Rebellious or Regnant: Police Brutality
Lawyering In New York City

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Abstract

The author encourages progressive lawyers of New York City to adopt a more rebellious form of practice to combat police brutality while empowering the client and community. This comment analyzes legal representation of New York police brutality victims through the perspective of Professor Gerald Lopez’s theory of rebellious lawyering. The comment first describes rebellious lawyering and includes criticism and discussion of other related theories. Next, the author discusses leading methods of representation used in New York City in police brutality cases and the regnant and rebellious characteristics of each method. The author finds that a more creative and rebellious method is necessary and suggests ways progressive lawyers can reshape their practices.

KEYWORDS: Gerald Lopez, regnant, rebellious, police brutality, legal representation reform
REBELLIOUS OR REGNANT: POLICE BRUTALITY LAWYERING IN NEW YORK CITY

Jessica A. Rose*

C'mon it's no great news: Means do prefigure ends.¹

INTRODUCTION

"What might a rebellious law office look like? Turn loose your imagination for just a moment."² This Comment presents this challenge to lawyers confronting the problem of police brutality in New York City. This Comment suggests that in order to challenge police brutality on a systemic level, while at the same time empowering the client and community, the progressive legal community of New York City must adopt a form of practice that is more “rebellious” in its methodology. It also provides well-deserved recognition for the dedicated work that a growing community of progressive lawyers is doing to combat this problem and for the rebellious spark that drives their work.³

The problem of police brutality is perhaps the most pressing social and political issue in New York City today.⁴ In August 1997, the world looked on with horror as the incident involving Abner

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¹ GERALD P. LOPEZ, REBELLIOUS LAWYERING, ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE 377 (1992) [hereinafter LOPEZ].
² Id. at 83.
³ I believe most poverty/social change lawyers are dedicated, intelligent lawyers who are committed to fighting poverty and struggling for justice. See Paul R. Tremblay, Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy, 43 HASTINGS L.J. 947 (1992).
⁴ “Police brutality, the abuse of authority and the use of excessive force by law enforcement officers, is one of the significant and divisive problems currently confronting the United States . . . . The net result has been a tremendous decline of public confidence in law enforcement and in the judicial system for failing to adequately deter police misconduct.” Sa’id Wekili & Hyacinth E. Leus, Police Brutality: Problems of Excessive Force Litigation, 25 PAC. L.J. 171-73 (1993).
Louima brought to light the frequency and severity of police brutality in New York City. Mr. Louima, a Haitian immigrant, had been arrested and brought to the 70th Precinct house where officers forced him into the bathroom, severely beat him, and sodomized him with the handle of a plunger. Then on February 4, 1999, plain-clothes officers fired forty-one shots at and killed Amadou Diallo in the vestibule of his Bronx home as he was reaching for his wallet. On February 25, 2000, an Albany jury acquitted those four police officers and the community expressed outrage. On March 16, 2000, undercover narcotics officers shot and killed Patrick Dorismond, an unarmed twenty-six year old security guard. The officers had approached Mr. Dorismond asking to purchase marijuana and a scuffle ensued. The police found no drugs or weapons on him.

Following this string of killings—all of unarmed men of color at the hands of New York City Police Department (“NYPD”) officers—the city erupted in protest and street mobilizations to decry the practices of the police. The city, state, and federal governments were called upon to scrutinize and censure the NYPD’s practices.

On an international level, human rights organizations

11. Id. ("The Civil Rights Division of the United States Justice Department and federal prosecutors in Manhattan and Brooklyn have been investigating New York City police practices since the 1997 assault on Abner Louima. In addition, Mary Jo White, the United States Attorney in Manhattan, said after the Diallo verdict that her office was examining evidence in the case to see if the officers violated his civil rights."); see also Archibold, supra note 9, at B6 (explaining that H. Carl McCall, the Comptroller of New York State, has requested a state commission to investigate and improve police and community relations, as well as describing a call for federal oversight and action by Mark Green, the city’s Public Advocate, and C. Virginia Fields, the Manhattan Borough President); *Federal Inquiry is Sought into Shooting Response*, N.Y. TIMES, Apr. 7, 2000, at B8 (describing how Congressmen Jerrold Nadler and Charles B. Rangel requested an examination by the Justice Department into the judicial reviews of the police shootings which killed Amadou Diallo, Gidone Busch, and Patrick Dorismond).
published reports on the crisis of police brutality in the United States.\textsuperscript{12} As Bill Goodman, the legal director of the Center for Constitutional Rights ("CCR"), explains, "Today it's not as easy to identify movements. But one movement which is more easily identifiable is the movement against police brutality."\textsuperscript{13}

This Comment examines the legal representation of victims of police brutality in New York City through the lens of Professor Gerald Lopez's theory of rebellious lawyering.\textsuperscript{14} This Comment presents the narratives of four plaintiffs attorneys and two community organizers working to combat police brutality and analyzes whether the legal community is approaching this crisis in a "rebellious" way.\textsuperscript{15} Part I discusses the model of rebellious lawyering, its

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    \item \textsuperscript{12} E.g., \textsc{Amnesty Int'l, U.S.A., Police Brutality and Excessive Force in the New York City Police Department} (1996); \textit{see also} \textsc{Human Rights Watch, Shielded From Justice: Police Brutality and Accountability in the U.S.} (1998).
    \item \textsuperscript{13} Interview with Bill Goodman, legal director, Center for Constitutional Rights, in New York, N.Y. (Oct. 22, 1999) (unpublished interview transcript, on file with the \textsc{Fordham Urban Law Journal}) [hereinafter Goodman Interview].
    \item \textsuperscript{14} Lopez, \textit{supra} note 1, at 429. Professor Gerald P. Lopez is a professor of law, at the University of California, Los Angeles School of Law. For other works by Professor Lopez see Gerald P. Lopez, \textit{A Declaration of War by Other Means}, 98 Harv. L. Rev. 1667 (1985) (reviewing Richard E. Morgan, \textit{The Rights Industry in Our Time} (1984), which "charges that the ‘rights industry’ has become too ready to ignore or discount the social costs of rights" and primarily discussing Morgan’s lack of analysis of the “elite academic left” and “streetwise” groups); Gerald P. Lopez, \textit{Economic Development in the Murder Capital of the U.S.}, 60 Tenn. L. Rev. 685 (1993) (discussing the impact of public perception on economic development in East Palo Alto, where a coalition of small businesses and residents brought a lawsuit against the city for mishandling a development project that promised to bring jobs and other benefits to the largely minority population); Gerald P. Lopez, \textit{Lay Lawyering}, 32 UCLA L. Rev. 1 (1984) (discussing how storytelling is used to facilitate problem-solving by lay lawyers, including how individuals rely on stock stories that reflect their conception of the world, and how storytellers must combine multiple perspectives and create a coherent narrative, and the resulting ethical and political implications); Gerald P. Lopez, \textit{Reconceiving Civil Rights Law Practice: Seven Weeks in the Life of a Rebellious Collaboration}, 77 Geo. L.J. 1603 (1989) (examining the use of 42 U.S.C. § 1983 litigation to promote social change by assessing the actual legal practice, including the types of firms and clients typically involved, rather than doctrine); Gerald P. Lopez, \textit{Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education}, 91 W. Va. L. Rev. 305 (1989) (arguing that “despite some real and unappreciated successes, legal education remains a stubborn underachiever” in training future lawyers to work with politically and socially subordinated people); Gerald P. Lopez, \textit{The Work We Know So Little About}, 42 Stan. L. Rev. 1 (1989) (asserting that legal education must take “seriously a diverse range of scholarship and teaching that focuses rigorous, eclectic, and sustained attention on the ‘Maria Elenas’ [low-income women of color and other socially and politically subordinated people] of our communities) (internal quotations added).
    \item \textsuperscript{15} Professor Gerald Lopez introduced the term “rebellious” lawyering. Lopez, \textit{supra} note 1, at 38.
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critique, and related theories, including the model of "regnant" lawyering. Part II describes, through the narratives of the lawyers, the four primary methods of legal representation that are being used by those seeking to challenge police brutality in New York City and, in some cases, to change the system which produces and condones police misconduct: individual representation, class actions, archival of complaints and referral, and community organizing. Part II then explores the narratives of two community organizers who have had extensive experience working with lawyers on the issue of police brutality. Part III examines the rebellious and regnant characteristics in each of the four methods of legal practice. This Comment also addresses the limitations of the current forms of representation in realizing the goal of combating police brutality and achieving social justice for subordinated groups. It concludes that the legal community must develop a more creative and rebellious methodology if it is to accomplish its goals and that it must focus on its potentially transformative impact on society, rather than satisfying itself with small, isolated struggles. Finally, it makes recommendations for how progressive lawyers can reshape their practices to embody a more rebellious model and thereby better assist existing community efforts to combat police brutality.

I. THE MODEL OF REBELLIOUS LAWYERING

A. Gerald Lopez's Theory of Rebellious and Regnant Lawyering

In his book, Rebellious Lawyering, One Chicano’s Vision of Progressive Law Practice, Professor Gerald Lopez proposes a model of lawyering that challenges the traditional approach of many progressive lawyers. Lopez argues that a “rebellious” practice must create a collaboration between lawyer and client that draws on

16. This Comment does not include the accounts of actual survivors of police brutality. The families of victims and survivors of police brutality who have become politicized through their experiences are often consumed with their organizing efforts. For them, this is not the time for an academic analysis of their experiences—it is a time for action. It is also difficult to locate or interview survivors of police brutality who have not been politicized. This is due to several factors. Many non-politicized survivors of police brutality are either unknown by progressive lawyers and organizers, or they are known but choose to limit the nature and duration of their relationship to the lawyers and organizers based on the specific legal needs of their individual cases. Perhaps, for these individuals, reliving their encounters with the police is too painful; the emotional aspect of this issue might therefore discourage participation in the larger political struggle and discussion.
both of their experiences and lawyering skills in order to alleviate
the client's subordinated position in society (the client's subordina-
tion can result from the marginalized position her economic status,
race, gender, sexual preference, age, etc., places her in with respect
to the power structure of society). Lopez asserts that both law-
yers and lay people possess "lawyering" skills that can be used in
the lawyer-client collaboration. Lopez calls for the "professional"
lawyer to recognize and encourage the use of the client's "lay"
lawyering skills.18

1. Theory: The Rebellious Lawyering Model

Rebellious lawyering seeks to empower subordinated clients.
Lopez contrasts this model of lawyering with "regnant" lawyering,
which perpetuates the traditional power inequity between lawyer
and client and society. He draws on theories of and
experiences in mobilization, community organizing, and deprofes-
sionalization.20 As Lopez describes it, "[T]hose who would 'lawyer

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18. The steps used in "professional lawyering" are the same as the steps used in "lay lawyering." Lopez, supra note 1, at 38-44. Both involve perceiving the difference between the reality we would like and the one we are living in, and trying to take the actions necessary to change our lives to conform with our vision of how we would like the world to be. Id. Whether this is complex contract negotiations or filing an application for food stamps, the process is fundamentally the same. Id. Lopez sees the law as a "set of stories and storytelling practices that describe and prescribe social reality and a set of conventions for defining and resolving disputes." Id. at 43.

19. The term "regnant" lawyering was also introduced by Professor Gerald Lopez. Lopez, supra note 1, at 23.

rebelliously' must . . . ground their work in the lives and in the communities of the subordinated themselves.”

The elements of rebellious lawyering are: consciousness of the ways the interpersonal relationship between lawyer and client can further disempower the client; continuous reevaluation of the legal and non-legal approaches to problems faced by clients; actively working in coalition and collaboration with other professionals and community members; and analysis of the impact of the lawyer's work on the client's life, as well as the context, interplay, and implications of the lawyer's work on local, regional, national, and international levels.

Rebellious lawyering is a theoretical and practical response to "regnant" lawyering. According to Lopez, the elements of regnant lawyering are: focusing on litigation; dichotomizing between service (individual representation) and impact (e.g., class actions or legislative advocacy) litigation; viewing "community education" as diffuse, marginal, and uncritical work; viewing "organizing" as a supplemental, sporadic, and auxiliary activity; viewing the lawyer as the "legal problem-solver" and the client as the "fact-giver"; generally seeing other institutions and groups as only a means of assistance in a certain aspect of a case; and failing to see the larger picture—how different levels and aspects of society respond to challenges of the status quo.

Therefore, rebellious lawyering seeks to address the defects of regnant lawyering, namely, "the interpersonal domination of clients by lawyers; the disempowerment that accompanies reliance on litigation-based dispute resolution or its equivalent; and the inefficacy of intrasystemic remedies to achieve meaningful change in the lives of poor clients."

2. Criticisms of the Rebellious Model

Various criticisms have been leveled against the rebellious model. These largely focus on the application of the theory and the

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White, Lessons From Driefontein]; Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 BUFF. L. REV. 1 (1990) (explaining how "speech norms and coerced speech practices that accompany race, gender, and class domination—undermine the capacity of many persons in our society to use the procedural rituals that are formally available to them" and concluding that there must be a gradual "relocation of bureaucratized governance in participatory institutions") [hereinafter White, Sunday Shoes].

21. Lopez, supra note 1, at 38.
22. Id.
23. Id. at 24.
24. Tremblay, supra note 3, at 952.
narrowness of its focus. Critics have proposed different techniques of lawyering to achieve the goals of the rebellious model while allowing lawyers a greater flexibility in the nature of their practice.

a. Tremblay: Macroallocation v. Mesoallocation

Professor Paul R. Tremblay argues that rebellious lawyering requires a "justifiable, justice-based allocation of resources away from the clients' short-term needs and in favor of a community's long-term needs." Tremblay contends that a response focused on the collective rather than the individual is in tension with the client-centeredness that the rebellious model also advocates. This tension raises ethical concerns and issues of the "deferral thesis." The weighing of these different considerations is arguably an exercise of distributive justice. In this regard, the lawyer is balancing macroallocation and mesoallocation concerns. Macroallocation takes into account the interests of society at large. Mesoallocation considers how to apply the macroallocation to a specific recipient. Tremblay concludes that clients cannot be expected, when offered an informed and free choice, to be self-sacrificing unless they are fairly certain of the future benefits in which they, in part, will share. Accordingly, Tremblay asserts that to a certain extent, rebellious lawyering necessitates the lawyer to impose this long-term view. The lawyers interviewed for this Comment all believe they adhere to a client-centered approach to representation; they all reported cohesion between their goals and their clients' goals. Therefore, it is unclear how a conflict between mesoallocation and macroallocation concerns would be resolved if a conflict did arise. On a hypothetical level, these lawyers all believe that they would follow their clients' desires.

25. Id. at 950. Tremblay terms this idea of deferring present benefits in exchange for promises of long-term benefits the "deferral thesis." Id. at 955.
26. Id. at 958.
27. Id. at 959-62. Tremblay looks to the field of bioethics to explain the deferral thesis. Id. (discussing how in bioethics the client must have informed consent to insure that the client understands the risk analysis involved in the medical treatment, plan, or study. The doctor not only considers the goal of curing the client, but is also influenced by the drive to develop effective treatment for future clients).
28. Id. (framing distributive justice in the context of resource allocation within medicine and law).
29. Id. at 962.
30. Id.
31. Id. at 967.
32. Id. at 967-68.
Southworth and Sisak: Devaluation of the Lawyer’s (Transactional) Skills

Professor Ann Southworth asserts that Lopez is “excessively pessimistic” regarding the ranges and importance of the skills that lawyers can, and should, provide to their clients.\(^{33}\) Southworth maintains that lawyers have skills based on specialized knowledge unique to their profession that should be recognized and utilized in progressive lawyering.\(^{34}\) Southworth acknowledges that as the scope and effectiveness of impact litigation has narrowed, the importance of community organizations and their community mobilization efforts has grown.\(^{35}\) But in contrast to Lopez, she argues that these organizing and community education efforts should be supplemented by a broader range of services from lawyers and that utilizing lawyers’ unique abilities would enable the community organizations to expand their work and to take full advantage of lawyers’ technical expertise.\(^{36}\)

Like Southworth, Janine Sisak proposes an expanded definition of rebellious lawyering that includes transactional representation.\(^{37}\) Sisak analyzes the work of Brooklyn Legal Services Corporation A (“Corp. A”) through the lens of rebellious lawyering and suggests a hybrid approach in structuring financing transactions for community organizations and small businesses.\(^{38}\) Sisak describes Corp. A’s work as a response to the community’s needs and as an effort to effect social change.\(^{39}\) These are two characteristics of rebellious lawyering. However, Corp. A’s lawyers see themselves as traditional in that they use transactional skills and do the “legal” end of the work that the clients’ request of them.\(^{40}\) Also, in Corp. A’s


\(^{34}\) Southworth suggests that lawyers can use their distinctive skills in a variety of ways, such as “general counsel and as providers of transactional representation” to community groups, organizations, and small local businesses. Id. Although Lopez recognizes the role of the lawyer as the bridge between lay and professional lawyering, Southworth feels that lawyers can serve perhaps most effectively as technical assistants, performing tasks such as “negotiating on the client’s behalf, structuring relationships, drafting agreements, and navigating procedural and political obstacles.” Id. at 222-23.

\(^{35}\) Id. at 228.

\(^{36}\) Id. at 227-30; see also Trubek, supra note 20, at 419 (discussing the growing number of nonprofit organizations that work with marginalized people).


\(^{38}\) Id. at 875.

\(^{39}\) Id. at 881.

\(^{40}\) Id.
work, the client’s empowerment is only part of the “whole process” of community empowerment.41 Sisak asserts that the definition of rebellious lawyering must be expanded to include alternate models of legal representation that can also seek to empower the client (e.g., transactional representation).42 However, she does not think this would undermine rebellious lawyering if the model is viewed as an “evolutionary process.”43

c. Handler, Simon, and Blasi: Too Narrowly Focused and Unhelpful In Effecting Collective Social Change

Rebellious Lawyering fits into what Professor Joel F. Handler deems the legal camp of “postmodernism for transformative politics.”44 His critique of this approach to law is that it lacks “metanarratives” (overarching themes) that create and encourage collective identities and movements.45

Similarly, Professor William H. Simon critiques poverty law scholars as not contributing meaningfully to larger collective efforts at institutional and systemic change.46 Simon asserts that a source of this ineffectiveness is an excessive concern by these scholars with “professional domination” of clients.47 He stresses that “not all lawyer power and influence should be seen as illegitimate domination.”48 He also finds that the new poverty law scholarship has “tended to sentimentalize poor clients and especially

41. Id. at 887. Sisak suggests the possibility that community empowerment may in fact happen outside of the lawyer-client relationship. Id. Empowerment may occur, for instance, “in the internal collective action of the community group [client].” Id. at 888.

42. Id. at 890.

43. Id. Fitting transactional work into the rebellious model requires “redirecting the model’s theoretical focus away from the attorney-client relationship and toward some other source of empowerment. Although this shift seems drastic, it does not undermine the model if rebellious lawyering is considered an evolutionary process.” Id.

44. Joel F. Handler, Postmodernism, Protest, and the New Social Movements, 26 L. & Soc’y REV. 697 (1992) (stating that the “major theme in postmodernism . . . is subversion, the commitment to undermin[ing] dominant discourse” and positing that, “deconstruction, as a form of politics, is ultimately disabling”).

45. Id. at 727; see also Ascanio Piomelli, Appreciating Collaborative Lawyering, 6 CLINICAL L. REV. 427, 444 (2000) (reviewing the different critics of collaborative lawyering scholars: Professors Gerald Lopez, Lucie White, and Anthony Alfieri).


47. Simon, supra note 46, at 1100-01; Piomelli, supra note 45, at 446-48.

48. Simon, supra note 46, at 1106.
poor ‘communities’ . . . and to underestimate the difficulties of collective practice.’”

Professor Gary L. Blasi asserts that lawyering scholars should produce works that can be both practical and useful to practice. Blasi puts forth four primary critiques of postmodern critical scholarship: (1) “comprehension of the theory . . . is no small contingency”; (2) it is too universally and harshly critical of other practitioners; (3) its focus on the “individual lawyer/client microworld” is too narrow; and (4) it fails to look for structure or explanation above the level of local narrative.

Lopez does not argue for clients’ narratives to take precedence over the narrative of lawyers, but rather that the two narratives be given equal treatment, and that the lawyer and client be seen as “co-eminent” practitioners. Lopez’s theory focuses on the local level and individual story. However, he also stresses the importance of connecting with other problem-solvers, such as neighbors, organizers, public employees, and policy makers. He further encourages professional and lay lawyers to identify and address the correlative impact of their work and the broader society (e.g., national and international interests).

3. Related Theories

Lopez’s theory of rebellious lawyering draws upon several theories of social change lawyering. A common theme throughout social change legal theory is the notion of client empowerment through the use of client narrative and voice in the development and representation of the client’s case. The relationships between lawyer, client, and community within their respective groups and

49. Id. at 1114.
50. Gary L. Blasi, What’s a Theory For?: Notes on Reconstructing Poverty Law Scholarship, 48 U. MIAMI L. REV. 1063 (1994) (critiquing postmodern critical scholarship and encouraging a more collective theory); see also Piomelli, supra note 45, at 450-52.
52. Blasi, supra note 50, at 1074.
53. Id. at 1088-89 (“The critical gaze rarely falls on the mirror: it is about the practice of others.”).
54. Id. at 1087 (“Never has so much theory rested on so little practice.”).
55. Id.; see also Piomelli, supra note 45, at 451-52.
56. Lopez, supra note 1, at 55; see also Piomelli, supra note 45, at 480.
57. Lopez, supra note 1, at 38.
58. Id.
59. E.g. White, Sunday Shoes, supra note 20.
with each other are seen as opportunities for societal and personal transformation.\footnote{See generally id. (noting that lawyering literature recognizes a long history of this attitude toward client empowerment).

61. Trubek, supra note 20, at 416-17. According to Louise G. Trubek, critical lawyering addresses two primary concerns: "[I]mproving lawyer-client relationships in order [sic] more effectively to serve subordinated groups, and rethinking the relationship between legal work and political mobilization." Id.


63. White, Sunday Shoes, supra note 20, at 4-5.

64. Id. at 4.


66. Lopez, supra note 1, at 377; see also supra text accompanying note 22 (discussing the elements of rebellious lawyering according to Lopez).}

a. Critical Lawyering

Critical lawyering examines different aspects of social and political stratification and marginalization (e.g., race, gender, and sexual orientation) and analyzes the role of the legal system in the perpetuation of these processes. It also posits that law can be used as an arena for reexamination of the different facets of structural domination.\footnote{[C]ritical cause lawyering implies a different understanding of the lawyer-client relationship. Attorneys are admonished to relate to clients as listeners and learners rather than as translators."\footnote{The theory of critical lawyering stresses that this redefinition of the lawyer-client relationship is necessary in order to resist and counteract the barriers that have been imposed to restrict access by subordinated groups to the justice system.\footnote{Lucie White explains that bureaucratic institutions and procedures, such as administrative hearings at welfare offices, can impede subordinated groups from "meaningful participation in their own political lives."\footnote{The critical lawyer sees the lawyer-client relationship as collaborative, as opposed to hierarchical.\footnote{Lopez draws from this collaborative approach to lawyering. Lopez, like the critical lawyering theorists, stresses the importance of client voice and the use of the client's knowledge in the legal process.}}}}} According to Austin Sarat and Stuart Scheingold, "[C]ritical cause lawyering implies a different understanding of the lawyer-client relationship. Attorneys are admonished to relate to clients as listeners and learners rather than as translators." The theory of critical lawyering stresses that this redefinition of the lawyer-client relationship is necessary in order to resist and counteract the barriers that have been imposed to restrict access by subordinated groups to the justice system.\footnote{Lucie White explains that bureaucratic institutions and procedures, such as administrative hearings at welfare offices, can impede subordinated groups from "meaningful participation in their own political lives." The critical lawyer sees the lawyer-client relationship as collaborative, as opposed to hierarchical. Lopez draws from this collaborative approach to lawyering. Lopez, like the critical lawyering theorists, stresses the importance of client voice and the use of the client's knowledge in the legal process.}}
have been denied access to the legal system. Proponents of professionalism argue that lawyers have a professional duty of public service and political commitment.67

Critics of professionalism argue that it is a theory that immunizes lawyers from external critique and regulation. Professionalism is criticized as a means of maintaining control of the market for legal services and preventing other professionals and the lay community from acquiring leverage within the legal system.68 Richard Abel advocates for non-lawyers to be encouraged to offer “legal services,” and the public at large to perform legal functions themselves with assistance, such as simplified legal forms and handbooks.69 This is similar to Lopez’s recognition of the role of “lay lawyers” in problem solving.70 He explains that “[t]he challenge involved in getting a handle on professional lawyering rests not in what is unique about such lawyering but what it has in common with what everyone practices in getting by from day to day.”71

c. Popular Education

Paolo Freire pioneered the theory of popular education in his work on the community education and politicization of the poor and marginalized in Brazil and throughout the Third World.72 He asserted that, given the necessary tools, individuals could enter into a dialogue with each other and society at large that had the potential for personal and political transformation. Education is seen as a tool by which the oppressed can transform their situation and achieve political and social transformation.73 Freire states: “Critical and liberating dialogue, which presupposes action, must be carried on with the oppressed at whatever the stage of their struggle

67. Sarat & Scheingold, Cause Lawyering, supra note 62, at 10; see also Richard L. Abel, Taking Professionalism Seriously, 1989 ANN. SURV. AM. L. 41, 51 (1989) (arguing that professionalism could “lobby vigorously for greater public expenditure on federal, state, and local legal aid and public defender programs” and that “the profession should require a significant pro bono contribution by all lawyers”) [hereinafter Abel].

68. E.g., Sarat & Scheingold, supra note 62, at 10. Sarat and Scheingold explain that, “Professionalism is, in this view, an excuse for excluding those . . . Instead of building consensus, enhancing ethical standards, and raising levels of competence, professionalism is seen as part of a top-down project of social control.” Id.

69. Abel, supra note 67, at 48.

70. Lopez, supra note 1 at 43-44.

71. Id. at 43.


73. PAOLO FREIRE, PEDAGOGY OF THE OPPRESSED 34-35 (Myra Bergman Ramos trans., 1981)
for liberation.”74 Through the process of popular education the student and teacher are considered “critical co-investigators in dialogue.”75 The popular education model has important implications for rebellious lawyering. The two theories emphasize the importance of student/client voice, the goal of empowerment and societal change, and the student/client serving as co-strategist in problem solving with the teacher/lawyer.76

d. Community Organizing

In *Rebellious Lawyering*, Lopez explores the relationship of community organizers and lawyers. In examining methods of community organizing, Lopez draws a parallel between regnant lawyering and what he calls “orthodox organizing.”77 The various elements of orthodox organizing are: organizers organize and typically do not develop groups or “movements”; organizers establish connections in the community in order to further their particular goals, and not because they see it as a necessary step to movement building; organizers exercise power, for example by setting meeting agendas and goals; organizers assume that the “oppressed” are willing and capable of sharing their experiences and articulating their grievances; regardless of the local circumstances, organizers follow a standardized organizing formula; organizers assert a willingness to work in coalition with any group (even if this is not a true desire or, alternatively, best for the particular project); organizers view the impact of their efforts as inherently radical; and finally, organizers consider themselves as the preeminent “pragmatists of power.”78

Just as Lopez argues that regnant lawyers should become more rebellious, he advocates that organizers should challenge the orthodoxy of organizing and adopt a more rebellious methodology.79 A “rebellious” community organizer should: be “life-sized” as op-

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74. *Id.* at 52.
75. *Id.* at 68.
77. Lopez, *supra* note 1, at 353.
78. *Id.* at 353-54. Pragmatists of power seem to be those willing to use power from any source necessary to accomplish a goal. *Id.*
79. *Id.* at 357.
posed to the ultimate "pragmatists of power."80 This means that an organizer should not be more or less noticeable than those around her. Lopez asserts that awareness of the work of professional organizers opens the process of mobilization and thus they should also renounce their invisibility despite the advantages of working behind the scenes.82 Further, Lopez advocates that organizers should "renounce exaggeration," thus challenging the myth that professional organizers are necessary to social change;83 and recognize that every person engages in pragmatic problem-solving (as do rebellious lawyers).84 Organizers must connect the local, regional, and national dynamics of power to their work and "imagine social and political arrangements responsive to inevitably plural communities."85 Lastly, they should participate in meaningful coalitions that address the realities and tensions at la frontera—the boundaries that divide "us" from "them."86

Saul Alinsky, another theoretician and practitioner of community organizing,87 established what are known as the Alinsky concepts of mass organization for power.88 He organized in poor communities throughout the United States and founded the Industrial Areas Foundation and a training institute for organizers. Lopez, like Alinsky, stresses communication as the most essential component to organizing.89 Similar to Lopez's theory of rebellious lawyering, Alinsky stressed that the dialogue must be a two-way experience. This is facilitated as messages are conveyed so that

80. Id. at 358; see also id. at 353 ("Organizers tend to consider themselves the preeminent 'pragmatists of power' in any situation and in any relationship.").
81. Id. This contrasts the orthodox organizer who sees himself or herself as inherently radical and necessary for social change to occur. Id. at 353-54.
82. Id. at 358-61.
83. Id. at 361.
84. Id. at 366.
85. Id. at 368. This requires diverging from a standardized organizing formula and adopting a plan that addresses the realities specific to the situation. Id. at 353-54.
86. Id. at 373 ("'Color-blind, radical populism' never has been what it was made out to be. . . . It tries to define out of existence the very differences—gender, ethnic, class, ideological—that define and give life to politics of all sorts. . . . Experience teaches that it serves most often to affirm, not to challenge the status quo.").
87. Id. at 362-63. Lopez is critical of promoting the centrality of professional organizers in fundamental social change. Id. According to Lopez, lay social activists, progressive lawyers, and other groups have adopted this notion of the idealized professional organizer. Id.
88. SAUL DAVID ALINSKY, RULES FOR RADICALS: A PRACTICE PRIMER FOR REALISTIC RADICALS, at About the Author (1971) [hereinafter ALINSKY, RULES FOR RADICALS].
89. Id.
90. Id. at 81.
people will be able to relate them to their own experiential knowledge.91

II. THE PROBLEM OF POLICE BRUTALITY IN NEW YORK CITY

A. Lawyers' Narratives—Different Methods of Legal Representation

The actual accounts of people working in the legal field of social change are not often heard. Mainstream media either downplays or ignores organizing efforts and litigation victories. This is evidenced by sparse media attendance at progressive demonstrations, marches, court case filings, proceedings, and rulings. Academic and professional journals similarly afford scant space for publications by and about progressive lawyering. Lawyers themselves often do not create a space for their clients' voices to be heard in the legal process, and instead translate clients' stories into legal arguments and clients' narratives into under-emphasized “impact statements” or “witness/victim testimonies.” As Lopez explains, “our oral traditions rarely report activist work as well as they might. Most such stories seldom circulate outside small, local circles.”92 The use of narrative, or storytelling, is a central element of rebellious lawyering.93 Accordingly, this Comment frames the analysis of legal representation in cases of police brutality in the context of the stories of the lawyers who are actually doing the lawyering and the community organizers working with them. At the same time, the limits and alterations inherent in every layer of reporting are recognized.94

The process of dialogue and narrative can be an empowering tool in the relationship between lawyer and client and among clients. Dialogic empowerment also can occur between lawyers.95

91. Id.
92. Lopez, supra note 1, at 8.
93. See id. at 39-44. ("We learn to use stories—to understand the world and to solve problems—by living in our cultures."). Id. at 40.
94. Lucie E. White recognizes this reality of story-telling in her analysis of the lawyering in a black South African village, Driefontein. White, Lessons from Driefontein, supra note 20, at 701. She states, “The story I tell sets out just one version of ‘what happened.’ Like every story, it has an inevitable ambiguity . . . . I do not seek to resolve these questions in the way I tell the story or in the way I comment on it. Questions, tensions, gaps will remain in the end; indeed, they constitute the particular richness of the narrative form.” Id.
95. Alfieri, Reconstructive Poverty Law Practice, supra note 20, at 2147. Alfieri posits that reconstruction of the poverty law practice requires an integration of client narratives in every aspect of the lawyer-client relationship (e.g., interviewing, counseling, investigation, negotiation, and litigation). Id.; see also John Kilwein, Still Trying:
This Comment endeavors to contribute to dialogic empowerment within the legal community to strengthen the legal community’s efforts to combat police brutality.

1. Individual Representation: Matthew Flamm and Ellen Yaroshefsky
   a. Matthew Flamm

Matthew Flamm is private practitioner in Brooklyn, New York. He works with a part-time associate and a receptionist. His work encompasses criminal representation, Civilian Complaint Review Board (“CCRB”) advocacy, Police Department employee disciplinary actions (brought in the Department Advocates Office of the Police Department), and civil actions. He started his career in the New York City Law Department. He explains that he learned this area of practice from the defense perspective, which put him in the position of justifying and defending police officers’ conduct and trying to avoid judgments against the Police Department. However, he used the “heightened duty” of government lawyers to try to see that justice was done.96

Individual justice is the primary goal and motivator for Matthew.97 He feels that in police brutality lawyering there are “principles at stake and real issues of public concern to litigate.”98 However, according to Matthew, the frustrating aspect of his practice is the lack of systemic impact from individual litigation. He says there is a “total disconnect” between individual legal actions and the police officers’ subsequent conduct since there is frequently little or no disciplinary action and the city usually indemnifies the officers for damages.99

Matthew considers himself a traditional lawyer since his work is limited to the legal system and the avenues of redress provided by the government. He is rebellious, however, in that he sees his work

96. Interview with Matthew Flamm, Esq., in Brooklyn, N.Y. (Oct. 26, 1999) (unpublished interview transcript, on file with the FORDHAM URBAN LAW JOURNAL) [hereinafter Flamm Interview].
97. Id.
98. Id.
99. Id.
and the issue of police misconduct in a political and philosophical framework. He views litigation simply as part of the larger picture of combating police brutality.\textsuperscript{100}

Matthew prides himself on seeing his clients as individuals who are worthy of respect. In fact, he says, he generally likes his clients.\textsuperscript{101} He has found that his attitude toward client participation in the legal process sets him apart from most attorneys.\textsuperscript{102} He involves his clients in the decision-making process of the case, particularly regarding decisions affecting the outcome of the case (e.g., when to seek settlement; what agency, or individual to sue). However, he clearly delineates between the lawyer’s and the client’s work. He feels that “the day-to-day stuff—letter writing, demands, etc.—is the lawyer’s job.”\textsuperscript{103} On occasion, “with the right client,” he will have his client assist in different aspects of the investigation for a case. He sees the client’s role as, “inherently passive.”\textsuperscript{104}

In terms of non-legal action and collaboration with community groups and other professionals, Matthew voices a certain sense of isolation and frustration.\textsuperscript{105} He is a member of the Police Watch Referral Panel and has done some presentations to Bar Associations. He has thought of reaching out to community groups, but feels “pigeon-holed in terms of legal representation.”\textsuperscript{106} Matthew expresses interest in finding information about community groups working around the issue of police brutality. He recognizes the need for groups that address the emotional injuries that result from police brutality and provide support to victims and their families.\textsuperscript{107} He has used the press on occasion. When he has had interactions with the press, he has generally had the clients speak for themselves.\textsuperscript{108}

Matthew, who is white, lives in Brooklyn, but feels that he is not a part of his clients’ communities, which are largely comprised of people of color. He thinks this is partly because he is not a “tre-
mendous self-promoter.” He feels connected to the community through the service he provides for its members. Recognizing that issues of race, class, and gender affect his relationship with his clients, Matthew is conscious of the need to treat people with respect.

b. Ellen Yaroshefsky

Ellen Yaroshefsky is a Professor at Cardozo Law School in Manhattan, New York. Ellen went to Rutgers Law School (then known as the “People’s Electric Law School”) when it was noted for its radical lawyering and activism. As a student in the constitutional law clinic, she worked on one of the first “long hairs on the New Jersey Turnpike” cases. She then went to Seattle, where she worked with a Native American tribe and started handling police misconduct cases. When she moved back to New York she continued her work at the Center for Constitutional Rights (“CCR”). Currently, she is working on a case involving the shooting and killing by the police of a Hasidic Jew, Gidone Busch, in Borough Park, Brooklyn. She and her co-counsel, the “dream team” of Johnnie Cochran, Barry Scheck, and Peter Neufeld, approach the case with the broad goal of changing the way the NYPD operates. This contrasts with Matthew’s individual case approach that focuses on individual justice and compensation.

Ellen maintains a client-centered approach to representation, but finds that her clients have a broader focus than just wanting money damages. She suggests to her clients that if their goal is to change the NYPD and society at large, that then they must work with the community. For instance, in the Gidone Busch case she has gone to the Borough Park community several times to meet

109. Id.
110. Id. (“[Y]ou cannot stop making judgments about someone based on race, what they look like, where you are meeting them and how they are acting and then you get past that superficial stuff.”).
111. Interview with Ellen C. Yaroshefsky, professor of law, Cardozo Law School, in Manhattan, N.Y. (Oct. 21, 1999) (unpublished interview transcript, on file with the FORDHAM URBAN LAW JOURNAL) [hereinafter Yaroshefsky Interview].
112. Id. (describing how in Lewis v. Hyland, 554 F.2d 93 (3d Cir. 1977), one of the first “long hair” cases, she fought to get an injunction against the police stopping long-haired men who looked like hippies driving along the New Jersey Turnpike).
114. Yaroshefsky Interview, supra note 111.
115. Id.
with different community members and groups. She, like Matthew, sees litigation as part of the bigger picture, stressing that, "you can’t see litigation in a vacuum."

She sees legal action as one tool for creating social change, and to that extent, she identifies herself as a rebellious lawyer. She aligns herself with the Lawyer’s Guild and explains that she went to law school to prepare herself to facilitate social change. Although she is not currently involved in community activities, she has been in the past and hopes she will be again. She has never had run-ins with the police, explaining that, “It’s not an experience that typically happens to a white woman. That’s precisely the point.”

Based on her experiences, she thinks that issues of gender, race, and class shape her interaction with clients and their communities. She also feels that, as she has gotten older, her age has affected people's perceptions of her. In her interactions with the Hasidic community she has felt the gender-role distinction; Hasidic men are not accustomed to dealing with women on the level of client-lawyer. This is in contrast to her experiences with African Americans and Latinos. She thinks she is able to sympathize with the experiences of marginalized people, while acknowledging that she is not an “oppressed person.”

2. Class Actions: Bill Goodman of the Center for Constitutional Rights

Bill Goodman is the legal director of the Center for Constitutional Rights (“CCR”) in Manhattan, New York. CCR is a non-profit legal organization that fights for human and constitutional rights both domestically and internationally. Bill began his work around police misconduct in 1961, the year he started law school and the year the Supreme Court recognized that the Federal Civil Rights Act provides private citizens the right to sue the government for violations of constitutional rights under 42 U.S.C.

116. Id.
117. Id. When asked whether she thought legal action is an effective way of combating police misconduct in New York City, she responded that she does not “see things as ‘either-or’ anymore. [She] think[s] each little incremental piece adds up to the over-all bigger picture. It’s like a synergistic effect.” Id.
118. Id.
119. Id.
120. Id. Alfieri views sympathy as an integral component of the attorney-client dialogue and as a means through which the attorney is able to honor the client’s independent exercise of judgment. Alfieri, Antinomies, supra note 20, at 699. Alfieri defines sympathy as an “ethic and ideal of shared ends experienced in the relation between self and others.” Id.
In 1962, he went to Virginia to intern at a small civil rights firm that, according to Bill, *Jet Magazine* described as "the first integrated law firm in the South." That summer, the firm began to consider suits against the police as a possible means of its financial survival. Then in 1964, once out of law school, he joined the firm that his father began in 1950 with Dave Crockett. The firm focused on representing political radicals and explored ways to sue the police for misconduct. They had found that common-law tort actions did not work and were exploring police misconduct cases pursuant to § 1983. Since then, he has worked on dozens of cases involving police and corrections officer misconduct.

CCR currently is pursuing a class action against the Street Crime Unit ("SCU") of the NYPD for its alleged illegal pattern and practice of predominately targeting its stop and searches at African American and Latino men. The name plaintiffs consist of several African American and Latino men and the National Congress for Puerto Rican Rights.

Bill describes the culture of CCR as focused on litigation. According to Bill, CCR works to eliminate the barriers between judges, lawyers, and clients that are set-up by the traditional model of lawyering. In that respect, he describes CCR’s work as non-traditional. However, he does not distinguish between rebellious and traditional lawyering. He, like Matthew and Ellen, recognizes that litigation is not the sole solution to police brutality. How-

121. Goodman Interview, supra note 13. Bill sees § 1983 suits as a way of getting private voices heard in court to challenge how the police department should or should not work. Id. Thus, these suits allow the community to scrutinize the operations of the police. Id.
122. Id.
123. Id.
125. Goodman Interview, supra note 13. Several of the initial plaintiffs were referred by Police Watch and Karl Franklin, the former legal director of Police Watch personally. Id.; see also Interview with Karl Franklin, legal director of Police Watch, in Manhattan, N.Y. (Oct. 22, 1999) (unpublished interview transcript, on file with the FORDHAM URBAN LAW JOURNAL) [hereinafter Franklin Interview].
126. Goodman Interview, supra note 13.
127. Id.
ever, he stresses that without legal action police misconduct would be more frequent and more egregious.

Bill acknowledges the effects of race, gender, and class in the staff's interaction with clients and emphasizes that CCR has taken leadership on these issues in the courtroom. However, he is reluctant to give any concrete examples and stresses that he believes people simply want effective legal assistance.128

Bill divides his time between Detroit, Michigan and Brooklyn, New York. He and his family have never had problems with the police. He is motivated in his work to challenge police brutality because he feels it is "as stark a demonstration of injustice that we are going to see in our lives."129

3. Archival of Complaints and Referral: Karl Franklin, Police Watch

Karl Franklin was the legal director of Police Watch ("PW") in Manhattan, New York. PW is a non-profit organization that has legal referral, community organizing, and archival components to its work.130 PW's twin goals are to provide direct services to people who have been victimized by the police and to organize around the issue of police brutality and misconduct. The legal services are provided through a Legal Advisory Board and a Legal Referral Panel. The Legal Advisory Board, which provides advice and legal direction, is made up of established legal organizations in New York City such as CCR, the Legal Aid Society, the National Lawyers Guild, the NAACP Legal Defense and Education Fund, and the Puerto Rican Legal Defense and Education Fund. The Legal Referral Panel handles individual referrals received through PW's hotline. The attorneys are a combination of politicized practitioners experienced in police brutality work and straight (non-political) practitioners. PW charges the panelists a one hundred dollar annual fee to participate in the panel and requires ten percent of any settlement or judgment collected by the lawyers from cases referred to them through PW.131 Karl feels that this portion of the project has worked extremely well.

128. Id.
129. Id.
130. Franklin Interview, supra note 125. Shortly after this interview, Karl left Police Watch to start a private practice in Brooklyn, New York.
131. Id.
PW also has a Community Advisory Board. Its collaboration with various community organizations enables PW to take part in the larger movement against police brutality and introduce non-legal approaches into their work. The community organizations that are members of the Community Advisory Board were integral in setting-up PW in New York and establishing it in the larger New York movement against police brutality and misconduct. The community component of PW has been a harder “row to hoe” for PW.

Karl became involved in police brutality work as a community organizer. His first experiences with this kind of work were the demonstrations in reaction to the beating of Rodney King by Los Angeles police officers in 1991. He identifies himself as a rebellious lawyer and went to law school for the specific purpose of learning a technical skill that would assist him in his organizing efforts. Karl’s law school education helps him to do “his part in the movement,” particularly in supporting political prisoners in the United States. He sees law as a tool, yet he recognizes its limits in creating social change.

As a member of

132. The community component of PW consists of the Community Advisory Board. Id. The Community Advisory Board is composed of the Malcolm X Grassroots Movement (“MXG”), the National Congress for Puerto Rican Rights (“NCPRR”), the Committee Against Anti-Asian Violence (“CAAAV”), the Audre Lorde Project, and Forever In Struggle Together (“FIST”).

133. “[T]he underlying goal of Police Watch is to do a better job at community organizing around the issue of police brutality and misconduct . . . . [T]o hook up the individuals with a community organization that is doing work on the issue . . . . So, the project has an advocacy arm to its work.” Id.

134. There is also a Police Watch project in San Francisco, California. Id. Both are projects of the Ella Baker Center for Human Rights which is also based in San Francisco. Id.

135. Karl feels that some tension resulted from a lack of clearly delineated roles and guidelines in the establishment of the Community Advisory Board. Id. There also have been differences in the visions of the organization and some of the board members on how best to approach projects. Id.

136. Id.; see also Sa‘id Wekili & Hyacinth E. Leus, supra note 4, at 183-86 (discussing the Rodney King incident and the subsequent “riots” that followed the trial, which resulted in the acquittal of the four Los Angeles Police Department officers).

137. Franklin Interview, supra note 125.

138. Id. (“It’s a tool and if it isn’t serving its purpose, then there are other tools to use to get what you need to get done. It’s a means to an end.”).

139. Id. In discussing the role of community organizing in the organization’s work, Karl explains, “[I]n essence, the issue isn’t going to be solved by litigation. Individual cases are not going to change the dynamics of police misconduct in these commu-
the Malcolm X Grassroots movement, Karl is personally involved in community organizing around police brutality, and other issues such as removing police from the public high schools, and advocating community control of police precincts.\textsuperscript{140}

Karl grew up and still lives in the public housing projects in Crown Heights, Brooklyn. He thinks that there are issues that he is not qualified to handle based on his personal background. For example, he has to "check [himself]" regarding his preconceptions and reactions when working with the transgender community. He struggles to overcome these limitations and believes that in order to address police brutality he has to see the struggle in a broader context.\textsuperscript{141} He also sees the issues of race, gender, and class as significant in the outreach and organizing work of PW. For example, when the project had a Latina staff person who spoke Spanish, they received more calls from the Latino community. The current administrative director of the project is a lesbian and has been able to forge ties with the gay, lesbian, bisexual, and transgender communities. One of the main tasks of PW is to reach as many communities as possible. Karl explains, "By no means is [the gay, lesbian, bisexual, and transgender] community saturated with our literature. So, I think there [are] some places where we are quite well known, and then there are others where we have a lot more work to do."\textsuperscript{142}

4. Community Organizing: Karl Franklin, Police Watch, The Community Advisory Board, and Grassroots Outreach and Education

Police Watch has a Community Advisory Board and provides community outreach and education.\textsuperscript{143} Of the four case studies, PW has the most in-depth and on-going community involvement in its work. Karl, PW's former legal director, explains that even though the members of the Community Advisory Board were instrumental in bringing PW to New York and continue to work to-

\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Id.
gether and value each other’s contribution in the police brutality movement, there have been hurdles to get over in establishing a solid and ongoing collaboration between the different community organizations and PW. Karl is open and candid in this self-critique of the project and accepts the fact that the organization needs to examine this issue further.

B. Through the Lens of the Community Organizer

In examining the “rebelliousness” of lawyers working with the issue of police brutality in New York City, it is critical not only to engage the lawyers in a self-examination of their practices, but also to listen to the experiences of the community organizers and survivors of police brutality who have worked with lawyers on this issue. This is another aspect of the dialogic process that is an integral component to rebellious lawyering.

At the time of this writing, New York City is reeling from a series of police killings of unarmed young men of color and the subsequent legal battles and street-level organizing. The following interviews with two community organizers reflect the intensity of these troubled times. The acquittal of the four police officers who fatally shot Amadou Diallo was announced the day of the interview with Richie Perez of the National Congress for Puerto Rican Rights ("NCPRR"). The interview ended when the verdict was announced because Richie had to participate in a live reaction interview with WBAI radio. The office of the Committee Against Anti-Asian Violence ("CAAAV") was empty on the day of the interview with Hyun Lee because the staff was involved with street-organizing efforts and support for those who were arrested in the aftermath of the Diallo verdict. The Louima and Diallo verdicts represent the standard by which other cases of police brutality will be viewed by the courts. Richie Perez asserts that, “They set the standard by which atrocities will be punished. And if these and other atrocities are not punished we are not going to get the others punished.”

144. Supra notes 5-11 and accompanying text.
145. Supra Introduction (discussing the police killing of Amadou Diallo).
146. The National Congress For Puerto Rican Rights is often referred to in short-form as “the Congress,” but to avoid any confusion with the United States Congress, this Comment will refer to the organization as NCPRR.
147. Interview with Richie Perez, National Congress For Puerto Rican Rights in Manhattan, N.Y. (Feb. 25, 2000) (unpublished interview transcript, on file with the FORDHAM URBAN LAW JOURNAL) [hereinafter Perez Interview].
1. *Richie Perez and the National Congress for Puerto Rican Rights*

Richie Perez has been politically organizing and working with the community to combat police abuse for more than three decades. He is a well-respected and trusted presence in the progressive community, particularly in the community of color and the younger generation of activists.\(^\text{148}\) One of Richie’s most striking characteristics is his ability to organize from the background and periphery, thus enabling a new generation of organizers to redefine the direction of the police brutality movement while at the same time sharing in the experiences and advice of an seasoned organizer.\(^\text{149}\)

Richie first worked on the issue of police brutality in the late 1960s and worked on this issue throughout the 1970s as member of the Young Lords Party.\(^\text{150}\) The Young Lords was a political organization of Puerto Rican youth that dealt with issues such as police abuse, unlawful imprisonment, and prison abuse.\(^\text{151}\) In the mid-1970s he was involved in the struggle to save open admissions in the City University of New York system. At the time, he was a teacher at Brooklyn College and had experiences with police surveillance and investigation, and was ultimately imprisoned for his organizing activities.\(^\text{152}\) During that period, he was part of a group that founded the Black and Latino Coalition Against Police Brutality.\(^\text{153}\) In 1979, he was a founding member of the Committees Against Fort Apache the Bronx, a group that spearheaded a campaign against the book and film, *Fort Apache the Bronx*.\(^\text{154}\) Richie sees parallels between the book and film’s portrayal of the South

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\(^{148}\) The author of this Comment is aware of Richie’s reputation through personal experiences with youth organizers and community organizers working around the issue of police brutality.

\(^{149}\) Perez Interview, supra note 147 ("An organization that cannot constantly replenish itself will die. So we made a decision in the early '90s that we wanted to change the nature of our organization and find a vehicle for giving it to young people to run. It didn't mean that we were retiring, just that we wanted to put ourselves as more of a resource, rather than at the center of everything... [We are] like these 500-pound elephants. People don't have room to grow."); see also Interview with Hyun Lee, the Committee of Anti-Asian Violence, in Manhattan, N.Y. (Feb. 28, 2000) (unpublished interview transcript, on file with the FORDHAM URBAN LAW JOURNAL) [hereinafter Lee Interview].

\(^{150}\) Perez Interview, supra note 147.

\(^{151}\) Id.

\(^{152}\) Perez was on trial for two years on charges of conspiracy to incite a riot. Id.

\(^{153}\) Id.

\(^{154}\) Id.
Bronx and the defense counsel’s depiction of the same area in the Diallo trial.\textsuperscript{155}

In 1981, the Committees Against Fort Apache the Bronx were merged into the newly formed National Congress for Puerto Rican Rights.\textsuperscript{156} Committing police brutality and injustice in the criminal justice system were, and remain, a part of the NCPRR’s platform. In the late 1980s, the focus of the NCPRR shifted from racially-motivated violence and police complicity to police brutality itself.\textsuperscript{157} The NCPRR Justice Committee specifically focuses on police brutality and related issues.\textsuperscript{158} As the Committee began working with families victimized by the police, it saw the political rhetoric it had been advancing being tied to real life examples and becoming more accessible to the community at large.\textsuperscript{159} Each individual case highlighted “fault lines in the criminal justice system.”\textsuperscript{160} Through its work with the families it began to broaden its membership body to people who were not “political” and had been thrust into the anti-police brutality movement by suffering tremendous personal loss.\textsuperscript{161} Richie stresses that once the NCPRR makes a commitment to a family it is a commitment that must be kept for as long as it takes for the family to gain justice.\textsuperscript{162}

The NCPRR has brought together various segments of the Puerto Rican community and the community of color at large. Through the NCPRR’s work around police brutality it has forged alliances between the families of survivors and victims of police brutality, veteran and younger community organizers, students,

\textsuperscript{155} Id. Richie states that the depiction of the South Bronx by both the film and the defense counsel was, “a home for savages, social parasites, and only the police represented civilization there. They had a dirty job and a very dangerous job. By dehumanizing the residents of the South Bronx they justified what was called ‘street justice’ or ‘street tactics’ being meted out by the police.” \textit{Id.}

\textsuperscript{156} Id.

\textsuperscript{157} Id.

\textsuperscript{158} Id.

\textsuperscript{159} Id. This reflects Alinsky’s position that organizers must be flexible, open to change, “adaptable to shifting political circumstances, and sensitive enough to the process of action and reaction to avoid being trapped by their own tactics.” \textit{Alinsky, Rules for Radicals}, supra note 88, at 6.

\textsuperscript{160} Perez Interview, supra note 147.

\textsuperscript{161} Id.

\textsuperscript{162} Id. “[W]e tell the families from the beginning that we cannot guarantee you justice, if we reach a working agreement together, what we can promise you is that you will never struggle alone. As long as you want to struggle, we will struggle with you . . . So like with Alttagracia Mayi [whose son, Manuel Mayi, was killed by a racist gang in Queens] and Iris Baez [whose son, Anthony Baez, was killed with an illegal chokehold by the police when his football accidentally hit a police car], we have been together for ten years, we are like [their] family.” \textit{Id.}
and street organization members. The NCPRR assisted the Latin Kings and the Nietas street organizations to broker a truce and create an internal monitoring system. Richie explains that, "These [youths] were our family gone wrong who had been pushed to the underground economy and marginalized and . . . we were prepared to embrace them if they were seriously committed to transformation." The NCPRR and the Parents Against Police Brutality made a historic alliance with the Latin Kings when the Latin Kings committed themselves to becoming a positive, political force in the community. However, according to Richie, like most individuals and groups that engage in political transformation, some parts of the Latin Kings remained tied to illegal activity. Ultimately, the police jailed the leadership and the organization's efforts to change its nature were almost entirely halted.

The NCPRR employs a three-part approach to its organizing efforts around the individual cases consisting of legal, media, and political/community outreach strategies. The NCPRR offers families its experience and support with the goal of helping families "get [a] voice and punch. So that as they struggle back from their loss they find strength to survive, that they are not just the grieving mother, that after time they become the seeker of justice who has a moral and eventually a political right to speak on the issues." From this organizing and uniting of families, a group of families formed Parents Against Police Brutality. If, however, a family wants to act in a way that the organization feels would be contrary

163. The term "street organizations" here refers to what some call "street gangs." Id.
164. Id.
165. Id.
166. Id. When the Latin Kings were accused of shooting a police officer in the 46th Precinct, the families were approached by the police to denounce the Latin Kings. Id. The parents held a press conference and refuted the accusation and stated their support for the Latin Kings. Id. Mrs. Baez stated, "I lost my son and I gained a thousand sons." Id.
167. Id.
168. Id. ("[T]he last thing [the police] want is one thousand organized, militant, young, politicized Puerto Ricans who respond to leadership—they [would] much rather have one thousand disorganized, competing youth, serving as a destabilizing element in our community.").
169. Id.
170. Id.
171. Id.
to the family's interests, the NCPRR will limit its relationship with the family. 172

In the NCPRR's experience, one of the most common reasons a family will not work with it or other community organizers is because the family is advised by its attorney not to do so. 173 This advice usually comes from private practitioners who do not specialize in police brutality work and focus on the possibility of settlement with the city as the goal of the lawsuit. 174 As Richie explains,

Many of the lawyers take the cases because they know there will be a cash settlement down the road. But the families, as they embark on trying to get justice, distinguish that there is a monetary civil suit (that motivates most of the lawyers), but that there is also criminal and civil rights prosecutions that are available. 175

The NCPRR has found that exacerbating the pressure to settle placed by many private attorneys, those lawyers often do not inform the families about the legal process, deny the families access to their files, charge exorbitant amounts to initiate the representation, and commit potential malpractice. 176 Furthermore, families are often divided as to the desired course of action and have financial hardships that increase the incentive to settle. 177 The NCPRR supported the establishment of Police Watch to address this need for quality and knowledgeable attorneys. 178 On occasion, the NCPRR has assisted families to change counsel due to this type of difficulty. 179

172. Id. For example, in approximately 1990, the NCPRR was working with a family that decided to align itself with the Reverend Al Sharpton. Id. At the time, Reverend Sharpton's reputation was under attack. Despite the organization's working relationship with him, they felt that the alliance would be detrimental to the family. Id. Richie states that, "We felt that this decision was a breach on their part and told them that. We would continue to support the case, but we would not participate in press conferences that we felt were harmful to them, or other [detrimental] activities." Id.

173. Id.

174. Id.

175. Id. ("But from the families' point of view settlement does not mean that anyone gets punished. Nor does it mean that the city has agreed to admit to any wrongdoing. Almost invariably the families say that 'this is not what we are in this for, money cannot bring back my kid.'").

176. Id. Examples of the potential malpractice that Richie has observed some lawyers commit are filing late and/or incomplete papers with the court. Id.

177. Id.

178. Supra Parts II.A.3-4.

179. Perez Interview, supra note 147.
The NCPRR also has extensive experience with progressive legal institutions and individual lawyers.\(^{180}\) According to Richie, one of the limitations of progressive lawyers and organizations like CCR is that they do not have the capacity to take every case.\(^{181}\) This causes the organizations to engage in a selection process which searches for cases that represent larger issues.\(^{182}\) Due to the scarcity of resources, these legal organizations prefer class actions to individual actions which “leaves us with the vacuum of who then is going to do the individual cases.”\(^{183}\) Richie observed that small law offices do not have the resources necessary to initiate and withstand the long process of a police brutality lawsuit.\(^{184}\)

Over the years of its organizing in the community around the issue of police brutality, the NCPRR has observed that survivors of police brutality and families of survivors and victims now often know how to respond to incidents with the police independently of community organizations.\(^{185}\) This may be an indication that the movement against police brutality has accomplished a degree of self-empowerment in the community at large.

2. Hyun Lee and the Committee Against Anti-Asian Violence

Hyun Lee began her police brutality organizing work when she joined the staff of the Committee Against Anti-Asian Violence (“CAAAV”).\(^ {186}\) On her first day of work in 1994, she met with a Korean woman who, following an argument with a taxi driver over payment of a fare, was arrested and subsequently assaulted both verbally and physically by the police.\(^ {187}\) CAAA V is a grassroots organization that has a small staff and corps of volunteers that work to address various issues confronting the Asian community in New York City.\(^ {188}\) It currently has three main projects: the Youth

\(^{180}\) Id. NCPRR was one of the name plaintiffs in the Street Crime Unit class action brought by CCR. Nat’l Cong. For Puerto Rican Rights, 194 F.R.D. 105 (S.D.N.Y. 2000).

\(^{181}\) Id.

\(^{182}\) Id.

\(^{183}\) Id.

\(^{184}\) Id.

\(^{185}\) Id. (“They don’t need us to tell them to have a press conference, to put up banners, to carry pictures of their children. This is now common-sense knowledge in our broader community.”).

\(^{186}\) Lee Interview, supra note 149.

\(^{187}\) Id.

\(^{188}\) Id.
Leadership Project, the Women Workers Project, and a project that is focused on the effects of gentrification in Chinatown.\textsuperscript{189}

Issues of police brutality and injustice in the criminal justice system, in general, often arise in the various projects.\textsuperscript{190} For example, one of the youths in the Youth Leadership Project in the Bronx and some friends were subjected to an illegal “stop and frisk” and selective enforcement; they were then “put through the system.”\textsuperscript{191} According to Hyun, the youths’ rights were violated while they were in police custody.\textsuperscript{192} CAAAV staff obtained a lawyer for the youths and brought the lawyer to the precinct. CAAAV staff also went to court with them and interviewed witnesses.\textsuperscript{193} Another example of issues pertaining to the police and criminal justice system permeating the various aspects of CAAAV’s work is its organizing efforts with street vendors in Chinatown. For the past several years Mayor Giuliani has been attempting to curb the proliferation of street vendors in certain areas of Manhattan.\textsuperscript{194} The police have been enforcing this policy by removing the vendors from the streets, which has often resulted in altercations.\textsuperscript{195} Until recently, the CAAAV, like the NCPRR, engaged in advocacy on behalf of claimants in individual police brutality cases.\textsuperscript{196} According to Hyun, due to limited resources and a decision that the organization could be more effective doing grassroots organizing, it reduced its individual caseload.\textsuperscript{197}

When CAAAV does engage in individual case advocacy it accompanies the client to his or her initial appearance in court.\textsuperscript{198} CAAAV assists the client in navigating the justice system and explains the procedures and the client’s rights. CAAAV also fre-

\begin{itemize}
\item \textsuperscript{189} Id.
\item \textsuperscript{190} Id.
\item \textsuperscript{191} Id. “Selective enforcement” is the term used to refer to the police’s execution of their duties in a manner that affects marginalized communities in a discriminatory manner, such the disproportionately high rate of stop and frisk of young men of color in New York City. See, e.g., Nat’l Cong. For Puerto Rican Rights, 194 F.R.D. 105 (S.D.N.Y. 2000).
\item \textsuperscript{192} Id.
\item \textsuperscript{193} Id. Hyun explains that, “By the nature of the community that [CAAV] works with, we often get cases of young people who are put through the system unfairly.” Id. CAAAV bases their involvement on these cases on whether it advances their “organizing work and the struggles of the community.” Id.
\item \textsuperscript{194} Id.
\item \textsuperscript{195} Id.
\item \textsuperscript{196} Id.
\item \textsuperscript{197} Id.
\item \textsuperscript{198} Id.
\end{itemize}
NYC POLICE BRUTALITY LAWYERING

quently translates for the clients to their attorneys. CAAAV found that working with Legal Aid attorneys was easier than working with the court-appointed 18(B) lawyers [court appointed pursuant to Part 18(B) of N.Y. County Law (Representation of Persons Accused of Crime or Parties Before the Family Court or Surrogate’s Court)] because they had a relationship with the Legal Aid Society as an organization. CAAAV found that the 18(B) lawyers were often disinterested in the clients’ cases and were resentful and hostile toward CAAAV organizers’ presence.

Hyun believes it has been easier to work with individual progressive lawyers than 18(B) and non-political lawyers. She asserts, “Legal organizations have their own organizational interests and there is a lot more we have to negotiate with organizations. With individuals it is really based on whether you can work with that personality.” CAAAV has worked closely with a small pool of lawyers with whom they have established a relationship.

CAAV sits on the Community Advisory Board of Police Watch. However, it has not referred any cases to Police Watch. It has also worked with the Asian American Legal Defense and Education Fund (“AALDEF”), CCR, and, more recently, through the Women Workers Project, with the National Employment Law Project (“NELP”). Hyun describes the relationship with the more progressive legal institutions as a relationship “not without contradictions.”

199. CAAAV has had to translate both live communications between the lawyers and their clients and written correspondence. Id. Hyun stated, “[T]hat’s the part of the work we don’t enjoy doing because we feel like we are receptionists for the lawyers.” Id.

200. N.Y. COUNTY LAW § 722 (McKinney 2000) (“The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons [before the Family Court or Surrogate’s Court] charged with a crime or who are entitled to counsel . . . who are financially unable to obtain counsel.”).

201. According to Hyun, “They would just advise people to go plead this or that and their whole attitude was just ‘listen to me because I am the lawyer’ . . . . Sometimes the lawyers will not even bother to call for translators because then you have to wait around for a long time.” Id.

202. Id.

203. Id. For example, they have referred cases to John Yong who is in private practice in Chinatown and formerly worked at the Legal Aid Society. Id. In the past he was a member of CAAAV. Id.

204. Id.

205. Id.

206. Id.

207. Id.
You love them because they take up a very important space in the movement—you need lawyers. You need people who are trained and able to defend our community. . . . But at the same time, it's not so clean. I would say [that] maybe this [is] not just a contradiction with legal institutions, but all non-profit groups that have an organizational interest that overtakes our commitment to the movement and to our communities.  

The tensions between organizers and lawyers often emanate from ideological differences. According to Hyun, lawyers, by nature, have to focus on the legal merits and the evidentiary strength of individual cases, while community organizers look at individual cases within the larger historical context of police brutality and the criminal justice system's treatment of people of color. These differences in ideology and tactics play out in the collaboration between organizers and legal institutions in deciding whether or not to encourage and/or organize direct actions during the grand jury selection process, and whether or not to call for federal investigation after the failure of local district attorneys to indict police officers for brutality and murder. The tension between the organizers and lawyers can manifest in every aspect of the working relationship, "all the way down to . . . the tone of language on picket signs." Hyun explains that,

As organizers, we felt that the police murder of [name omitted] was a part of a long history of police brutality against people of color, and a long history of district attorneys' failing to indict cops for murder. We felt that it almost didn't matter what kind of position we took, the DA hadn't indicted a cop for murder in countless other cases before [name omitted] . . . . For us it's about movement building among the communities of color and understanding history, it's about taking the anger of the community and doing something with it—building something.

CAAAV tries to connect victims/survivors of police brutality and their families with other families who have confronted and struggled against police brutality. When considering the type of action to take in a specific case, CAAAV focuses on the potential political

208. Id.
209. Id.
210. Id.
211. Id.
212. Id.
213. Id.
transformation and empowerment of the individual or family with whom they are working.  

According to Hyun, CAAAV's experiences with progressive legal institutions have served as important learning experiences for both the organizers and lawyers about "the possibilities and shortcomings of the relationship between community groups and progressive legal institutions. We undoubtedly need each other for the movement to grow and will continue to learn from our mistakes to forge a stronger relationship that serves to advance the struggles of our community." Hyun feels that legal action can be an effective way of dealing with police brutality when it supports movement building; however, she also feels that it has the potential of being counter-productive in that it can give people a false sense of security and justice.

In its organizing work, CAAAV also has had experiences with progressive lawyers and legal institutions in which the lawyers made promises that CAAAV relied on, about legal strategies and theories and possible representation, that did not come to fruition. The failure of lawyers to deliver on their promises sometimes meant serious setbacks in their organizing strategies. She feels that the optimal working relationship between community organizers and lawyers will be reached when there are clearly delineated roles and expectations, coupled with a shared agenda.

According to Hyun, a primary difference between organizers and many progressive lawyers is that "[a]s an organizer you are accountable to a certain community forever. When you have two hats, as a lawyer and an organizer, this double-identity can lead to contradictions."

In analyzing the role of race, ethnicity, class, and gender, Hyun talks about "non-movement" lawyers' inability to empathize with the day-to-day realities of their clients. For example, a lawyer making an inflexible appointment with the client regardless of the implications for the client's work situation. She is also critical of some of the lawyers' dehumanizing treatment of their clients who

214. Id.
215. Id.
216. Id. ("It really sometimes dampens the movement building efforts when people are encouraged to just look to the legal channels to fight their battles.").
217. Id.
218. Id.
219. Id.
220. Id.
221. Id.
do not speak English. Hyun believes that, on an organizational level, CAAAV has been treated by the courts and the media as a novelty. For example, people have said, "'Oh, Asian people get beaten up by the police too?' or 'Committee Against Anti-Asian Violence—what violence?" Among other community-based organizations from other communities of color the largest struggle for CAAAV has been to place the experience of immigrants and Asians specifically into the historic view of police brutality. In terms of class, gender, and age dynamics between the lawyers and the CAAAV organizers, Hyun concludes that "non-movement" lawyers would prefer to use CAAAV as an intermediary between them and the clients because the CAAAV organizers tend to be college educated, middle-class, and English speaking. The lawyers also see CAAAV organizers as providers of emotional and informational support to the clients.

Her first and only personal experience with the police and the criminal justice system was when she was fifteen years old and her father hit a bicyclist during a family trip in Alabama. She recalls her father being visibly afraid and when she asked him why, he responded by yelling, "Don't you know what the cops are like in Alabama? They don't like us." They waited for the police to arrive and her father was arrested without the police asking any questions. She returned with her father for the court hearing to translate for him and remembers the court treating them rudely.

III. EXAMINING THE DIFFERENT MODELS OF REPRESENTATION THROUGH THE LENS OF THE REBELLIOUS LAWYERING MODEL

Matthew, Ellen, Bill, and Karl all have aspects of their work that reflect regnant as well as rebellious lawyering characteristics; however, Karl and PW embody the greatest quantity of rebellious qualities. PW is the newest organization and is staffed by young, activist lawyers and organizers. The two New York staff people are

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222. Id.
223. Id.
224. Id.
225. Id.
226. Id.
227. Id.
228. Id.
229. Id.
230. Id.
231. Id.
an African American male in his late twenties and a white lesbian woman in her early twenties.\textsuperscript{232} According to Lopez, the lawyer living in and being a member of the community with which she works facilitates rebellious lawyering.\textsuperscript{233} PW approaches the problem of police brutality through a multi-faceted lens and are open to change.

The narratives of community organizers Richie and Hyun offer both confirmations and contradictions of the lawyers’ accounts. Their two organizations, the NCPRR and CAAA, have had markedly negative experiences with individual private practice lawyers who are not part of the progressive community.\textsuperscript{234} Their experiences with progressive legal institutions have been more complex. Richie and Hyun both recognize the important role of progressive lawyers in supporting the grassroots movement against police brutality and in representing individuals who have been subjected to police misconduct.\textsuperscript{235} Yet, they both emphasize the organizational/practitioner interests that can conflict with either the client’s desires or the objectives of the larger community movement.\textsuperscript{236} Hyun suggests that the ideal lawyer would be an individual lawyer who can consistently commit herself to the struggles of a specific community.\textsuperscript{237} She also asserts that lawyers should not confuse the boundaries between lawyering and community organizing.\textsuperscript{238} This poses a difficult hurdle in the formulation of a rebellious practice: if the client or community articulates a desire for the lawyer to embody regnant characteristics, then is it not disempowering to deny that direction and impose a rebellious model of lawyering? A possible solution would be a hybrid approach in which the lawyer acknowledges and follows the client’s directions but also engages the client in using her own “lawyering” skills in collaboration with the lawyer.

\textsuperscript{232} Franklin Interview, \textit{supra} note 125. Since the date of the Interview with Karl, the staff make-up of PW has changed.

\textsuperscript{233} \textit{Lopez}, \textit{supra} note 1, at 31.

\textsuperscript{234} Perez Interview, \textit{supra} note 147; \textit{see also supra} text accompanying notes 170-176 and (discussing Perez Interview).

\textsuperscript{235} Perez Interview, \textit{supra} note 147; \textit{see also supra} text accompanying note 180 (discussing Perez Interview).

\textsuperscript{236} Perez Interview, \textit{supra} note 147; \textit{see also supra} text accompanying note 182 (discussing Perez Interview).

\textsuperscript{237} Lee Interview, \textit{supra} note 149; \textit{see also supra} text accompanying notes 202-203 (discussing Lee Interview).

\textsuperscript{238} Lee Interview, \textit{supra} note 149; \textit{see also supra} text accompanying note 219 (discussing Lee Interview).
A. Rebellious Characteristics

As previously discussed, the primary characteristics of rebellious lawyering are: being open to change, utilizing the clients' lay lawyering skills, living in the community, making use of the media, using the client's storytelling ability, and seeing the larger picture. Interviews with the lawyers and community organizers present a picture of the reality of lawyering surrounding the issue of police brutality and misconduct in New York City. By comparing and contrasting the characteristics of rebellious and regnant lawyering with these realities, this Comment presents questions to legal practitioners striving to be "rebellious" and suggests ways to change their practice to more fully embrace "rebellious lawyering."

1. Being Open to Change/Engaging in Alternative Problem-Solving

A fundamental aspect of rebellious lawyering is an openness to change on the part of the lawyer. The lawyer should be able not only to question his or her routinized problem-solving techniques (e.g., litigation), but also should listen to the client and ascertain from the client's story which method of problem solving would be most effective.

The NCPRR engaged in a process of redefining its organizing tactics and political rhetoric to be accessible to and inclusive of the families of the victims of police brutality, youth, and street organizations. This openness to change and desire to integrate community voices into their practice is not present in any of the lawyers' narratives. All four of the narratives show a reliance on litigation, and in particular § 1983 suits, as the primary problem-solving technique.

239. Supra Part I.A.1.
240. Supra Part II.
241. Lopez discusses this concept in his description of the "early brainstorming stage," in which the attorney considers not only how a court will respond to a claim, but also what other audiences may be potentially available to respond to the client's needs and concerns. Lopez, supra note 1, at 190. Rebellious lawyers should "draw on marginalized experiences, neglected intuitions and dormant imagination to redefine what clients, lawyers, and others can do to change their lives." Id. at 29. Lopez asserts that effective lawyering requires an openness to new insights and a willingness to scrutinize one's own solutions, even if they are generally successful. Id. Furthermore, the lawyer to be effective must put these new, creative ideas into action with his or her clients. Id. at 66.

242. Alinsky, Rules for Radicals, supra note 88, at 197 (1971); see also supra note 159 and accompanying text (discussing Alinsky's work and theory).
Bill says that CCR is committed to using the law in different ways to address the concerns and expand the rights of CCR’s clients. Matthew, similarly, confines his work to the traditional legal arena; however, he is open to possibilities of collaboration with community groups and sees the need to expand the services provided to victims of police brutality.

Both Ellen and Karl see litigation as just one possible vehicle to respond to police brutality. Ellen stated that the community arena may have greater potential for effecting change; however, she gave the caveat that this would only be the case if the community was “organized.” Karl sees community organizing as being at the forefront of the work of PW. This reflects a tension between the role of rebellious lawyers in social movements. Hyun asserts that lawyers should use their skills and position in the justice system to defend organizers and community members. She conceptualizes the role of organizer and lawyer as discrete and separate, yet working in partnership. Her position suggests that legal institutions, such as PW, should focus on legal advocacy and leave the organizing to the community organizers. Karl readily admits that PW needs to engage in a more in-depth dialogue with the collaborating community organizations and continue to be flexible in its ability to respond to the needs of different communities.

2. The Lawyer-Client Relationship: Utilizing Clients’ Lay Lawyering Skills

Lopez insists that a rebellious lawyer must regard “subordinated” clients and other professionals as “co-eminent problem-solvers.” Alfieri also discusses this notion of collaboration, negotiation of shared responsibilities, and use of client-spoken narratives.

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243. In the context of the Diallo shooting, Bill explains that CCR was in a “position to do what CCR has always done best—which is to find an innovative litigation strategy to meet the needs of the movement.” Goodman Interview, supra note 13.
244. Flamm Interview, supra note 96.
245. Yaroshefsy Interview, supra note 111.
246. Franklin Interview, supra note 125.
247. Lee Interview, supra note 149.
248. Id.
249. Id.
250. Franklin Interview, supra note 125; see also supra text accompanying note 142 (discussing PW’s outreach to the gay, lesbian, bisexual, and transgender community).
251. Lopez, supra note 1, at 213. “She must learn to work with, and not just for them, and she must learn to make space, in more than just her thoughts, for what they bring to the collaboration in the way of experience, know-how, and strategic sense.” Id. Lopez, in his description of an attorney named Sophie, asserts that a rebellious lawyer must not be limited to “imaginative case processing. She [must] keep[ ] a con-
tives. Alfieri maintains that this is part of the lawyer's responsibility.\textsuperscript{252} Richie articulated this concept by saying that the goal of the NCPRR is to help the families "get voice and punch."\textsuperscript{253} A key element of the NCPRR's work is to empower the families to develop their own voices in the struggle against police brutality.

Matthew, Ellen, Bill, and Karl all maintain that they are client-centered and are primarily directed by the client in their strategic decisions.\textsuperscript{254} Despite this, the interviews did not reflect efforts on their part to engage in a dialogue with the clients to develop new, creative responses to police brutality. Matthew does, however, engage some clients in investigative work in preparation for the case. He also includes the client in the parts of the litigation that require client input, such as discovery and trial preparation, in a way that encourages the client's full participation rather than passive acquiescence.\textsuperscript{255} Karl and Ellen state that on occasion (in Ellen's case, more so in the past), in cases where the clients do not have claims that are sufficiently meritorious and/or the cases are ripe for community mobilization, they will refer the clients to community organizations for alternative means of resolution.\textsuperscript{256} For example, community organizations employ different techniques to garner support and draw attention to the issue of police brutality. These techniques include community mobilization or media campaigns.\textsuperscript{257} They also collaborate with community organizations and go to their clients' communities and other public forums to do workshops and outreach.

3. Living in the Community

In \textit{Rebellious Lawyering}, Lopez describes the danger of a lawyer being seen as a "permanent outsider." Lopez states that, "this community has had more than its share of so-called friends flitting in and out trying to make changes."\textsuperscript{258} The regnant model does not

\begin{itemize}
  \item \textsuperscript{252} Alfieri, \textit{Reconstructive Poverty Law Practice}, supra note 20, at 2141.
  \item \textsuperscript{253} Perez Interview, \textit{supra} note 147; see also \textit{supra} text accompanying notes 170 and 185 (discussing how the larger community also has been effected by this process of dialogic empowerment in that people on their own prerogative know how to respond to police brutality).
  \item \textsuperscript{254} Flamm Interview, \textit{supra} note 96; Yaroshefsky Interview, \textit{supra} note 111; Goodman Interview, \textit{supra} note 13; and Franklin Interview, \textit{supra} note 125.
  \item \textsuperscript{255} Flamm Interview, \textit{supra} note 96.
  \item \textsuperscript{256} Yaroshefsky Interview, \textit{supra} note 111; Franklin Interview, \textit{supra} note 125.
  \item \textsuperscript{257} Perez Interview, \textit{supra} note 147; Lee Interview, \textit{supra} note 149.
  \item \textsuperscript{258} Lopez, \textit{supra} note 1, at 31.
\end{itemize}
require the lawyer to be a part of the community since the lawyer is
serving as a technical specialist and liaison to the legal system.²⁵⁹
In response to this regnant tendency in the progressive lawyering
community, Lopez asserts that a rebellious lawyer should live in
the same community in which he or she works.²⁶⁰

Of the four lawyers interviewed, Karl is the only one who lives
within the community he serves. Karl lives in the housing projects
of Crown Heights, Brooklyn and has grown-up in an atmosphere of
hostility and brutality by the police. Both he, and to a greater ex-
tent, his friends, have been victims of police harassment and
brutality.²⁶¹

The term “community” can be broadly defined to encompass
one’s identity (i.e., ethnicity, religion, race, or sexuality). However,
even broadly defined, Matthew, Ellen, and Bill live in communities
which are separate from their client population. They, and their
families, have never had conflict with the police, except in a civil
disobedience setting. Yet, they all identify with the issue of police
brutality through a common sense of moral and political outrage
and through their friends, acquaintances, and the society in
general.²⁶²

Both Hyun and Richie organize primarily among their own re-
spesive ethnic groups. Additionally, they both participate in coal-
tion efforts that cross racial and ethnic lines to bring together
victims of police brutality. CAAAV has worked extensively with
AALDEF, which is primarily focused on issues affecting the Asian
community. However, it also works extensively with NELP, CCR,
and the Legal Aid Society, organizations not serving any one eth-
nic or racial group. The two community organizations, therefore,
work with lawyers and legal organizations that do not specifically
serve their racial group. However, Hyun stressed the importance
of a lawyer’s ability to empathize with the client’s background and
to engage in a respectful collaboration with both the client and
community organizations which support the client.²⁶³

²⁵⁹. Id. at 23.
²⁶⁰. Id. at 31.
²⁶¹. Franklin Interview, supra note 125.
²⁶². Flamm Interview, supra note 96; Yaroshefsky Interview, supra note 111;
Goodman Interview, supra note 13.
²⁶³. Lee Interview, supra note 149; see also supra text accompanying note 222 (dis-
cussing Lee Interview).
4. Making Use of the Media

Lopez views the use of the media as a tool for creative problem-solving and rebellious lawyering.\(^{264}\) All of the practitioners and organizers have used media as a tool in their work. They have used print news, radio, television, and public hearings.\(^{265}\) Karl believes that two of the challenges PW has confronted are breaking into mainstream media and the cost of advertising. He feels that reaching as many people as possible is crucial to accomplishing the project's goals.\(^{266}\) Matthew cited the use of the press as the most rebellious aspect of his practice.\(^{267}\) CAAAV and the NCPRR, however, have had conflicts in the past with lawyers who discouraged the organizations or their clients from going to the media since they feared that drawing attention to pending cases might lessen the chances of settlement or indictment.\(^{268}\)

5. Using the Client's Storytelling Ability

Rebellious lawyering stresses the importance of clients' storytelling because the theory recognizes the silence forced upon marginalized communities.\(^{269}\) Rebellious lawyers must collaborate with their clients in a manner that enables clients to express their stories. The client's narrative can be incorporated into every form of legal representation discussed. The class action, individual action, legal referral, archival, and community organizing approaches can increase client narratives in a variety of ways. Forums in which lawyers could incorporate client narratives include: in the courts (e.g., introducing victim impact statements and direct testimony); before the public (e.g., holding public hearings); in the media (e.g., giving interviews and issuing press releases); and by community outreach (e.g., disseminating posters and educational materials). The NCPRR and CAAAV have encouraged the community mem-

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\(^{264}\) Lopez, supra note 1, at 15. The use of media, (for example, a press conference announcing the filing of a law suit) can be used as a means of making contacts with other institutions and groups in the community and as a means of engaging the public at large in the issue. Id. The media can also be used as an alternative to litigation as a means of “marshaling support.” Id. at 206.

\(^{265}\) Flamm Interview, supra note 96; Franklin Interview, supra note 125; Perez Interview, supra note 147; and Lee Interview, supra note 149.

\(^{266}\) Franklin Interview, supra note 125.

\(^{267}\) Flamm Interview, supra note 96.

\(^{268}\) Perez Interview, supra note 147; Lee Interview, supra note 149. See also supra notes 174 and 212 and accompanying text (discussing the Perez and Lee Interviews, respectively).

\(^{269}\) Lopez, supra note 1 at 191 (explaining the historic silencing of marginalized communities).
bers they have worked with to articulate, in their own terms, their experiences, and have found that this has enabled their organizations to reach a broader audience.270 According to Hyun, lawyers often dwell on the legal minutiae of the cases and scrutinize the organizer’s and client’s language before they speak to the public.271 Lawyers also have a tendency to speak in “legalese” that obscures the message they are trying to communicate to the client and public at large.272 Hyun cites many examples of lawyers approaching clients—particularly non-English speaking clients—in a “dehumanizing” manner.273

6. Seeing the Larger Picture

Another fundamental characteristic of rebellious lawyering is the ability to see the client’s issue within the larger societal context. A rebellious lawyer should not only see the impact of the lawyer-client collaboration on the client’s individual life, but also the impact it will have and the response it will receive in the local, regional, national, and international socio-political spheres.274 All four lawyers see the issue of police brutality in the larger socio-political context. Matthew spoke of the relationship between the citizenry and the civilian military force in the United States and other countries.275 All four spoke of the political schism between payment of damages and the budget of the NYPD. The lawyers also spoke of the role of politicians like Mayor Giuliani and Comptroller Hevesi in settling or pursuing litigation, and their willingness to accept culpability and responsibility to change. This reflects an understanding of the reciprocal impact between their legal work and the actions of local politicians. Karl put the problem of police brutality in the larger context of the “prison industrial complex” and the criminalization of African Americans in the United States.276 Richie spoke

270. ALINSKY, RULES FOR RADICALS, supra note 88; see also supra text accompanying note 159 (discussing Alinsky’s work and theory); Lee Interview, supra note 149; see also supra text accompanying notes 197-199 (discussing Lee Interview).

271. Lee Interview, supra note 149; see also supra text accompanying note 211 (discussing Lee Interview).

272. Id.

273. Lee Interview, supra note 149; see also supra text accompanying note 222 (discussing Lee Interview).

274. LOPEZ, supra note 1, at 33. In making this connection, the rebellious lawyer will be able to “identify emerging interests, to avoid duplication of efforts, and to help mobilize for increased resources and participation.” Id.

275. Flamm Interview, supra note 96.

276. Franklin Interview, supra note 125. By the term “criminalization” of African Americans in the U.S., I not only refer to the mass incarceration of this part of the
of police brutality within the larger context of the criminal justice system and white supremacy. Hyun says that CAAAV’s Chinatown Justice Project comes into contact with police brutality through its work with youth, street vendors, and low-income residents. CAAAV places police misconduct in Chinatown within the larger context of gentrification and the policies of the Giuliani administration. They generally situate police violence within the context of the criminal justice system and white supremacy.

**B. Regnant Characteristics**

As previously discussed, the characteristics of regnant lawyering are: focusing on litigation; seeing “community education” as diffuse, marginal, and uncritical work; seeing “organizing” as sporadic, supplemental mobilization; and viewing lawyers as preeminent problem-solvers and clients as fact-givers.

1. **Focused on Litigation: The Paradigm of Direct Service or Law Reform**

Litigation is appealing because it offers the possibility of forcing the government to alter its current method of functioning and to comply with federal constitutional and statutory guidelines. This can have a tangible impact on people’s everyday lives. However, lawyers working toward the empowerment of subordinated clients and their communities also must recognize the limits of litigation and its possible negative effect on community organizing efforts.

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277. Perez Interview, supra note 147; see also supra text accompanying to note 159 (discussing Perez Interview).

278. Lee Interview, supra note 149; see also supra text accompanying notes 189-193 (discussing Lee Interview).

279. Id. (stating that other CAAAV programs address different forms of police brutality).


281. Lopez, supra note 1, at 171.

282. Professor William P. Quigley, in his discussion of the impact of litigation on community organizations, highlights the weaknesses of the judicial system, in general, in regard to social reform. William P. Quigley, Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations, 21 Ohio N.U. L. Rev. 455, 469-70 (1994). The judiciary is far more disposed to and capable of stopping something from happening than it is to force something positive to occur . . . . However, the real work of organizational development is to take the members’ rightful share of power and redistribute it . . . . Thus, litigation, particularly litigation
This aspect of litigation was not discussed in the interviews with the lawyers. All of the lawyers interviewed saw litigation as just one of the available tools in social change. None of the lawyers shared experiences of litigation causing a negative impact on the client or the community. However, Hyun feels that focusing on legal resources can “dampen” movement-building efforts. She asserted that being focused solely on litigation as a means of redress could be counter-productive to community organizing efforts.\(^{283}\)

Hyun discussed the tension between the desire of legal organizations to bring precedent-setting litigation and the interests of the clients and community organizers.\(^{284}\) According to Richie, progressive legal institutions and individual lawyers lack the necessary resources to accommodate the large number of individual clients needing representation. This lack of resources pressures the larger legal organizations to focus on impact litigation.\(^{285}\)

Regnant lawyers narrowly define lawyering as litigation. They judge different potential aspects of the practice, such as community education, street theater, and coalition building, as “variously flawed, utopian, or somehow not really lawyering at all.”\(^{286}\) Critics of traditional litigation-centered lawyering have observed that direct services and law reform litigation can potentially have a negative impact on community organizing efforts. For instance, providing direct service representation may isolate the client because it fails to connect the client with others who have faced similar problems, and fails to develop a collective response.\(^{287}\)

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\(^{283}\) Id.; Alfieri, Antinomies, supra note 20, at 664 (“Remedial litigation should not be mounted, even where altruistic relief is possible, without the activization of class consciousness among the poor, nor without the political organization and mobilization of the poor.”).

283. Lee Interview, supra note 149; see also supra text accompanying note 216 (discussing Lee Interview).

284. Lee Interview, supra note 149; see also supra text accompanying notes 208-208 (discussing Lee Interview).

285. Perez Interview, supra note 147; see also supra text accompanying note 182 (discussing Perez Interview).

286. Lopez, supra note 1, at 26.

287. Alfieri, Antinomies, supra note 20, at 684-85. In his discussion of direct service, Professor Alfieri confronts the possible negative consequences of examining the client’s problem as an isolated event. Id. Alfieri states, “The failure to address legal disputes contextually as individual manifestations of class antagonisms inhibits client politicization and class consciousness . . . and too often improvish[es] [a] community.” Id.
Matthew expressed a frustration with the isolation of his practice and the narrow and limited impact the individual cases have on the practice of police officers and the system at large. He did not speak of any experiences of bringing clients together to share experiences of police brutality and he probably has not tried this approach. Bill spoke of both a class action (the SCU case) and individual police brutality cases that CCR has undertaken. Although the class action brings together various victims, he too did not share any experiences of bringing clients together from separate cases or the various class actions. Despite the fact that all of the lawyers interviewed feel that law reform and direct services alone cannot accomplish social change, there seems to be a lack of creative and innovative approaches being developed to improve collaboration with clients and community and to better address the problem of police brutality.

2. Seeing “Community Education” as Diffuse, Marginal and Uncritical Work and “Organizing” as Sporadic, Supplemental Mobilization

All of the lawyers interviewed recognize the value of community education and organizing. However, with the exception of Karl, their involvement in these efforts is minimal. This recognition of need, coupled with the inaction by the individual lawyers, produces a crisis in the progressive legal community. If the need to reach out to, organize with, and educate the community is viewed as an essential component to social change lawyering, then why are these lawyers not participating in these activities to a larger extent? The answers likely would be the common responses of regnant lawyers: there is not enough time, litigation uses their specialized skills to a greater degree, there are other people who are doing the organizing work, or they reach out to the community when there is the need—when looking for members for a class action or asking for support for a press conference or rally. If a lawyer is going to work for the empowerment of the client and community and embody

288. Flamm Interview, supra note 96.
289. Alfieri, Antinomies, supra note 20, at 688. “Framing an attack on a particular wrong cannot ipsi dixit [sic] unmask domination and liberate consciousness. In the same way, pressing for judicial creation or enforcement of a particular rule or doctrine cannot redistribute class power.” Id.
290. Lopez, supra note 1, at 153. A characteristic of regnant lawyering is to treat community education and organizing as collateral to the lawyer's “real” work and to be involved in these efforts only on a “sporadic, superficial” level. Id.
rebellious lawyering, the lawyer must create space and give priority to these alternative techniques of lawyering.

Richie and Hyun both recognize the importance of legal action in addressing police brutality. One of the three parts of the NCPRR’s organizing strategy is legal action. However, both community organizers stressed that their organizations only will work with lawyers and support legal action if they see it as beneficial to the larger organizing effort. This position places the lawyers on the periphery of the organizers’ response to police brutality. Therefore, the lawyers and organizers envision the centrality of the legal action and the community organizing differently.

3. Viewing Lawyers as Preeminent Problem-Solvers and Clients as Fact-Givers

Matthew captures the regnant belief that clients are essentially fact-givers and lawyers are problem-solvers in his statement that, “Being a client is actually an inherently passive role.” Regnant lawyers see their role as filling a need in the fight against subordination and the use of their specialized skills and knowledge places them in a special position in this struggle. The legal analysis that is used to determine whether a case is legally meritorious or if the legal argument can be broadened to bring about a larger scope of change are exercises which exclude the clients from actively participating in the outcome of their cases. These practices must be examined and questioned.

CONCLUSION

The theory of rebellious lawyering has particular salience in the context of the legal representation of victims of police brutality.

291. Perez Interview, supra note 147; see also supra text accompanying note 169 (discussing Perez Interview).

292. Franklin Interview, supra note 125; Lee Interview, supra note 149; see also supra text accompanying notes 180 and 216 (discussing Franklin and Lee Interviews respectively).

293. Flamm Interview, supra note 96; Lee Interview, supra note 149; see also supra text accompanying notes 104 and 201 (discussing Flamm and Lee Interviews respectively). Hyun explains that CAAAV has observed 18(B) attorneys in criminal court also not engaging the clients in a dialogue. The lawyers do not explain the criminal court procedures and often do not even request translators so that they and the court can communicate with the client.

294. LOPEZ, supra note 1, at 28.

295. Franklin Interview, supra note 125; Goodman Interview, supra note 13.

296. Yaroshefsky Interview, supra note 111.
The clients and their communities are, on “lock-down” and they and their loved ones have been subject to and witnesses of continuous, brutal attacks by the NYPD. As the interviewed legal practitioners and community organizers have recognized, their clients are looking for more than just pecuniary damages. They are seeking justice and attempting to prevent similar brutalization from recurring. The importance and impact of these lawyers’ work should not be denigrated or belittled. The judgments and settlements they win for their clients are the closest their clients have gotten to obtaining justice and recognition for their injuries. However, after more than two decades of suits against the NYPD for police brutality and other misconduct, we must attempt to create and encourage alternative approaches to this dilemma that can bring about systemic change on a greater level.

The lawyers envision themselves as client-centered. They voice frustration with the limits of litigation in the context of seeking systemic change in the operations of the police. Despite this frustration, their practices are largely litigation focused and, in this manner, regnant in character. All four attorneys have rebellious characteristics and they all acknowledge the importance of community organizing and education. They also see police brutality in the larger political context of the United States.

Police brutality is a symptom of larger power inequities within the United States. Therefore, the goal of police brutality-related legal representation should be to abolish such brutality, as well as the power dynamic that creates and condones this articulation of inequality. A more rebellious stance on the part of the legal community would respond to the needs of the clients and the community on a more profound level. It is incumbent upon the legal community to take a more rebellious stance in its practice. The transformative process of rebellious lawyering must take place on both an organizational and individual level. Concrete steps can and should be undertaken by the progressive legal community to better assist community mobilization against police brutality. Various grassroots organizations have created networks to assist each other in creating a unified response to police brutality in New York City. Similarly, progressive legal institutions and individual lawyers must come together to discuss their strategies and methodologies. Lawyers would benefit from a network by mobilizing support

297. Franklin Interview, supra note 125.
for their cause and by giving and receiving emotional, political, and technical support from their peers.\textsuperscript{298}

The "blue wall of silence" that has been cited as a barrier inhibiting police officers from exposing misconduct within the police force appears to have a parallel within the legal community. The lawyers and community organizers interviewed shared experiences with private lawyers who have further violated the rights of their clients in unprofessional and unethical representation. This wall of silence must be broken as well.

Lawyers, community organizers, survivors of police brutality, families of victims of police brutality, students, members of street organizations, and others must recognize each other as collaborators in a joint struggle and work together to fashion a legal response to the problem of police brutality that will enable the community to become empowered.

\textsuperscript{298} Kilwein, \textit{supra} note 68, at 195.