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Jennifer Ching
North Star Fund

Thomas B. Harvey
Advancement Project

Meena Jagannath
Community Justice Project, Inc.

Purvi Shah
Movement Law Lab

Blake Strode
ArchCity Defenders

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A FEW INTERVENTIONS AND OFFERINGS FROM FIVE MOVEMENT LAWYERS TO THE ACCESS TO JUSTICE MOVEMENT

*Jennifer Ching, Thomas B. Harvey, Meena Jagannath, Purvi Shah
& Blake Strode**

We are five lawyers who occupy very different corners of justice work. We are civil rights, human rights, and criminal defense lawyers, and we have worked at and managed legal services programs. We have taught law at law schools and universities and have built our own organizations. We currently work in interdisciplinary spaces with community organizers, funders, and other stakeholders in the justice system.

As diverse as our perspectives are, we share a common belief that any mobilization around access to justice fails if it does not center the vision and strategies of larger social justice movements. We share here our collective calls to action to the legal community—and the allies that support and resource legal services—to expand our mission beyond chasing a standard of fairness that is impossible to achieve as long as we have deeply embedded structural and systemic inequity. Instead, let us reimagine what our communities actually need to be safe, free, and to live in our fullest humanity. We believe the role of movement lawyers is to use the law as a tool of social change, at the direction of communities most impacted by injustice. When we focus our lawyering on listening to community organizers, clients, and activists with a broader vision for social change, we can become partners in transforming systems, rather than simply making them more hospitable.

I. BUILD THE POWER OF MOVEMENTS, DON'T JUST INCREASE ACCESS TO JUSTICE

Purvi Shah

Lawyers, judges, or courts will not save us. Despite the legal-centric mythologies we are taught, courts are not on the frontlines of social, cultural,

* Jennifer Ching is the Executive Director of North Star Fund. Thomas B. Harvey is the Program Director of Justice Project, Advancement Project National Offices. Meena Jagannath is Co-Director of the Community Justice Project, Inc., based in Miami, Florida. Purvi Shah is the Founder and Executive Director of the Movement Law Lab and Co-Founder of Law For Black Lives. Blake Strode is the Executive Director of ArchCity Defenders. The authors would like to express their gratitude to David Udell for inviting us to make a contribution and for his leadership in catalyzing critical thinking about the access to justice movement. The authors also thank the *Fordham Law Review* for making this piece possible.

or legal change. The law has always been a tool to protect the interests of the powerful, white, and the rich. And while law will always be an important terrain of struggle, it is important we fight on this terrain with crystal clear precision about the limitations and biases baked into the law. Law is not objective or neutral. History has shown us that “The Law” has always trailed behind what was just.

The sordid truth about the American legal system is that our judges and courts—even liberal ones, even polite ones—are the frontlines of daily injustice. In courtrooms across the country, they sentence people to death, incarcerate adults and children to lifetimes behind bars, terminate parental rights, deport and detain, evict, and justify police violence of all sorts. Our courts are the frontline of meting out injustice against the poor, people of color, immigrants, women, LGBTQ, and gender-nonconforming people. Despite popular notions, law is a deeply political tool, often used as a way to congeal and justify an unequal and violent order.

For too long, progressives have made the mistake of being overly focused on access to the courts and legal reforms without concerning ourselves with the question of power. Law is a malleable tool that shifts and shapes depending on who is wielding it. In the hands of those who seek to control, oppress, and divide, it can architect injustice. In the hands of people of conscience who seek to create more equality, freedom, and self-determination it can be a tool that protects, defends, and emboldens those who take collective action to transform the status quo.

History has shown us the social change occurs when everyday people—workers, tenants, mothers, students—build and lead social movements for racial and economic justice. Strong movements and sustained organizing are the forces that determine our destiny. Social movements create a way where there is none and they transform ideas and institutions. They are one of the few things that can truly give us “access to justice.”

A growing sector of lawyers and legal organizations, deeply invested in questions of justice, are using their skills to build the power of social movements. Instead of viewing themselves as saviors, these lawyers see themselves as scaffolding under the feet of collectives of marginalized people courageously resisting the status quo and fighting for the transformation of their own lives. These lawyers creatively use legal tools to build the power of, make space for, validate, bolster, defend, and protect social movements and the activists and communities within them. Premised on the idea that lawyers and the law are but one piece of social change, this style of lawyering is entitled “movement lawyering.”

Providing access to the courts is an important tool that lawyers can put at the disposal of communities for the sake of building power, but it is only one. Access to courts must not be mistaken as an end in itself. It is rather a means to help communities fight for the justice they seek. The biggest mistake we could make in this moment is to think that the primary terrain for struggle is the courts, or that court victories will save us. Justice includes improving access to courts, but it cannot end there.

To all my fellow lawyers and law students out there: I ask you to recommit to using your legal work to help everyday people collectivize their resistance and survival. We must use the process of struggling for justice in the courts to create stronger, more emboldened leaders and movements—even when we lose. We must use law to defend those who resist and, frankly, we must resist outside of the courtroom as well. Instead of simply creating “access to justice,” the work of a lawyer of conscience in this time is to focus on protecting, emboldening, and strengthening social justice movements.

II. JUSTICE FOR WHOM?

Blake Strode

There are so many questions raised by the idea of “access to justice,” starting with the question of what we conceive of as justice and whether it is something to which one should need to gain access at all. We have so compartmentalized and diminished the very idea of justice that we tend to speak of it as something that can be doled out in pieces: a little criminal justice in this courthouse, civil justice in that, and for social justice, well, good luck. In this process of stripping down the notion of justice and selling it for parts, we too often lose sight of the whole. But as limited a collective appetite as this country has shown for robust conversations about justice, we have even less appetite for thoughtful consideration of another concept that has always been essential to our system of justice: identity.

Any effort to pursue justice for marginalized and under-resourced communities must wrestle seriously with the question of identity and how it impacts the institution of justice. When we talk about those who are most likely to be denied fair and equitable outcomes in our legal system, we are necessarily talking about poor people, people of color, women, queer and trans individuals, and those who live at the intersections of these multilayered identities. This is true no matter the issue or area of law, be it criminal or civil; housing or family law; on federal, state, or municipal levels. Matters of race, class, gender, and sexual orientation or sexual identity are not only *relevant* to conversations about justice; they are *central* to understanding America’s conception of justice, how it is applied, and why it produces such disparate outcomes. Our current legal system, and its philosophical underpinnings, not only does a poor job of accounting for the role that identity plays in the day-to-day implementation of what we call “law,” but it also actively discourages us from interrogating these dynamics by embracing dangerous myths of neutrality and objectivity.

If this all sounds a bit abstract, spend even a little time interacting with the clients that enter our doors every day at ArchCity Defenders in St. Louis. They are poor, and the vast majority are black. They are seeking our help to navigate oppressive systems that criminalize and dehumanize them daily precisely *because* they are poor and black. They are poor and black in a nation and region still scarred by its original sin of the systematic enslavement of African peoples and their descendants. They are poor and black in a nation and region that maintains shockingly high levels of

residential segregation marked by housing stock in black communities that is depleted and decayed from generations of redlining, discrimination, and speculation. They are poor and black in a region and a nation that has for decades caged poor and black people at a rate that is unprecedented in the modern world. For our clients, identity very much matters.

A fundamental question for all who purport to be justice advocates is this: what does it mean to have a legal system designed by and explicitly for the benefit of propertied white men, and can such a system ever truly serve the interests of anyone else? Far from being fatalistic, this question should encourage us to think beyond mere technical reforms and procedural innovations. We should take our challenge instead to be one of transformation—a transformation that is process-driven, not outcome-driven, and that centers and lifts up the voices of individuals and communities that have long been acted upon by the legal system without playing any role in its design.

There is no version of justice that does not begin by first contending with injustice. And there is no honest conversation about injustice that does not recognize the role of identity. Therefore, as we go about discussing *what* justice is, *why* it is so critical, and *how* we can ensure access to it, let us also spend a moment on *who* gets to have it.

III. LAWYERS MUST SUPPORT AND CENTER COMMUNITY LEADERSHIP

Meena Jagannath

A transformation of our justice system will be nearly impossible if lawyers put themselves at the forefront of driving the justice agenda—setting the scope of what justice means through an aperture constricted by our current legal frameworks and institutions. Lawyers too often ask the people shouldering most of the burden of our inequitable system to temper their demands to not sound unreasonable, to make them palatable, to not shake the foundations too much. They ask communities to take little step by little step, to treat symptoms instead of root causes—an incremental approach that all but ensures that the system remains largely the same.

But those who regularly confront the violence of the current system cannot afford this incrementalism, and we as lawyers should not ask them to. The lawyer of a multinational corporation allegedly complicit in human rights violations under the Apartheid regime does not tell the corporation that avoiding accountability is immoral and unjust towards the victims of that regime. The lawyer instead sets about figuring out how to get the legal system to legitimize the actions or make reparations inaccessible, because that is what the client has asked them to do. So why do we lawyers supposedly acting on behalf of communities tell them that they are asking too much and prescribe a more measured route instead? Why do we water down the demands of those closest to the problem because they are not “winnable” in our estimation? A part of the answer may come from a recognition that our laws and legal institutions, as presently configured, are more likely to legitimize a well-resourced corporation’s claims than to hold

a police officer accountable for killing a Black person—which is why our system is fundamentally broken. But the other part of the answer lies in the fact that we as lawyers generally do not renounce the driver’s seat and put ourselves at the disposal of community priorities and community self-determination to find ways to make the legal system validate their claims.

This should not be so. Following the leadership of the communities we serve must be fundamental to our practice as part of the process of transforming the justice system. Unless we make it our priority to listen to those directly impacted by an issue and create space for them to exert their leadership in pursuit of community-identified solutions, we will continue to hold up a power structure that thrives on the marginalization of a subset of our population.

Of course, this is no small feat. Low income communities of color facing innumerable obstacles to asserting themselves in democratic spaces and accessing decision-making bodies may need a lot of support to surface, articulate, and make known their demands for change. It is up to the community-minded movement lawyer to accompany a community through this process and find creative ways to build capacity and lift up leadership. Law students and lawyers must not think of this accompaniment as formulaic, but rather as a series of questions, trade-offs, and tensions that we must navigate to stay as accountable as possible to the value of centering community leadership of those most impacted. Unless we elevate this as a fundamental guiding principle of our advocacy, transformation of the system will remain elusive.

IV. TO MAKE ACCESS TO JUSTICE A MOVEMENT, SUPPORT COMMUNITY ORGANIZERS BUILDING THE WORLD THEY WANT TO SEE

Thomas B. Harvey

For the Access to Justice Movement to make transformative change, we have to do more than hire more lawyers to represent more people. Access to justice has to move beyond the vocabulary of movements and deeply engage with people already working to transform their communities. We have to support community organizers and help them build power to create the world they want to see.

To get there, we cannot simply raise money to provide a lawyer for every person facing eviction. Rather, we have to support tenant organizers and help communities figure out ways to own their own land. Whether it is a community land trust or a cooperative, this model allows communities to provide people with safe, affordable housing, and control it. Similarly, we cannot just fight wage theft cases against employers who stole from our clients. Instead, we have to help workers take control of their companies or create their own worker owned co-ops. In short, to build the world we want to see, lawyers must rethink their work. It is no longer just about reducing harm and putting a band-aid on a serious wound, it is about using our skills to support a vision where there are healthy, thriving communities with

affordable housing, widespread access to quality healthcare, and abundant public transportation.

That is not to say civil legal aid lawyers should stop doing their work. We must of course continue to reduce harm through direct representation and systemic litigation. Eviction prevention is critical even if we know it is only a short-term solution. Impact litigation has to be used strategically even if we know it is only going to change the practices of one landlord, one bank, or one school system for a short period of time. It just means that we have to make our work about connecting these individual cases to movements designed to change the anti-Black, white supremacist system that upholds our society's status quo.

We know that direct representation and impact litigation will not transform our society or cure its ills. If you have been a poverty lawyer for more than a few years, you have seen the systems we fight survive virtually every attack. You know they will simply recalibrate to hurt our clients in other ways that we may not have anticipated, sometimes with our help.

To meaningfully combat that recalibration, we have to support people who are already dreaming and struggling with others to imagine the world they want to see. We have to rethink our work and shape it so that it also helps build the power required to make this new world a reality. There is a long history of dreaming about a world where Black people and people of color are free and safe, so you do not need to make anything up. You just need to spend time with and take direction from the people whose lives are routinely destroyed by our society's racist and predatory legal system. In all likelihood, there is an organizer, activist, or community group in your backyard who has already thought this through. Go to their meetings or invite them to lead yours. Find out if your impact litigation can serve as a way to draw attention to their campaigns and bring more people into their work. See if an organizer thinks it makes sense to speak at a press conference announcing your lawsuit. Everything you do can be strategically used to support a campaign. Figure out ways to support movements and make the world they are dreaming about a reality.

V. MONEY TALK: FUNDERS NEED TO INVEST IN MOVEMENT LAWYERING AND SYSTEMS CHANGE

Jennifer Ching

Poverty is profitable. Poverty makes a lot of money for many people, including lawyers. Poverty makes money for millions of people who work in the corporations, agencies, banks, prisons, courts, hospitals, and every other place where we individually and collectively make decisions that have the intended or unintended result of keeping people poor. Many of us—including lawyers like myself, but also doctors, paralegals, teachers, and case managers—are the gatekeepers for the system in which people who are poor struggle to gain a foothold. Fortunately, only some of us make deliberate decisions to punish the poor. Most of us wake up, go to work, and try to do what is right for whomever is before us. We do what we believe is right and

within our individual power to decide. And most of the time, that equates to doing our best to improve someone's outcome within whatever set of rules may apply.

Often, however, that outcome is far worse than anything we would accept for ourselves. As civil legal services lawyers, for example, we tell our clients, your child has been taken away, but you will be able to visit with them. You will still be evicted, but you have three more months to find a place to live. We offer outrage, we offer kindness, we say, "I know these rules are unfair. It is unfortunate, but this is what the law says."

So intertwined in our world are the decisions that lead to or reinforce poverty that it is near impossible to point one's finger and say, "There. That is the most effective intervention to counter poverty." We look at a broad array of systems working against our clients, we review our limited resources, and it feels overwhelming. It is natural, then, for us to focus on our own point of entry. As lawyers, that is looking at the legal system and naming the myriad ways in which the playing field is stacked unfairly against our clients. We seek fairness in the legal system, so we think about access and resources for more lawyers and more advocacy within the system. In short, we substitute access for justice.

We use the word "access" because it feels achievable. It is non-threatening to larger forces because it makes the story about discrete resources. Yet, access to justice is a complex Venn diagram of many intersecting visions: fairness, empowerment, and equity are among the circles most commonly referenced by civil legal services lawyers when asked why we do the work we do. Lawyers translate those circles to mean we need more for the system itself. Yet when we ask our *clients* how to fix the system and what those circles mean, we are given a fairly consistent—and different—response: more power, money, safety, freedom, dignity, voice, and the right to be listened to and to make decisions for oneself.

Why, then, do we accept, reinforce, and seek to resource the system that creates and multiplies inequity at a relentless pace? Since I started my working life, I have been asking this question. I ask from the perspective of someone who does not have the safety net of intergenerational wealth, but who represents a particular and familiar story of American mobility. I started asking this question because, like so many of us who become the system's gatekeepers, I did not understand how my parents could be working every day and yet money was always a problem. I could not reconcile the effortless living I saw on sitcoms with our own daily stresses. My brother and I started working as teenagers to cover our own expenses because we knew our parents had limited means to help us. We worked in stores, restaurants, and frozen yogurt stands. We were warehouse and office temps, we did paid medical trials—we worked to live. At some point, I started thinking about ways to build a life where I was making money, but also helping others. My brother did the same, and he became a doctor. I did part-time work in homeless shelters, I ran a soup kitchen. I did research for professors working on noble projects and I worked in the New York City welfare administration. I lobbied and worked on public policy at the federal, state, and city levels.

After law school, I was a civil rights lawyer, then a corporate lawyer (to pay off enormous college and law school debts) and then, until a few years ago, I ran a civil legal services program that served thousands of people every year.

I made a life where I was, I could say, doing good. And by reaching this place, I was also a very good story for the system. I am a woman of color and I benefited from many programs designed to help people like me—scholarships, loan repayment assistance, leadership-building spaces where I was chosen to think about what could be possible in the future: become a judge, teach, run an even larger organization. I was a gatekeeper held up as the future of gatekeeping. Still, I remained uncomfortable. I reached a place where I had personal safety—a mortgage I could pay, vacations I could take—but how was I participating in the creation of community safety? Had I pointed my finger in the direction of the intervention that I believed could best improve the collective good?

This question was sharpened for me as I realized that I was applying my experience in corporate litigation to more and more civil legal services matters. Towards the end of my work in civil legal services, one of the most powerful indicators of just how much money there is to be made in keeping people poor was the shift in both who was suing our clients and who our clients were suing. More and more, there were corporations on the other side. Private equity firms hold portfolios of apartment buildings and seek to evict longtime residents in mass-filed actions in housing court. Unnamed corporate trusts held by large banks, like Deutsche Bank or Bank of America, who purchased thousands of mortgages on pennies for a dollar and sought foreclosure as the most profitable outcome. The money made off of poverty was becoming increasingly shifted towards, and protected by, corporations. This was particularly accelerated after the Great Recession, as middle and low-income communities suffered huge losses while banks and corporations, protected by the government bailout, took advantage of the national fire sale of assets that were destabilized by the earlier predatory, devastating actions of these very same institutions.

During this time, as a gatekeeper to the system, I was focused on strengthening the system in search of some estimation of fairness. As advocates, we went to the government and we asked for more lawyers, more judges, more process. We counted numbers of people we touched, we counted types of service, we counted questionable victories—like a client where we prevented an eviction in legal terms, but with knowledge that the client would not be able to afford the rent because their low-wage employment did not cover the expenses. We knew they would soon fall back into arrears again.

There is no question that there are not currently enough resources in the civil legal system for a poor person to meaningfully participate and have their interests represented at any level commensurate with that of their corporate or government adversary. Looking into the yawning chasm, however, I saw a different, equally huge gap. By focusing on the access question alone, without investing in transformative lawyering that lifts our clients' collective

vision for a different system altogether, we are left to stick our fingers in the cracks of the breaking dam.

Two years ago, I decided to leave the law because I felt that in order to change the legal system, we have to address the root cause of the systemic inequities. We have to change the money system that incentivizes the profit of poverty. I joined a small corner of philanthropy and activism. At the foundation where I work, money raised from a broad spectrum of people is pooled and then distributed by, and to, grassroots organizers working in communities most impacted by injustice who are designing solutions targeting systems change. Now that I am a part of philanthropy conversations about strategy, I also see how powerful the access narrative is for those of us looking for entry points into making the system fairer. Of total philanthropic dollars awarded each year by the nation's largest foundations, less than 10 percent goes to any work in communities of color to build systemic change.¹

Funders, donors, and philanthropists are the ultimate gatekeepers. By holding the money and directing how it should be used, philanthropy has an outsize role in determining what strategies are elevated and given room to grow. One core strategy that is deeply neglected by philanthropy is movement lawyering. I experienced movement lawyering as both a young community organizer in Boston and New York's Chinatowns, where we partnered with lawyers to advance grassroots strategies to reform exploitative employment practices in immigrant communities, and I practiced as a movement lawyer when I graduated law school, working in Newark, New Jersey, to support local organizing led by undocumented workers.

Movement lawyering is a strategy that, partnered with community organizing led by people most impacted by injustice, creates transformational opportunities to change and reimagine the system of persistent poverty. When lawyers, community organizers, and community members (our clients) work together to elevate the voice, leadership, and strategy of low-income communities of color in particular, we move the dial in real ways. It is an intervention that looks beyond access and changes our belief in what is possible. It is a companion strategy to services designed to meet the essential survival needs of client communities, and it requires equal investment.

Movement lawyering is deeply linked to the grassroots, as opposed to the grass tops. As such, it is part of the larger ecosystem of building new leadership from lived experiences. It is a powerful pipeline for leaders of color—Black, Latinx, Muslim, Asian, immigrant, LGBTQ, poor and working class, and so many more underrepresented lawyers in our sector. Movement lawyers are themselves mentors and leaders to young students of color and/or students from working class backgrounds who might not imagine a career in the law and the possibility of what we could do when we partner organizing and legal advocacy together.

1. See *Pennies for Progress*, NAT'L COMMITTEE FOR RESPONSIVE PHILANTHROPY, <https://www.ncrp.org/publication/pennies-for-progress> [https://perma.cc/KTW9-J69P] (last visited Apr. 1, 2019).

The problem, we all might say, is that there is not enough money to right these wrongs. The pie can only be cut so many ways. As an allied movement, civil legal services and movement lawyering can partner to build new investment into our shared strategies. Movement lawyering can transform the system of civil legal services—reminding us of some of the original roots of the sector, which included a vision of clients serving in organization leadership and young lawyers flooding the courts seeking to change the systems that had created harm in the Jim Crow era.

The money is there, and it is the money made from the poverty system. Over \$100 billion in unallocated charitable funds sit in donor-advised funds across our country's banks.² Even more money sits in the endowments of philanthropic entities like foundations. If our voices were united to call for a strategy that not only guarantees the rights of people to access a system so they can survive, but the rights of people to redefine the system towards a new equity framework, we would be unstoppable.

2. *The 2018 DAF Report*, NAT'L PHILANTHROPIC TRUST, <https://www.nptrust.org/reports/daf-report/> [<https://perma.cc/4WY2-WF9Q>] (last visited Apr.1, 2019).