and Start Investing in Us*, ACTION NETWORK (Nov. 24, 2020), www.actionnetwork.org/petitions/dayton-says-no-to-shotspotter-stop-over-policing-us-and-start-investing-in-us [perma.cc/D65V-NAAE].

78. Iqbal, *supra* note 74. Darryl Fairchild, the Dayton commissioner who voted against the renewal of the ShotSpotter contract, stated that funding for the ShotSpotters should have instead addressed “root causes” of violence by investing in programs that make neighborhoods safer and healthier, such as more green spaces and youth programs. *Id.*

79. Massey & Tannen, *supra* note 3, at 1028.

80. Dayton, like many cities, had hosted several protests in the spring of 2020 around the killings of Black individuals by police officers. *George Floyd protests: Quiet streets after teargas deployed, curfew enacted in Dayton*, WHIO (May 31, 2020), www.whio.com/news/local/protest-take-place-downtown-dayton-response-death-george-floyd/FIBDGVDPFCSLFPL2BPRQ6RJ6I/ [perma.cc/QFE7-2M7T]. The City of Dayton launched a police reform initiative with several working groups. *See Police Reform*, CITY OF DAYTON, www.daytonohio.gov/policereform [perma.cc/5ZAV-YXSF] (last visited Jan. 27, 2022) (describing Dayton 2020 Police Reform Process and role of working groups). This national movement undoubtedly helped drive momentum around the coalition’s local campaign. *See* Community Letter to Mayor Nan Whaley et al. (Sept. 30, 2020) (on file with author) (discussing use of surplus military equipment at recent Black Lives Matter protests). But in meetings with the attorneys, the coalition identified an unmet need for local, cross-city, community-driven advocacy to address transparency, accountability, and public participation in local government decisions about policing. *See id.* (describing the need for a process to incorporate citizen input on police department acquisition and use of surveillance technology items).

3. *Supporting Community Coalitions in Identifying the Root of the Problem and How to Address It*

In late summer 2020, Kersh and ABLE attorney Ellis Jacobs, who worked with Black Lives Matter Dayton and the Dayton Unit NAACP, scheduled a virtual meeting for these groups to meet and talk about potential strategies to increase community participation and influence in local government decisions about policing.⁸¹

After listening to community concerns, the attorneys worked with the groups to identify legal solutions that, as Cole notes in his second question, would address the root of the community-identified problems, rather than the symptoms.⁸² The attorneys introduced a strategy to advocate for a city ordinance that would establish a process to mandate community participation and provide political accountability in new and existing surveillance technology used by the city. Using the American Civil Liberties Union's Community Control over Police Surveillance ("CCOPS") sample ordinance as a model,⁸³ the ordinance would address the core issues the community had identified: lack of transparency and accountability and exclusion of affected communities in policing decisions, by creating a process where the police had to request approval for new technology or new uses of existing technology.⁸⁴ The ordinance would promote transparency and accountability by imposing reporting requirements on the police that mandated the disclosure

81. Over time, representatives from additional partner organizations joined the coalition, including the League of United Latin American Citizens Dayton Chapter, Hispanic Catholic Ministries of Dayton, the Dayton Hispanic Chamber, Leadership for Equality and Action in Dayton, the Miami Valley Immigration Coalition, and individual community activists. See Coalition letter to Dayton Mayor Nan Whaley et al., (May 11, 2021) (on file with author) (letter signed by Coalition representatives from these communities). The geographic, racial, ethnic, and organizational diversity represented in this coalition boosted the group's advocacy power and ensured that interests of many communities, including the Black, Latinx, and disability community, were represented. *Id.*

82. Cole I, *supra* note 24, at 668.

83. One of the attorneys, ABLE Senior Attorney Ellis Jacobs, had previously worked with the ACLU on a surveillance technology oversight ordinance using its CCOPS model bill. Jacobs had worked with community groups in a neighboring village to advocate for the passage of a CCOPS bill. See *Community Control Over Police Surveillance (CCOPS) Model Ordinance*, ACLU, www.aclu.org/legal-document/community-control-over-police-surveillance-ccops-model-bill [perma.cc/7838-2KR5] (last visited Jan. 28, 2022) [hereinafter *CCOPS*] (ACLU model ordinance language). Over twenty other jurisdictions have adopted CCOPs ordinances. See Chad Marlow, *The People, Not the Police, Should Decide If and How Surveillance Technologies Are Used In Their Communities*, ACLU (May 25, 2021), www.aclu.org/news/criminal-law-reform/the-people-not-the-police-should-decide-if-and-how-surveillance-technologies-are-used-in-their-communities/ [perma.cc/7SV7-HBQ7] (noting that Dayton and Detroit are the twentieth and twenty-first cities, respectively, to adopt CCOPS ordinances).

84. DAYTON, OH, CODE OF ORDS., § 34.11(a) (2021).

of the purpose of the technology and its impact on affected communities, including communities of color and immigrant communities.⁸⁵

The coalition of community organizations, which included Black Lives Matter Dayton, Dayton Unit NAACP, Latinos Unidos, Hispanic Catholic Ministries of Dayton, the Dayton Hispanic Chamber, and Leadership for Equality and Action in Dayton, named themselves the Coalition on Public Protection (“the Coalition”),⁸⁶ decided to focus on advocating for the oversight ordinance as their main strategy because they felt that such advocacy would allow them to build a movement to educate the community around public participation in policing decisions, and, if passed, codify a process for future community participation in policing decisions.⁸⁷ The coalition asked the attorneys to support them in the ordinance advocacy process. Such policy advocacy is part of typical legal services delivery model, but the attorneys used a community lawyering approach by centering the coalition in every step of their advocacy, including issue identification and strategy decisions.

4. *Educating the Client Coalition on Surveillance Ordinance Policies*

To begin the ordinance advocacy process, the attorneys reviewed dozens of ordinances, annual reports, and use policies from local governments around the country, such as Berkeley, California,⁸⁸ Davis, California,⁸⁹ and Yellow Springs, Ohio.⁹⁰ They synthesized the information in each ordinance, identifying how each locality addressed key aspects of the ordinance, such as annual reporting requirements, treatment of existing technology, notice requirements for the public hearing, use of technology in exigent circumstances, and data-sharing policies.⁹¹ The attorneys presented

85. §§ 34.10(1), 34.10(4)(f).

86. Frolik, *supra* note 72.

87. Iqbal, *supra* note 74.

88. BERKELEY, CA, MUN. CODE, § 2.99 (2018).

89. DAVIS, CA, MUN. CODE, § 26.07 (2018).

90. YELLOW SPRINGS, OH, MUN. CODE, § 607 (2018).

91. It is important to note that different Coalition members brought different knowledge bases because of their personal backgrounds, and sometimes were more knowledgeable than the attorneys about specific issues necessary for the campaign. For example, one Coalition member was a former police chief who provided expertise about typical use of surveillance technology, how policies are passed, and the role of the Fraternal Order of Police in policing culture. Another Coalition member was very familiar with the Commission meeting process. The attorneys’ role was to educate the Coalition on best practices and valuable language to include to protect privacy rights, to introduce the clients to national experts who could further educate the Coalition about trends in surveillance technology. As the Coalition progressed, members found roles contributing their strengths, rather than solely relying on the attorneys’

these different approaches to the coalition at a regular virtual meeting, and the coalition discussed each point. From these discussions, the attorneys worked with the coalition to develop a community priorities statement for the ordinance, which listed specific community demands for the ordinance.⁹² The Coalition, through individual members' connections and the attorneys' professional relationships, identified several members of the local government who were interested in supporting the ordinance. The group continued communication with the Commissioner who had worked with Latinos Unidos around the ALPR initiative, and who had offered to champion the ordinance.

ABLE attorneys worked with the Commissioner to arrange a meeting between coalition representatives and members of the City Commission and their staff, law department staff, and staff from the mayor's office. Where, in traditional legal services model, attorneys might have attended this meeting to speak on behalf of their clients, the Coalition members presented their own community-identified goals for the ordinance to the City officials and the attorneys were there to support the Coalition, consistent with a community lawyering model. In communicating the need for the ordinance to city officials, Coalition members emphasized the importance of community participation and political accountability as key values the ordinance would address.⁹³ The importance of that meeting was threefold: first, it was the first time the coalition—whose members may have had relationships with individual City representatives from the city through previous work—presented itself as a unified group with a specific purpose (advocating for the surveillance oversight ordinance); second, the group made a formal request for the support of elected officials and their staff; and third, the group presented its priorities for the ordinance. The creation of this priorities statement required coalition members to familiarize themselves with key aspects of the ordinance and consider and

knowledge.

92. Latinos Unidos et al., *Community Points for Surveillance Technology and Surplus Military Equipment Ordinance* (Dec. 10, 2020) (on file with author).

93. The Opportunity Agenda, a national organizing and advocacy communications organization, describes shared values as the basis for persuasive advocacy. "Communications research shows that audiences are more receptive to unfamiliar arguments when they are framed by shared values." *A Communications Toolkit*, OPPORTUNITY AGENDA, 14 (May 6, 2019), www.opportunityagenda.org/sites/default/files/2019-05/2019.05.06%20Toolkit%20Without%20Comic%20Book.pdf [perma.cc/YKB9-F6QR]. For example, in discussing equal opportunity for higher education, the term "affirmative action" is a jargon term that holds no meaning for many people, while discussing the shared value of "equal opportunity for all and the importance of diversity to a [twenty-first] century education . . . we can then work through the conversation, leading audiences to why removing barriers to equal opportunity is important and why affirmative action policies are necessary." *Id.*

determine their positions, values, and priorities on each key point. In presenting these demands to City officials, who were not yet familiar with the specifics of the ordinance, the Coalition developed a set of substantive knowledge and educational skills they previously did not possess and established control of the narrative around the need for surveillance technology oversight. In so doing, the community priorities statement was key to educating Coalition members, empowering them to then educate the City on their demands, and building power in the movement.

5. *Building the Movement Through Community and Media Engagement*

After deciding on key language and priorities for the ordinance, the Coalition, along with the attorneys, sought to build the movement around the ordinance by engaging the constituencies of the organizations represented by the coalition. ABLE attorneys worked with coalition members to launch a series of virtual webinars on surveillance technology and the goals of an oversight ordinance.⁹⁴ In the beginning of the campaign, ABLE attorneys invited national experts to speak about how surveillance technology is used by local law enforcement and potential impacts on civil liberties. Coalition members spoke about why community participation and political accountability around surveillance technology is important in Dayton communities.⁹⁵ As the campaign progressed, individual coalition members developed expertise on the ordinance language and process and spoke as substantive experts in some of the later webinars.

Coalition members and attorneys invited local media to attend the webinars to amplify the movement around the ordinance.⁹⁶ Media campaigns are a setting in which traditional attorney/client power dynamics can play out, and where attorneys must exercise restraint to not coopt the narrative from community members. In this campaign, the ABLE attorneys attempted to speak with the media only to provide legal context for the ordinance. The ABLE attorneys tried to refer all journalists to one or more coalition

94. See Latinos Unidos, *Police Surveillance & Military Equipment: Transparency & Accountability*, FACEBOOK (Jan. 12, 2021), www.facebook.com/events/495868021382238?ref=newsfeed [perma.cc/5H9E-ATJ3] (invitation to Jan. 14, 2021 webinar); Latinos Unidos, *Lunch and Learn: Surveillance Technology and Surplus Military Equipment*, FACEBOOK (Mar. 10, 2021), www.facebook.com/events/844359849743365?ref=newsfeed (invitation to Mar. 17, 2021 webinar); Latinos Unidos, *Police Surveillance Technology Transparency Ordinance: What is Next? Lunch and Learn Webinar*, FACEBOOK (June 2, 2021), www.facebook.com/events/154474473263138/?ref=newsfeed (invitation to June 11, 2021 webinar).

95. *Id.*

96. See e.g. Iqbal, *supra* note 74 (discussing the Coalition's Mar. 17, 2021 virtual lunch and learn webinar).

members to speak about the community-driven values behind the ordinance and discuss how the movement had been built. It was sometimes challenging to navigate the community-lawyering role in the media campaign component: short reporting deadlines meant that reporters were not always sure they would be able to interview additional coalition members, and coalition members—particularly in the beginning of the campaign—often requested preparation sessions with attorneys, which take time. A media campaign is undoubtedly an important part of many organizing campaigns, which is not a legal skill that attorneys are traditionally taught in law school. However, when aware of these concerns, attorneys can try to overcome timing and other challenges⁹⁷ and will allow the client to develop a skill set that will last past the advocacy on the current issue.

ABLE attorneys worked with the coalition to draft a proposed ordinance, using the community priorities statement, the ACLU CCOPS ordinance,⁹⁸ and other local ordinances as guides.⁹⁹ Over the course of approximately eight months, ABLE attorneys met with the City's legal department to negotiate the terms of the ordinance. ABLE attorneys would bring each change to the Coalition at weekly meetings for discussion and review to ensure the coalition's participation in the ordinance drafting process. The Coalition would consider the changes, discuss their reactions, and achieve consensus on whether they could accept the city's new language or not. If they did not accept specific language, the attorneys were sent back to relay this to the law department. This process continued for months. As the ordinance process progressed, Coalition members became more comfortable identifying their main priorities and evaluating new language from the city to determine

97. The Coalition and the attorneys learned several best practices for media relations in this campaign. First, it is crucial to have coalition members develop their own, independent relationships with journalists. Journalists, in this author's experience, appreciate and sometimes prefer communicating with impacted community members, but do not always know to whom they should reach out, particularly national journalists. An attorney can support the community by introducing leaders to journalists and encouraging coalition members to share their media contacts and experiences with each other. Second, it is important to develop a list of community priorities and/or talking points at the beginning of the campaign, and for the group to go back and refer to it throughout the campaign to become familiar with the coalition's priorities. In this campaign, the community priorities statement was long, but the attorneys, at the direction of the group, created a two-page statement in support of the surveillance technology ordinance that coalition members cited and quoted to the media, at public speaking events, and at community education events throughout the campaign.

98. *CCOPS*, *supra* note 83.

99. BERKELEY, CA, MUN. CODE § 2.99; DAVIS, CA, MUN. CODE § 26.07; YELLOW SPRINGS, OH, MUN. CODE § 607; CAMBRIDGE, MASS., MUN. CODE, § 2.128 (2018); MADISON, WIS., MUN. CODE § 23.63 (2020).

whether it was contrary to those priorities.¹⁰⁰ The attorneys found themselves explaining the city's language less as the Coalition's understanding of surveillance technology terms and mastery of their community priorities grew.

To be sure, the Coalition compromised some of its original priorities, such as limiting the scope of the ordinance to cover technology used only by the police department.¹⁰¹ When the attorneys received new language from the city that seemed to change the scope or impact of the ordinance, the Coalition would frequently revisit their community priorities list and evaluate whether the change ultimately impacted those priorities. The ultimate litmus test for the Coalition was whether a change impacted the transparency, accountability, and community engagement goals they set at the beginning of the ordinance campaign. And there were certain issues the Coalition refused to concede, including the application of the ordinance to existing surveillance technology.¹⁰²

After several months of negotiations, the City was unwilling to require that existing technology that is used in a different way or on a different scale be subject to the public hearing process in the ordinance.¹⁰³ The Coalition felt that technology that was expanded to much greater use (for example, purchasing one hundred license plate reader cameras where only one or two had been previously used) was such a major change that the Coalition's community participation and accountability priorities would be compromised if such technology was not subject to the public hearing process.¹⁰⁴ The Coalition, through the attorneys, voiced these concerns to the City Commissioner and other city officials, who ultimately backed the Coalition on the inclusion of certain types of existing technology in the public hearing and approval process. The city ultimately agreed and added language to the ordinance that would subject existing surveillance technology used in a different scope, scale, or manner to the public hearing process.¹⁰⁵

Coalition members also divided up other responsibilities based

100. Areas of disagreement between the Coalition and the police/City were how to address the use of surveillance technology in exigent circumstances, what surveillance technology should be exempt from the ordinance, and whether surveillance technology the police were already using should go through the approval process.

101. DAYTON CODE § 34.09 (2021).

102. § 34.12 (2021).

103. Surveillance Technology Oversight Ordinance Draft (Mar. 31, 2021) (on file with author).

104. Email from author to John Musto (Mar. 31, 2021) (on file with author).

105. See DAYTON, OH, CODE § 34.11(a)(2) (2021) (stating that the Commission "shall" review a request by the Dayton Police Department at a public hearing with notice and the opportunity to comment prior to ". . . using existing Surveillance Technology for a purpose, scope, scale or in a manner contrary to the use policy for that technology or the Surveillance Impact report . . .").

on their skills and experiences: some focused on public education at coalition webinars and other speaking engagements, others hosted rallies around other events and made space for coalition members to speak to the community about the ordinance, others coordinated a communications campaign, compiling contact information from interested community members and sending out emails updating the community on the progress of the ordinance, and others continued to work with the media.

The Surveillance Technology Oversight Ordinance passed the Dayton City Commission with a unanimous vote on May 12, 2021.¹⁰⁶ The ordinance empowers the community to influence policing decisions in several ways. First, the police are now required to request approval from (the elected) City Commissioners for the acquisition of new technology or the expansion of existing technology.¹⁰⁷ Second, such approval can only be given after a full public hearing at a regular Commission meeting that requires thirty-days' notice and the opportunity for in-person and written testimony, which must be considered before Commissioner's approve or deny any technology request.¹⁰⁸ Third, every time the police request approval for a technology item, they are required to submit a surveillance impact report detailing the technology's potential impacts on civil rights and civil liberties, financial impact, and impact on crime reduction, supported by data.¹⁰⁹ The police are also required to summarize the groups they contacted to gauge community interest in the technology, and the ordinance specifically requires them to report on engagement with communities of color and immigrants.¹¹⁰ Fourth, the police must draft and present annual reports to the Commission at a Commission meeting disclosing each type of surveillance technology used, its purpose, and providing data about the item's efficacy and potential impacts on civil rights.¹¹¹ The ordinance provides for specific thirty-day notice requirements before the public hearing and before the annual report is presented at Commission meetings, to give the public sufficient time to review, comment, and contact their elected officials regarding the proposal or report.¹¹² Finally, the ordinance requires notice of all requests for approval, policies, and annual reports to be sent via email to community members who sign up through the City's update notification system.¹¹³ Each of these provisions in the ordinance sought to address the root problem identified by the coalition: to promote transparency and community

106. DAYTON, OH, CODE §§ 34.09-34.39 (2021).

107. § 34.11(a) (2021).

108. §§ 34.11 (b) & (d) (2021).

109. § 34.10(4) (2021).

110. § 34.10(4)(f) (2021).

111. § 34.10(1) (2021).

112. § 34.14(2021).

113. § 34.10(6)(g) (2021).

participation in local government policing decisions about policing.

Advocating for the passage of the ordinance was an important strategy, but it was not the goal in itself. In order for the ordinance to address the root issue—transparency, accountability, and community participation in local government decisions about policing—the ordinance must *actually* work in a way that effectively promotes community input. After the ordinance was passed, attorneys obtained and analyzed implementation policies, including a general surveillance technology policy¹¹⁴ and specific use policies for existing surveillance technology such as body cameras¹¹⁵ and automated license plate readers,¹¹⁶ that the City adopted. The attorneys and one community leader each reviewed a policy against the requirements of the ordinance and identified areas where certain ordinance-required information was not provided or adequately addressed. Each individual presented the policy with their findings to the group, who discussed concerns and what recommendations to make to the City Commissioners for change. For example, regarding the overarching surveillance technology implementation policy, the Coalition gave feedback and directed the attorneys to schedule a meeting with the City’s law department to address several key concerns, such as the lack of diversity in the list of community groups with which the police will engage regarding new technology, and the method of disclosure of existing surveillance technology as required by the ordinance. As of the date this article was written, those conversations are still ongoing.¹¹⁷

The coalition also continues to build the movement. Coalition members are working on adopting a community priorities statement for automated license plate readers, for which the police department intends to seek approval soon. The coalition is also working on a community priorities statement for an ordinance that would similarly provide oversight to surplus military equipment use.

The surveillance technology ordinance advocacy, including building the coalition, educating the community, and advocating with the local government for the ordinance’s language and passage, facilitated a symbiotic relationship between attorneys and our client coalition. The community leaders in the coalition needed no education on the day-to-day impact of surveillance technology in their communities—they were experts on that experience. But attorneys, based on the issues identified by the impacted community, did connect the coalition to national experts that could contextualize surveillance technology expansion in Dayton within larger, national trends towards increasing surveillance. These

114. DAYTON, OH. POLICE DEPT., GEN. ORDERS, § 3.01-5 (2021).

115. § 3.01-4 (2021).

116. § 3.02-8 (2021).

117. Email from author to Coalition participants (Jan. 4, 2022) (on file with author).

experts provided statistics and information about how the technology is used and what particular aspects of the technology pose privacy and other civil rights concerns.¹¹⁸ ABLE and other attorneys also educated coalition members about specific legal solutions and tactics that different organizations and cities had used to promote oversight of surveillance technology. This Coalition consisted of community leaders and activists, many of whom were employed and worked on other community projects. Because this advocacy was part of the attorneys' legal work, they had the resources (time and compensation) to review the sample ordinances, synthesize information, and present it in a concise way to the Coalition. Coalition members then considered the information presented, asked questions, requested further investigation and research by the attorneys, and ultimately decided what strategies and tactics to pursue and what concessions to make in advocating for the ordinance's passage.

6. *Challenges and lessons learned*

While the movement around increased transparency, accountability, and meaningful public participation in the local decision on policing continues after the passage of the ordinance, there are already several lessons learned from the campaign's progress. First and most important, a coalition of community members directing and driving the advocacy is key to ensuring the legal work furthers a broader movement. Second, there is an important and unique role for trained community organizers to fill.¹¹⁹ But lack of community organizing resources, particularly in a mid-sized city like Dayton, often forces the coalition-building responsibilities onto the attorneys. In some ways, this makes sense because legal services attorneys presumably have funding to do this

118. For example, Brian Hofer, the Executive Director and Chair of Secure Justice, provided information regarding the inefficacy of automated license plate readers as a crime fighting tool. See Jonathan Jofer, *Automated License Plate Readers: A Study in Failure*, INDEP. (Nov. 30, 2021), www.independent.org/publications/article.asp?id=13893 [perma.cc/C83N-3QJV] (analyzing sixteen years of stolen vehicle numbers from Piedmont California a "super user" of ALPRs and finding ALPRs are ineffective at deterring vehicle theft). Hofer also connected the Coalition to an audit of the ShotSpotter by the Policing Project at New York University's School of Law. See Policing Project, *Privacy Audit & Assessment of ShotSpotter, Inc.'s Gunshot Detection Technology*, POLICING PROJ. (Jul. 2019), www.policingproject.org/shotspotter [perma.cc/5H6P-4N78] (discussing privacy concerns regarding the ShotSpotter's ability to conduct targeted voice surveillance by capturing the voices of individuals near its sensors).

119. Scott L. Cummings & Ingrid V. Eagley, *A Critical Reflection on Law and Organizing*, 48. UCLA L. REV. 443, 501 (2001) (discussing the importance of professional, trained organizers and how "the varied conceptual bases, practical strategies, and institutional forms of organizing practice put a lawyer with no organizing training at a disadvantage").

work and have access to resources like Zoom, interpretation, and other technology that makes meeting possible. However, such a focus and too many organizing responsibilities on the attorneys can promote lawyer-centric advocacy.¹²⁰

It may seem ironic that the more non-legal work an attorney conducts, the greater the risk that the work becomes more lawyer-centric. However, if an attorney is also responsible for logistical coordination for the group,¹²¹ the work can easily appear like the attorney or legal services organization—rather than the community—is driving the movement. This would be antithetical to the community lawyering approach. When an attorney accepts that their role is to provide legal advice that supports a community-led agenda, the community—rather than the attorney—is better able to drive the advocacy.¹²²

When attorneys must be responsible for many organizing tasks in addition to legal support (usually because there are no organizers available), attorneys must work all that much harder and be intentional to emphasize they do not have the decision-making authority. As the coalition progressed and members became more familiar with one another, it became clearer which members held which individual strengths, and members began to take on specific roles. For example, one member of the coalition who is a retired police chief and affiliated with the NAACP provided inside perspectives on law enforcement's goals in employing surveillance technology, the types of technology being used, and was able to connect the group to national law enforcement experts. Another member was a seasoned organizer who excelled at sending updates to a larger group of interested community members and inviting them to the coalition's webinars. As individual members' strengths and experiences emerged, the group began to divide up tasks and attorneys were better able to focus on their legal roles. Identifying the strengths and roles of different group members early on in a campaign is an important step to decentralizing the attorney's role and institutionalizing the change the campaign seeks.¹²³

The surveillance technology ordinance was a strategy to create a new process to regulate surveillance technology that addressed key community objectives to promote transparency, accountability, and public participation in local government's decisions about

120. For example, Coalition members frequently called the attorneys to see if they could invite new community leaders to the coalition because the attorneys managed the Zoom meeting invitations. It made sense from a logistical standpoint but had the effect of placing attorneys in a gatekeeping role, rather than following the coalition's decisions as to who should participate.

121. Non-legal, logistical tasks can include planning meetings, taking notes, assigning tasks to coalition members, and advertising community events.

122. Elsesser, *supra* note 28, at 387.

123. See Elsesser, *supra* note 28, at 382 (intense organizing work by impacted group members is "instrumental" to securing or institutionalizing social change).

policing.¹²⁴ However, it is undeniable that this new process functions by working within a pre-existing legislative, regulatory system at the City Commission, which certainly posed some challenges. Working within the system of the local government to pass an ordinance meant local government officials controlled the timelines. The group was also forced to work within some of the preexisting bureaucratic processes, which limited the advocacy at times. For example, the ordinance would be passed by elected commissioners, but the policies regulating the technology would be adopted by the City Manager,¹²⁵ who is not an elected official, thus reducing some of the political accountability the ordinance was designed to promote.¹²⁶

Even though the ordinance ultimately functions inside a pre-existing legislative system, the ordinance campaign indisputably built power in the community in several key ways.¹²⁷ First, the coalition itself united groups from around the city that brought diverse racial, ethnic, professional, organizing, geographical, and ability backgrounds together around one key issue, and the cumulative power of this group together was extraordinary.¹²⁸ Second, the group worked to educate the larger community in webinars, email updates, and sign-on letters, to build a movement around the surveillance technology ordinance, but also focusing on the broader issue of public participation in local government decisions around policing.¹²⁹ For their part, the attorneys researched the ordinance process, connected the coalition to

124. See Coalition letter to Mayor Nan Whaley et al., *supra* note 81, at 1 (the Coalition comments that the ordinance “is an important step toward transparency and accountability for policing technology.”).

125. DAYTON CODE § 34.10(6) (2021).

126. See Coalition letter to Mayor Nan Whaley et al., *supra* note 81, at 1 (Coalition’s public comment submitted before the Commission’s vote on the ordinance, stating a number of concerns about community priorities omitted from the ordinance that the City chose to address in policy after the ordinance passed).

127. For a deeper discussion of the costs and benefits of advocating within a preexisting system (in this case, the local legislative process) versus creating a new system in which to advocate and center local power, see Cole II, *supra* note 35, at 705-09 (discussing and comparing the “participatory model” and “power model” for advocacy campaigns).

128. See Iqbal, *supra* note 74 (discussing the different geographical foci of the Coalition members and the Coalition’s formation); see also Cornelius Frolik, *Dayton imposes regulations on police surveillance tech*, DAYTON DAILY NEWS (May 12, 2021), <https://www.daytondailynews.com/local/just-in-dayton-imposes-regulations-on-police-surveillance-tech/A6V6CRMBEFHBVOJEOS6GHU7MVE/> (discussing Coalition’s role in ordinance advocacy and passage).

129. See Iqbal, *supra* note 74 (coverage of one of the Coalition’s community education webinars); Coalition Letter to Mayor Nan Whaley et al., *supra* note 81, at 1 (stating the importance of community involvement in surveillance technology purchases); Community Letter to Mayor Nan Whaley et al., *supra* note 80 (“sign-on” letter from community groups).

national experts on these ordinances, provided logistical support, helped frame discussion for the Coalition to make important advocacy decisions, met with City attorneys to facilitate negotiations based on Coalition decisions, and continue to synthesize new policies and documents regarding the ordinance and future coalition projects.¹³⁰ The success of this work is not just the passage of the ordinance, but the creation of a new local government process.¹³¹ Where traditional legal services might have resulted in the passage of surveillance technology regulations, this ordinance and the campaign surrounding it promoted public participation around policing decisions and created a coalition of community members who built and maintained community power to continue this advocacy in the future.

B. Case Study 2: Dayton Superfund Sites

1. Building and Maintaining Trust

Building trust in an impacted community is critical to successful community lawyering. Trust can be built differently, but the authors' experience has shown that listening to what the impacted community and their leaders are saying and then responding with legal interventions along with addressing current legal issues facing leaders is critical, especially when those are outside of the traditional areas of representation. Only when the lawyer has proven their trust will the impacted community be willing to engage in a co-created legal intervention.

A second example of ABLE's involvement in community-driven advocacy involves issues related to three urban superfund sites in the Dayton area. As an industrial city, the Dayton region has numerous superfund sites.¹³² Superfund is a term that arises from the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").¹³³ CERCLA authorizes the U.S. EPA to clean up sites contaminated with hazardous waste by forcing the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work.¹³⁴

130. See Email from author to John Musto, *supra* note 104 (discussing Coalition's critiques of ordinance draft); Email from author to Coalition participants, *supra* note 117 (author's letter to Coalition summarizing Coalition's recommendations for revision to annual report draft).

131. DAYTON CODE § 34.09 (2021).

132. Steve Bennish, *Contaminated sites raise alarms, health concerns*, DAYTON DAILY NEWS (Apr. 7, 2016), www.daytondailynews.com/news/contaminated-sites-raise-alarms-health-concerns/qV3eqdtmd6ZgilsWszVHiN/ [perma.cc/NKV7-93Q8].

133. *What is Superfund?*, U.S. ENVTL PROTECTION AGENCY, www.epa.gov/superfund/what-superfund [perma.cc/MCG3-BYSQ] (last visited Feb. 1, 2022).

134. *Id.*

Its goals are to “[p]rotect human health and the environment by cleaning up contaminated sites; [m]ake responsible parties pay for cleanup work; [i]nvolve communities in the Superfund process; and [r]eturn Superfund sites to productive use.”¹³⁵

By responding to the community-identified needs and concerns, rather than imposing the attorneys’ ideas of what issues should be prioritized and addressed, ABLE built trust in the impacted community and established itself within the community as experts in environmental legal issues but also as attorneys who listen and respond to the community’s concerns without putting a legal strategy first.

The U.S. Environmental Protection Agency added Behr Dayton Thermal System VOC Plume to the National Priorities List in 2009.¹³⁶ Around this time, ABLE attorneys were contacted by the McCook Field Neighborhood Association representing the impacted area for assistance in understanding the complex regulatory process to remediate the site. They also sought assistance in advocating with federal, state, and local agencies to ensure the cleanup of the site meets the community’s needs.

The neighborhood associations organized community meetings where they invited ABLE attorneys to listen to community-identified concerns, such as the cleanup process, addressing the impact of a significant drop in property value, health impacts of exposure, and organizing capacity. ABLE attorneys then advised the neighborhood association on a variety of matters that focused on community identified concerns, from the CERCLA Superfund process to property tax abatement due to the significant drop in property values to incorporating a legal entity to support the residents to connecting the neighborhood association to other who can offer experience, expertise, and support, such as hydrogeologists who understand the groundwater, medical professionals to provide health information and organizations that support grassroots environmental activism.

Simultaneously, the groups of private attorneys were also meet

135. *Id.*

136. National Priorities List, Final Rule No. 46, 74 Fed. Reg. 16,126 (Apr. 9, 2009) (40 C.F.R. pt. 300), www.govinfo.gov/content/pkg/FR-2009-04-09/pdf/E9-7825.pdf [perma.cc/BJ9U-U2CN]. The NLP is a list created by the U.S. EPA that identifies the worst hazardous sites that warrant cleanup. *Superfund Cleanup Process*, U.S. ENVTL PROTECTION AGENCY, www.epa.gov/superfund/superfund-cleanup-process [perma.cc/4S24-2FZB] (last visited Feb. 1, 2022). VOC is an abbreviation for volatile organic compound, which are generally human-made chemicals that are often components of petroleum fuels, hydraulic fluids, paint thinners, and dry cleaning agents. VOCs are common ground-water contaminants and may have short- and long-term adverse health effects. *What are volatile organic compounds (VOCs)?*, U.S. ENVTL PROTECTION AGENCY, www.epa.gov/indoor-air-quality-iaq/what-are-volatile-organic-compounds-vocs [perma.cc/D9JG-PMPE] (last visited March 2, 2022).

with the neighborhood association and residents. Class action lawsuits were filed with toxic tort and diminution property value claims.¹³⁷ ABLE did not build complete trust with the neighborhood association until it represented the neighborhood association president in responding to a deposition notice in one of the class action lawsuit brought by private attorneys.¹³⁸ While this is not a case priority and is not a matter where ABLE would typically represent a client, representation in this matter proved necessary to show support for the neighborhood association and the community leader. Other legal organizations should consider similar flexibility in case acceptance criteria to build trust.

This trust led to additional neighborhood-led environmental justice work. Approximately four years ago, an ABLE attorney was introduced to Valleycrest Neighbors and Concerned Citizens, part of the Old North Dayton Neighborhood Association, the location of another Dayton superfund site and adjacent to the Behr site. The North Sanitary “Valleycrest” Landfill in the Old North Dayton neighborhood has been on the U.S. Environmental Protection Agency’s National Priorities List since 1994.¹³⁹ ABLE has advised the VNCC and consulted with the VNCC technical experts on a variety of matters, including ownership of the superfund site. Importantly, the legal work is beginning to support the impacted community’s vision for community solar development as the reuse of the (former) landfill.

This involvement with the Behr and Valleycrest matters was critical in building trust in the impacted community. Most recently, the trust established with the community in the Behr and Valleycrest matters led to ABLE’s involvement in a Dayton area Community Advisory Group (“CAG”). According to the EPA, the purpose of a CAG “is to provide a public forum for community members to present and discuss their needs and concerns related to the Superfund decision-making process.”¹⁴⁰ The Dayton area CAG includes the impacted neighborhoods from three separate neighboring sites: Behr, Valleycrest, and Valley Pike.¹⁴¹ As part of

137. *Martin, supra* note 10 at ##.

138. *Id.*

139. National Priorities List for Uncontrolled Hazardous Waste Sites, 59 Fed. Reg. 27989, 27996 (May 31, 1994) t www.govinfo.gov/content/pkg/FR-2016-09-09/pdf/2016-21615.pdf [perma.cc/7FVN-JWEK].

140. *Superfund Community Advisory Groups*, U.S. ENVTL PROTECTION AGENCY, www.epa.gov/superfund/superfund-community-advisory-groups [perma.cc/JF3P-MDYL] (last visited Feb. 1, 2022).

141. Eileen McClory, *EPA Working on cleanup in Riverside, Northeast Dayton industrial sites*, DAYTON DAILY NEWS (Aug. 24, 2021), www.daytondailynews.com/local/epa-working-on-cleanup-in-riverside-northeast-dayton-industrial-sites/K7WRPMC2WFH4XIP37N7SIHROME/ []; *Multi-Site Community Involvement Plan Dayton and Riverside, Montgomery County, Ohio*, U.S. ENVTL PROTECTION AGENCY at 7-10, <https://www.epa.gov/sites/default/files/2016-02/documents/dayton-area-cip-201411.pdf>; and *History of Valleycrest Landfill*, VALLEYCREST NEIGHBORS AND

ABLE's community-centered representation, ABLE attorneys are attending CAG meetings, filing public records requests on behalf of the CAG to obtain important documents, and explaining the importance of hiring independent technical experts and mechanisms to fund such experts. These tactics educate the community and help support these communities as they build a movement to address superfund site designations in their neighborhoods. Additionally, ABLE attorneys are also working with the CAG on incorporation options to build long-term advocacy capacity in this community.

2. *Challenges and lessons learned*

This work aligns with Cole's three central tenets of environmental poverty lawyering: client empowerment; group representation; and law as a means, not an end.¹⁴² The legal work ABLE attorneys performed on half of the Behr, Valleycrest, and Valley Pike neighborhoods is not the goal, nor is success with the legal work. Rather, the legal work is a tactic to support the community's strategy to achieve its goal. When the legal work is not a strategy needed to reach the goal, it places the power into the community.¹⁴³ It also challenges attorneys to rethink legal success, a successful court decision compared to how an unsuccessful lawsuit can lead to lasting social change.¹⁴⁴

C. *Comparing and Contrasting the Two Case Studies*

In both of these case studies, ABLE attorneys provided legal representation outside of the traditional litigation-based approach. Attorneys supported a community group or groups' advocacy around issues the community had already identified. In the first case study, the attorneys played more of a central role in bringing the Coalition together by coalescing leaders from communities in which the attorneys had already built trust. In the second case study, the impacted groups were already organized as neighborhood associations, and the attorney had to devote more time to building trust in and relevance to that community through individual case representation and legal research.

Both systems are similar in that the groups had to function

CONCERNED CITIZENS, www.valleycrestlandfill.weebly.com/ [perma.cc/3P9U-4SBD] (last visited Feb. 23, 2022).

142. Cole I, *supra* note 24, at 668.

143. *See generally* Cole II, *supra* note 35 (challenging attorneys to beyond traditional legal approached in favor of approaches that build community power). This is especially true when the attorney looks to defines success.

144. *See also* JULES LOBEL, SUCCESS WITHOUT VICTORY: LOST LEGAL BATTLES AND THE LONG ROAD TO JUSTICE IN AMERICA (1st ed. 2003) (describing lost legal battles that have led to important social victories).

within existing legislative or regulatory systems (local and federal). However, the Coalition in the first case study worked to build its own system-within-a-system by creating a new process for the City Commission to approve surveillance technology.¹⁴⁵ The role for the attorneys in this case was to provide support and information necessary for the Coalition to make informed decisions about what their priorities were in creating this new technology approval process. Whereas in the second case study, the community groups had to work with processes already established by the EPA.¹⁴⁶ The attorney's value to these clients was providing education to assist the group to understand the process and how to work within it to achieve their own goals (filing public records act requests, hiring experts, etc.). The second case study highlights the importance of educating client groups particularly where they are working to establish power in a preexisting regulatory process that cannot easily be changed.

Finally, both case studies highlight the importance of coalition building and the different roles attorneys may play in this process. The Coalition in the ordinance case study was an unincorporated group of community-based organizations and individuals. The attorneys helped to introduce the coalition members at the outset and provided logistical support to facilitate coalition meetings. In the superfund case study, client groups already existed as neighborhood organizations, and the attorney assisted these groups in forming a Community Advisory Group to engage with the EPA. The attorney educated the community groups on the role of a CAG compared to other EPA mechanism in obtaining technical assistance, and provided transactional legal services to help the CAG incorporate so it would be formally recognized. Whether it is relationship-building, logistical support, legal education, or transactional legal services, attorneys should prioritize coalition building as a means to support groups in building power for community-driven advocacy.

While the attorneys in these case studies sometimes used different strategies and tactics, both case studies show ways that attorneys can decentralize the role of the attorney and the traditional legal services litigation model to represent groups advocating for community-led change. However, in order for this work to promote lasting social change, legal services organizations must implement means to institutionalize this work and make it a permanent part of their service delivery model.

145. DAYTON CODE § 34.09 (2021).

146. U.S. ENVTL PROTECTION AGENCY, *supra* note 140.

IV. MOVING FORWARD: INSTITUTIONALIZING THE COMMUNITY LAWYERING MODEL

If a legal services organization wants to show its client communities true commitment to community lawyering, the organization should consider ways to institutionalize this service-delivery model. One suggestion has been previously made about flexibility in case acceptance.¹⁴⁷ This section provides additional suggestions.

Implementing a community lawyering service delivery model into a legal services program is important but poses many challenges. Programs have at times competing demands, such as meeting grant deliverables and a focus on affirmative litigation to achieve law reform.¹⁴⁸ Community lawyering also has high demands: it requires a commitment to developing legal work that comes out of community relationships, time outside of the office and, at times, undefined work and outcomes.¹⁴⁹ For example, the relationship building work in the Superfund case study involved neighborhood meetings with client groups, oftentimes after traditional office hours. Yet this work was crucial to build trust with the client communities. Such work is invaluable both in terms of achieving client outcomes and maintaining staff morale for attorneys committed to social change.¹⁵⁰

Establishing case acceptance protocols that help advocates analyze community involvement and the potential to support impactful community-driven advocacy is key. To that end, the Legal Corps has developed the following Community Lawyering Project Acceptance Criteria:

Has the issue in this case identified by the impacted community?

Explain:

Did the impacted community invite us to work on this issue with them? Explain:

How will our work on this case educate people?

How will our work on this case build capacity in our client community?

How will our work on this case address the root of the problem, rather than merely a symptom?

How will our work on this case be community-centric and not lawyer-

147. Section III B., *infra*, at 42.

148. Cole I, *supra* note 24, at 658, n. 163.

149. See Elsesser, *supra* note 28, at 392-93 (describing an attorney's role in base-building tactics such as door-knocking or giving know-your rights trainings).

150. *Id.*, at 379 (noting "young social justice lawyer can become very frustrated [when] she fails to see any real connection between her work and any meaningful change in her clients' communities").

centric advocacy?

Explain anticipated outcomes. Is success on the case measured by our clients' long-term success?

This is an attempt to put client empowerment/community lawyering at the center of case/project acceptance within the Housing and Community Economic Development Practice Group at ABLE. Importantly, it attempts to place empowerment of the client at the center of the legal work, rather than placing the legal outcome at the center of the representation. Other legal organizations interested in prioritizing a community lawyering approach should consider similar case and project acceptance criteria.

These Project Acceptance Criteria also shift the priority of legal services away from traditional priorities to where outcomes tend to focus on individual case outcomes individual clients to outcomes that are more concerned with movement building to support and achieve social change.¹⁵¹ Through this lens, the law is seen as a means, not an end; and there is a recognition of the limits that lawsuits have in dismantling unjust systems, showing that non-legal tactics may offer the best approach to achieving client outcomes to what are ultimately political questions.¹⁵²

Community lawyering work poses challenges to traditional funding and reporting models.¹⁵³ It is difficult to achieve tangible outcomes in typical short-term grant funding cycles. Trust building is crucial to the effectiveness of the attorneys' work, and many cases require months or even years of relationship building to identify community groups and leaders.¹⁵⁴ This timeline is further elongated if the attorney is working with identified leaders to establish a client group or coalition where one did not exist before.¹⁵⁵ In both the case studies in this article, ABLE attorneys spent years working in

151. *See* Cole I, *supra* note 24, at 668 (Noting that much of an attorney's focus is usually on the "product" of a legal case, some of the most important outcomes in community representation happen through the "process," such as "creation of a sense of community, education (and self-education) of residents, development of leaders, empowerment of participants, and recognition of common problems").

152. *Id.*, at 667-68.

153. Many legal services attorneys working in organizations funded by the Legal Services Corporation, the primary federal funder of legal aid work, are prohibited from conducting the organizing and legislative advocacy necessary to effectuate a successful community lawyering project. This poses a large challenge to many attorneys, particularly those practicing in smaller cities or rural areas, where organizing resources are scarce. *See* Prohibited legislative and administrative activities, 45 CFR § 1612.3 (2019); Organizing, 45 CFR § 1612.9 (2019) (describing restrictions on organizing for LSC-funded organizations).

154. *See* Cole I, *supra* note 24, at 665, n. 206 (noting the importance of longstanding relationships between legal services organizations and community groups).

155. *Id.* at 666.

communities before representing them in the specific community-lawyering projects.

Finally, the philanthropy sector's historical prioritization of quantifiable—rather than qualifiable—metrics as determinants of success presents a reporting challenge for community lawyering work.¹⁵⁶ Attorneys are often required to accept a certain number of cases or serve a certain number of individuals to successfully fulfill the terms of a grant contract. Sometimes attorneys have to find quantifiable ways to measure broad sweeping outcomes, such as access to employment or poverty reduction, to report the successes of their work.¹⁵⁷ But the goal of community lawyering work is not to represent a certain number of individuals. The goal is to support community driven advocacy to promote lasting community power to address a community-identified issue.¹⁵⁸ That goal is very difficult to quantify in traditional reporting metrics.

To address this issue, ABLE has developed a system of outcomes to measure the success of community lawyering work. ABLE attorneys still measure the number of cases accepted and individuals impacted by their work but have added additional outcome codes to measure the progress of their work in communities. Some of those outcomes include:

- The identification of a new community leader
- Potential champion recruited for community-driven advocacy issue
- Coalition or community group formed
- Technical assistance provided to community to choose self-advocacy tool (litigation, media campaign, etc.)
- Assisted community to successfully identify issue for self-advocacy
- Improved community group's ability to gather and use data
- Improved community group's media contacts
- Connected community group to a decisionmaker
- Trained community members on community-identified legal issue
- Technical assistance provided for residents to conduct advocacy campaign

These outcomes measure the advocacy work over which the attorney has control. Rather than focusing on whether a legal problem was cured, an outcome might focus on whether the attorney

156. Some funders around the country, such as the Ohio Access to Justice Foundation, are increasingly valuing community-driven advocacy work. This priorities shift must become more widespread for community lawyering work to become a more dominant legal services model.

157. See Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 226 (2012) (describing how attorneys define their work in terms of “developing legal doctrines and establishing legal precedent” and how clients’ goals are secondary to these outcomes).

158. Elsesser, *supra* note 28, at 376.

assisted the group to identify a legal solution to a community-identified problem.¹⁵⁹

To be sure, legal wins are still very important to clients and to community lawyers, but these alternative outcomes reframe the measurement of an attorney's success by how they support the community in leading *its own* advocacy, rather than how (or whether) an unjust legal system favorably responds to a community's needs. The authors have achieved or hope to achieve many of these outcomes in the two case studies in this article. For example, the attorneys in the first case study assisted the groups with forming a new coalition, provided technical assistance to the community to choose a self-advocacy tool (an ordinance to regulate police use of surveillance technology), and provided technical assistance to assist the Coalition in their advocacy campaign for the ordinance. In the second case study, the attorney assisted the community groups with the formation of the Community Advisory Group to engage with the EPA. He also improved the group's ability to gather and use data through filing Public Records Act requests and analyzing the responses with the clients. While none of these outcomes involve winning a major impact lawsuit, each of these outcomes built advocacy power in the client groups.

V. CONCLUSION

Community lawyering offers a service delivery framework for legal service programs and attorneys working to redress systematic issues of discrimination and inequality. For lasting change to occur, social justice attorneys, legal service programs, and their funders must support community identified and lead efforts. This work inherently requires attorneys and others in the legal field to rethink how attorneys develop their advocacy, how to rework the attorney/client power dynamic, and how to measure the success of legal work. This reframing is difficult but understandable, as historical means of providing and evaluating legal services function within the bounds of unjust systems where the law often provides no long-term mechanism to promote justice, such as the housing, environment, and immigration legal systems. Where attorneys work to support clients not only to achieve legal outcomes, but – perhaps more importantly – to create processes and local systems that promote and value community participation, client communities are designing, advocating for, and implementing new systems to effectively address unjust systems.

159. See Cole I, *supra* note 24, at 662 (defining empowerment lawyering—Cole's term for community lawyering in this article—as a “*method* more than a *product*, a practice through which the lawyer helps the group learn empowering methods of operation”) (emphasis in original).

