

Rebellious Social Movement Lawyering Against Traffic Court Debt

Veryl Pow



ABSTRACT

The prominence of Black Lives Matter in American society today signals the revitalization of alternative forms of participatory democracy—from localized community organizing to widespread social movements—as political expression among racial minorities. For social movement lawyers, this historical moment demands an urgent clarification as to their role and the strategies they should undertake: How should lawyers connect their preexisting advocacy with the broader social movement? Must lawyers be relegated to the background, or might they assume an active role that enhances the leadership of grassroots community members within the movement? What are concrete tools lawyers might deploy in advancing the struggle?

Through a case study of challenging traffic court debt in South Los Angeles, a statewide system that entraps low-income communities of color in cycles of poverty and involvement in the criminal justice system, this Comment proposes a new theory—rebellious social movement lawyering—to resolve these questions. Rebellious social movement lawyering contemplates an active role for lawyers in movements, so long as they are guided by two principles: first, that social movements are necessary to achieve structural social change; and second, that the participation and leadership of grassroots community members, more than professionals and formal social justice organizations, is necessary to sustain such movements. The strategies deployed by rebellious social movement lawyers must be fluid and flexible, ranging from traditional legal devices to confrontational demonstrations, with each decision stemming from community collaboration and the lawyer's self-questioning as to how a proposed tactic contributes to building the social movement on the one hand, and to enhancing grassroots participation and democracy on the other.

Rebellious social movement lawyering is meant both as a theoretical intervention in rebellious lawyering, movement lawyering, and Critical Race scholarship, and as a methodology to guide public interest legal practitioners. In grounding my theory in a concrete case study, I hope that practitioners across other areas of public interest law will recalibrate their own advocacy as rebellious social movement lawyers working collaboratively to challenge the underlying structures producing material harms for their clients.

AUTHOR

Skadden Fellow at the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., specializing in challenging various forms of indigent incarceration. B.A., University of Washington; J.D., UCLA School of Law. For careful and detailed feedback, I am grateful to Devon Carbado, Scott Cummings, Gerald López, Noah Zatz, Theresa Zhen, and the UCLA Law Review staff, particularly Thomas Wanebo. For support and inspiration on this Comment, I am appreciative of Amna Akbar, Anthony Alfieri, Khaled Beydoun, Richard Delgado, Akiva Freidlin, Jessica Hanson, Donna Harati, Cheryl Harris, Andres Kwon, Kabita Parajuli, and Jean Stefancic.

TABLE OF CONTENTS

INTRODUCTION.....	1772
I. TRAFFIC COURT DEBT IN CALIFORNIA.....	1776
A. The True Immediate Costs of a Traffic Infraction.....	1778
B. Disproportionate Impact of License Suspensions on Low-Income Communities of Color	1780
C. Racialized Arrests Pursuant to Failure to Appear and Driving With a Suspended License.....	1781
D. Collateral Consequences of the Criminalization of Traffic Violations ...	1783
E. Traffic Stops as a Pretext for Vehicle Searches and Criminal Investigations	1784
II. A MULTIFACETED APPROACH TO CHALLENGING TRAFFIC COURT DEBT	1787
A. Direct Representation.....	1788
B. Policy Advocacy.....	1790
C. Impact Litigation.....	1793
D. Community Organizing.....	1795
III. REBELLIOUS LAWYERING: AN ACTIVIST THEORY OF LAWYERING.....	1801
A. The Rebellious Approach to Advocacy.....	1803
B. The Limited Scalability of Rebellious Lawyering Case Studies.....	1807
IV. REBELLIOUS SOCIAL MOVEMENT LAWYERING.....	1810
A. Principles of Rebellious Social Movement Lawyering.....	1810
B. Processes of Rebellious Social Movement Lawyering.....	1815
V. RECONCEIVING ADVOCACY AGAINST TRAFFIC COURT DEBT IN CALIFORNIA: A REBELLIOUS SOCIAL MOVEMENT LAWYERING APPROACH.....	1819
A. Building a Grassroots Organizing Group	1819
B. Advancing the Struggle from Local to Movement	1824
CONCLUSION	1827

INTRODUCTION

The prominence of Black Lives Matter (BLM) in American society today signals the revitalization of alternative forms of participatory democracy—from localized community organizing to widespread social movements—as political expression among racial minorities.¹ For social movement lawyers, this historical moment simultaneously anticipates² an exciting possibility of mass protest culture unseen since the 1970s³ and demands an urgent clarification, in material terms, of the role of social movement lawyers and the strategies they should undertake: How should lawyers connect their preexisting advocacy with the broader social

-
1. Black Lives Matter (BLM) has cohered into a vibrant social movement in no small part due to its disruptive quality across the nation. This has been evident from the spontaneous riots in Ferguson and Baltimore to the popular protests that shut down speeches by political candidates from each party—Bernie Sanders in Seattle and Donald Trump in Chicago—during the 2016 presidential primaries. See Jim Brunner, *Black Lives Matter Protesters Shut Down Bernie Sanders; Later Rally Draws 15,000*, SEATTLE TIMES (Aug. 11, 2015, 9:45 AM), <http://www.seattletimes.com/seattle-news/politics/black-lives-matter-protesters-shut-down-bernie-sanders-rally> [https://perma.cc/2KVW-NXRC]; Jessica Taylor, *Donald Trump Rally in Chicago Canceled Amid Widespread Protests*, NPR (Mar. 11, 2016, 8:30 PM), <http://www.npr.org/2016/03/11/470154065/donald-trump-rally-in-chicago-canceled-amid-widespread-protests> [https://perma.cc/9HBM-7X2S].
 2. Alternative forms of participatory democracy will likely continue to rise should racial minorities be excluded from conventional political channels for social change under a new political climate in Washington, D.C. See Intersectional Black Panther Party History Project, *Women of the Black Panther Party Reflect on Today's Struggle, Staying Engaged and Why Trump's Win Might Be a Good Thing*, COLORLINES (Dec. 31, 2016, 3:41 PM), <http://www.colorlines.com/articles/women-black-panther-party-reflect-todays-struggle-staying-engaged-and-why-trumps-win-might> [https://perma.cc/PS7T-VH5Z] (suggesting that Donald Trump's presidency might galvanize a new wave of organizing).
 3. Frequent, large-scaled protests that were characteristic of the Black Power and Civil Rights Movements in the 1960s declined by the mid-1970s due to the evolution of racialized capitalism that gave rise to Black entrepreneurship, minority participation in the electoral process, and the nonprofit industrial complex (NPIC) on the one hand, and to state repression of revolutionary, Black nationalist organizations on the other. These new developments simultaneously co-opted many movement leaders into promoting the establishment of minority-owned businesses, running for office, or joining the ranks of social service professionals, while punished others who refused to assimilate. For discussion of white philanthropic efforts that gave rise to Black capitalism, electoral politics, and the NPIC, see ROBERT L. ALLEN, *BLACK AWAKENING IN CAPITALIST AMERICA: AN ANALYTIC HISTORY* (1990); MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA: PROBLEMS IN RACE, POLITICAL ECONOMY, AND SOCIETY* (Haymarket Books 2015) (1983); and, *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX* (INCITE! Women of Color Against Violence ed., 2007). For discussion of state repression techniques, see WARD CHURCHILL & JIM VANDER WALL, *AGENTS OF REPRESSION: THE FBI'S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* (1988); KENNETH O'REILLY, "RACIAL MATTERS": THE FBI'S SECRET FILE ON BLACK AMERICA, 1960–1972 (1989); Charles E. Jones, *The Political Repression of the Black Panther Party 1966–1971: The Case of the Oakland Bay Area*, 18 J. BLACK STUD. 415 (1988).

movement? Must lawyers be relegated to the background, or might they assume an active role that enhances the leadership of grassroots community members within the movement? What are the concrete tools lawyers might deploy in advancing the struggle?

In proposing a new theory, one I term *rebellious social movement lawyering*, I argue that social movement lawyers should play an active role in social movements, so long as they are guided by two overarching principles at all times: first, that social movements are necessary to achieve structural social change;⁴ and second, that the participation and leadership of grassroots community members, more than professionals and formal social justice organizations, is necessary to sustain such movements. The strategies deployed by rebellious social movement lawyers must be fluid and flexible, ranging from traditional legal devices to confrontational demonstrations, with each decision stemming from community collaboration and the lawyer's self-questioning as to how a proposed tactic contributes to building the social movement on the one hand, and to enhancing grassroots participation and democracy on the other.

My theoretical insights on the role and strategies of rebellious social movement lawyers stem from my yearlong localized advocacy against traffic court debt in South Los Angeles. During my second year of law school, I externed with Theresa Zhen, then in her second year of a Skadden fellowship at A New Way of Life Reentry Project (ANWOL), to attack the excessive fines and fees generated from traffic tickets. In response to the structural dimension of traffic court debt, which entraps low-income minorities in cycles of indebtedness and involvement in the criminal justice system, our advocacy gradually evolved from purely direct representation to legislative advocacy, strategic litigation, and community organizing. Though our work was guided neither by principles of building social movements nor by enhancing grassroots democracy, our multifaceted approach to advocacy informs the dynamic role of lawyers under my theory.

In thoroughly detailing my experience challenging traffic court debt, I hope to make the following scholarly contributions. First, by deriving my theory from an in-depth case study, I frame rebellious social movement lawyering as a practical methodology for public interest law practitioners invested in structural social

4. This Comment distinguishes structural from symptomatic change. The former contemplates the transformation of the underlying system responsible for producing multiple symptoms of harm, whereas the latter is limited to resolving immediate symptoms of harm, without addressing their underlying cause.

change. In so doing, my theory falls squarely in the “activist”⁵ tradition known as rebellious lawyering.⁶ In contrast to existing rebellious lawyering literature, my Comment reaches beyond localized changes and contemplates structural reform on a statewide level. Second, because the failure to pay off traffic court debt can result in arrest and incarceration, I provide a new account of rebellious lawyering in a criminal context.⁷ As such, this Comment provides a potential blueprint for legal practitioners involved in public defense and criminal justice reform to reengage their advocacy through the lens of rebellious social movement lawyering. Third, because I emphasize the importance of lawyers in directly empowering community members at the grassroots level in contrast to representing existing organizational clients at the movement level, my Comment addresses two open questions raised by movement lawyering literature⁸ on the role of movement-oriented lawyers in the absence of social movements and in regard to deference, strategies, and evaluation.⁹ Fourth, by foregrounding a race-conscious framework in discussing the impact of and solutions to traffic court debt, I bridge an academic divide between rebellious lawyering and Critical Race literature. Finally, my

-
5. Ascanio Piomelli, *Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 398.
 6. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992). The rebellious lawyering tradition has also been termed “collaborative lawyering,” “community lawyering,” and “law and organizing.” Piomelli, *supra* note 5, at 398. Rebellious lawyering literature derives its theoretical currency from the concrete work of community lawyers, including clinical law professors such as Gerald P. López, reflecting on their “own lawyering before joining clinical academia.” Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 438 (2000).
 7. Previous case studies detailing localized accounts of rebellious lawyering have mostly implicated civil law. See *infra* Part III.B for discussion on anti-gentrification, environmental justice, and workers’ rights contexts. See also Bill Ong Hing, *Legal Services Support Centers and Rebellious Advocacy: A Case Study of the Immigrant Legal Resource Center*, 28 WASH. U. J.L. & POLY 265 (2008) (describing the use of a rebellious approach taken by lawyers in an immigration legal services support center). For an exception to the civil law context, see Ingrid V. Eagly, *Criminal Clinics in the Pursuit of Immigrant Rights: Lessons From the Loncheros*, 2 U.C. IRVINE L. REV. 91, 91–92, 109 (2012), which describes how students enrolled in a criminal defense clinic at UCLA Law worked collaboratively with a lunch truck vendor organization to challenge a Los Angeles ordinance that subjected street vendors to steep fines. Though the ordinance implicated civil law, Eagly argued that the financial penalization of street vendors was an example of the “fading line between civil and criminal law.” *Id.* at 109. It is important to note that while Eagly’s emphasis on community collaboration comports with rebellious lawyering, she does not expressly invoke the tradition. Unlike rebellious lawyering’s emphasis on the lawyer’s fluid identity as simultaneously a lawyer and an organizer, Eagly views the law student—and by extension, the criminal lawyer—as strictly a legal advocate who, as a “cause lawyer,” engages in legal reform, or, as a legal consultant, advises and supplements the advocacy of community organizations. See *id.* at 109, 120.
 8. See *infra* Part III for an overview of movement lawyering scholarship.
 9. See *infra* Part IV.A for discussion on how rebellious social movement lawyering departs from movement lawyering theory.

Comment is the first to contemplate a practical role of movement-oriented lawyers in BLM.¹⁰

In Part I, I outline the system of traffic court debt in California, tracing identifiable steps along a pathway from an initial traffic stop to eventual arrests, jail time, and other destabilizing collateral consequences. I use quantitative data to show the racial impact of the system in sheer numbers, and qualitative data—in the form of personal narratives from low-income individuals of color from South Los Angeles whom I interviewed¹¹—to illustrate and emphasize the systemic devastation experienced on the individual level.

In Part II, I describe the advocacy Zhen and I pursued. Our strategies shifted over time due to the limits of direct representation, and our accompanying desire to change the system of traffic court debt. I hope that a thorough account of our strategies will encourage practitioners to comprehend rebellious social movement lawyering as encompassing an ensemble of tools both inside and outside traditional legal work. Because we ultimately embraced professional strategies over grassroots community collaboration, however, our advocacy ended up addressing merely one facet of the larger system: ending license suspensions as a debt collection mechanism.

In Part III, I lay out one specific intellectual influence—rebellious lawyering and its progeny—that shaped the analysis of our advocacy against traffic court debt and, in turn, my theory of rebellious social movement lawyering. In Part IV, I fully formulate my theory. Finally, in Part V, I apply my theory to constructively criticize Zhen’s and my advocacy. Specifically, I present a counterfactual of how rebellious social movement lawyers might challenge the entire system of traffic court debt by advocating in such a way that enhances grassroots democracy and contributes to social movement building. In so doing, I hypothesize ways in which a localized grassroots campaign challenging one facet of debt might

10. For scholarship on BLM’s impact on the role of legal professionals, see Amna A. Akbar, *Law’s Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352 (2015), which outlines a new pedagogy for legal academics inspired by the power of BLM, and Bill Ong Hing, *From Ferguson to Palestine: Disrupting Race-Based Policing*, 59 HOW. L.J. 559, 620 (2016), which calls for lawyers and activists to continue engaging in “innovative ideas that can disrupt the convention” without articulating a specific role for lawyers in relation to BLM.

11. The interviews cited in this Comment were conducted over the course of my externship for several reasons including performing intakes for direct representation, gathering anecdotes for a policy report, and identifying possible plaintiffs for impact litigation. Some of the narratives from this Comment were directly featured in a policy report, parts of which I authored. See STEPHEN BINGHAM ET AL., STOPPED, FINED, ARRESTED: RACIAL BIAS IN POLICING AND TRAFFIC COURTS IN CALIFORNIA (2016), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf [<https://perma.cc/V5GQ-FPMG>]. The narratives that appear in this report are some of the specific parts that I authored.

expand into a broader social movement that challenges its underlying structure by drawing on the power of BLM.

I. TRAFFIC COURT DEBT IN CALIFORNIA

Since the 2015 publication of the U.S. Department of Justice report on Ferguson, Missouri,¹² national attention has increasingly turned to the explosion of traffic court debt in low-income communities of color as a mechanism of revenue generation for municipalities.¹³ Los Angeles County is not immune to this scheme, with an average of \$26.8 million collected each year from 2010 to 2015 from civil assessment fees¹⁴—\$300 fines that are automatically added to the overall amount owed by individuals who fail to appear for their traffic court hearing or who miss a payment for a traffic citation¹⁵—alone. By state statute, civil assessment fees are distributed to the Trial Court Trust Fund, which funds the salaries of court employees and operations of the court including the civil representation pilot program,¹⁶ incentivizing traffic court judges to “coax” guilty pleas and thereby

-
12. CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf [https://perma.cc/R9WR-TJB].
 13. Debt from traffic tickets is one specific manifestation of revenue generation by justice systems that disproportionately affects low-income communities of color. Another is debt accrued from involvement in the criminal justice system. *See, e.g.*, Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277 (2014) (outlining the economic sanctions issued by criminal and juvenile courts); Irene Oritseweyinmi Joe, *Rethinking Misdemeanor Neglect*, 64 UCLA L. REV. 738 (2017) (discussing the collateral consequences, including fines and fees, that criminal defendants face); *see also, e.g.*, ACLU OF WASH., MODERN-DAY DEBTORS’ PRISONS: HOW COURT-IMPOSED DEBTS PUNISH POOR PEOPLE IN WASHINGTON (2014), <http://columbialegal.org/sites/default/files/ModernDayDebtorsPrison.pdf> [https://perma.cc/7XC9-XEHB] (explaining how imposing legal financial obligations at criminal sentencing continues to punish the poor upon completion of a sentence).
 14. CIVIL ASSESSMENT COLLECTED (PC § 1214.1) (2015) (on file with author) (displaying the reported revenues of Los Angeles County Superior Court from civil assessments from the fiscal years of 2010–2015). This information can also be accessed from the Report of Revenues of the Trial Court Budget Information as provided by the Judicial Council of California’s website. *See, e.g.*, *Trial Court Budget Information*, JUD. COUNCIL CAL., <http://www.courts.ca.gov/7552.htm#tab33115> [https://perma.cc/X7CT-U582]; *Trial Court Budget Reports FY 2007–08 to 2014–15*, JUD. COUNCIL CAL., <http://www.courts.ca.gov/35046.htm> [https://perma.cc/5ZJC-WVKZ].
 15. CAL. PENAL CODE § 1214.1 (West 2004 & Supp. 2017). While the statute does state that the civil assessment *may* be imposed, this fee is automatically added in practice. *See* ALEX BENDER ET AL., NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA 6–7 (2015), <https://wclp.org/wp-content/uploads/2015/04/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California.pdf> [https://perma.cc/S3VR-YK8Z] (discussing the default practice of imposing the \$300 civil assessment fee). Indeed, all discretionary fines and fees in this context seem to be automatically applied.
 16. CAL. GOV’T CODE § 68085.1 (West 2009 & Supp. 2017).

collect fines and fees.¹⁷ While the \$26.8 million collected from civil assessment fees is quite alarming in itself, uncollected traffic court debt across California is estimated at over \$10 billion.¹⁸ To facilitate collection, courts routinely suspend licenses and issue warrants and jail sentences.

Part I is divided into five Subparts. I begin by describing how the confluence of predatory court procedures, excessive fines and fees, and license suspensions facilitates this scheme for revenue generation. Second, I analyze the rate of license suspensions for failure to appear (FTA) or failure to pay (FTP) on low-income communities of color in Los Angeles County. Third, I describe the mechanisms of arrest and jail as an enforcement tool to collect unpaid debt. Fourth, I lay out the broader collateral consequences arising from the criminalization of traffic violations. Finally, I conclude with qualitative data to highlight both the regularity and manner of policing for traffic violations in low-income

17. In *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), the U.S. Supreme Court held that the: Petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause . . . where he was compelled to stand trial for traffic offenses before the [judge] whose court through fine, forfeitures, costs and fees, provided a substantial portion of village funds.

Id. at 57. In *Ward*, the petitioner was convicted of two traffic offenses and fined \$50 on each. *Id.* The Court found that a “major part of village income is derived from the fines, forfeitures, costs, and fees imposed” through traffic court, to the extent that in 1968, \$23,439.42 of the \$52,995.95 in total revenue collected by the village was derived from the collection of court fees. *Id.* at 58. The Court reasoned that a “possible temptation” existed on the judge that would:

[M]ake him partisan to maintain the high level of [financial] contribution from the . . . court. This, too, is a “situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, and necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him.

Id. at 60 (alteration in original omitted) (quoting *Tumey v. Ohio*, 273 U.S. 510, 534 (1927)).

Within the last few years, civil rights organizations have filed lawsuits invoking *Ward* to challenge various municipal court systems that generate revenue from court-imposed fines and fees. In 2015, in *Cain v. City of New Orleans*, No. 15-4479, 2016 WL 2849478 (E.D. La. May 13, 2016), the complaint alleged that judges of the Orleans Parish District Court collect over \$1 million from bond fees alone into the Judicial Expense Fund each year. Class Action Complaint at 21, *Cain*, No. 15-4479, 2015 WL 5460413. The complaint cites *Ward* for the proposition that due process requires, “at a minimum, neutral prosecutorial and judicial officers, free from financial conflicts of interest.” *Id.* at 39–40. In a similar case filed by the same civil rights organization a few months earlier, *Jenkins v. City of Jennings*, No. 4:15-CV-00252-CEJ (E.D. Mo. filed Feb. 2, 2015), the complaint noted that the City of Jennings, Missouri, “has earned more than \$3.5 million dollars from its municipal court fines, fees, costs, and surcharges” over the past five years. Class Action Complaint at 36, *Jenkins*, No. 4:15-CV-00252-CEJ. Due to this scheme of revenue generation, the complaint alleged that “the entire municipal government apparatus, including municipal court officials and City jailors, has a significant incentive to operate the court and the jail in a way that maximizes revenues, not justice.” *Id.* The City of Jennings recently decided to settle for a tune of \$4.75 million. Settlement Agreement at 7, *Jenkins*, No. 4:15-CV-00252-CEJ.

18. BENDER ET AL., *supra* note 15, at 6.

neighborhoods. Cumulatively, Part I reveals how traffic court debt is a statewide system with identifiable steps along a pathway that maintains a cycle of indebtedness and criminalization of low-income people of color.

A. The True Immediate Costs of a Traffic Infraction

The fines and fees tacked onto traffic citations have steadily increased over the last few decades.¹⁹ Today, an individual is automatically charged a total of \$490 for a \$100 ticket.²⁰ This true cost of a ticket is routinely withheld from traffic court defendants during arraignment. Many individuals choose not to appear for arraignment because they cannot even afford to pay the underlying base fine, much less the true cost of the ticket, of which they are often unaware. Individuals who do not appear at arraignment are automatically charged with and convicted of an FTA, which includes \$325 in additional fines and fees, bringing the total cost of a \$100 ticket to \$815.²¹

In addition to an increased financial hardship, individuals with an FTA have their licenses suspended by the Department of Motor Vehicles (DMV)²² and a misdemeanor conviction on their criminal record.²³ Although implicit in the language of section 40508 of the California Vehicle Code is a requirement of a court hearing to determine whether the individual *willfully* failed to appear,²⁴ in

19. *Id.* In 2006, the California Research Bureau documented the introduction and expansion of “penalty assessments,” fines added onto citations to fund various state and county programs, such that a \$100 ticket actually cost \$370. *See* MARCUS NIETO, CAL. RESEARCH BUREAU, WHO PAYS FOR PENALTY ASSESSMENT PROGRAMS IN CALIFORNIA? 6 chart.1 (2006), <https://www.library.ca.gov/crb/06/03/06-003.pdf> 6 [[<https://perma.cc/7HYS-BM9L>].

20. *See* BENDER ET AL., *supra* note 15, at 6, 9, 10. The \$490 total is broken down into the following components: For every \$100 in base fine, there is a \$100 state penalty assessment (*see* CAL. PENAL CODE § 1464 (West 2011)), \$20 state criminal surcharge (*see id.* § 1465.7), \$40 court operations assessment (*id.* § 1465.8), \$50 court construction fine (*see* CAL. GOV’T CODE § 70372 (West 2009)), \$70 county fund fine (*see* CAL. GOV’T CODE § 76000 (West 2017)), \$10 DNA Fund fine (*see id.* § 76104.6), an additional \$40 DNA Fund fine (*see id.* § 76104.7), \$4 Emergency Medical Air Transportation Fee (*id.* § 76000.10(c)(1)), \$20 EMS Fund (*see id.* § 76000.5), and \$35 conviction assessment (CAL. GOV’T CODE § 70373 (West 2009)), and \$1 night court assessment (CAL. VEH. CODE § 42006 (West 2014)). Also, *see* CAL. R. CT. 4.102.

21. *See* BENDER ET AL., *supra* note 15, at 9–10. In addition to the \$490, an individual who fails to appear is charged a \$10 Department of Motor Vehicles (DMV) hold assessment fee (CAL. VEH. CODE § 40508.6 (West 2014)), \$15 fee for failing to appear (*id.* § 40508.5), and a \$300 civil assessment for failure to appear (CAL. PENAL CODE § 1214.1 (West 2015)).

22. CAL. VEH. CODE § 13365 (West 2010).

23. CAL. VEH. CODE § 40508(a) (West 2014) (“A person willfully violating his or her written promise to appear . . . is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.”).

24. For clarity, and to reflect the terminology interchangeably used among advocates, I use the terms “willfulness determination hearings,” “ability-to-pay proceedings,” and “indigency hearings” to

practice, some courts, including those in Los Angeles County, require payment of “total bail”²⁵—the full amount owed on a citation including the civil assessment fee—before any further process from the court.²⁶ Thus, an individual who lacks the ability to pay in the first place and unwillingly misses their court hearing lacks meaningful recourse to contest their license suspension or FTA conviction. Similarly, individuals who miss a court-scheduled payment are subsequently convicted of FTP, which carries the same financial, license suspension, and criminal consequences as those convicted of an FTA.²⁷

The lack of due process in the form of willfulness determination hearings leads to indefinite permanent license suspensions and misdemeanor convictions. Between 2006 and 2013, there were 4,289,995 license suspensions as a result of FTA/FTP, and only 69,906 license reinstatements.²⁸ Thus, 4,220,089 licenses were indefinitely suspended during this time. This statistic alone suggests the enormity of the disproportionate effect of license suspensions on the working class, which I address in Part I.B.

From the state’s perspective, the cruel irony of license suspensions as a debt collection mechanism is that functionally, suspensions exacerbate the state’s inability to collect outstanding debt by making it impossible for individuals to maintain employment and thus pay their debt. Since many jobs and occupational licenses require a valid driver’s license and clean criminal record, individuals with suspended licenses or convictions are automatically precluded from consideration for some employment.²⁹ Moreover, driving with a suspended license constitutes a separate misdemeanor conviction.³⁰ Because of the inadequacy of the public

describe the court hearing requirement statutorily guaranteed under section 40508 of the California Vehicle Code.

25. See CAL. R. CT. 4.102; see also BENDER ET AL., *supra* note 15, at 6.

26. Prior to June 2015, courts across the state required payment of “total bail.” See, e.g., S.F. CTY. SUP. CT. R. 17.1 (2014) (repealed 2015), <http://www.sfsuperiorcourt.org/sites/default/files/pdfs/Local%20Rules/Local-Rules-of-Court-Effective-January-1-2015.pdf> [<https://perma.cc/938N-FDEX>]. On June 8, 2015, the Judicial Council adopted Rule 4.105, which prohibits courts from denying a court hearing absent payment of bail. See CAL. R. CT. 4.105. However, Los Angeles County has contravened the purpose of Rule 4.105 by continuing to tie court process with the collection of bail. Interview with Theresa Zhen, Skadden Fellow, A New Way of Life Reentry Project, in L.A., Cal. (Nov. 27, 2015).

27. CAL. VEH. CODE § 40508(b) (“A person willfully failing to pay bail in installments . . . or a lawfully imposed fine . . . within the time authorized by the court and without lawful excuse . . . is guilty of a misdemeanor regardless of the full payment of the bail or fine after that time.”).

28. BENDER ET AL., *supra* note 15, at 13 tbl. (depicting data provided by the DMV of total license suspension & reinstatement actions in California between 2006 and 2013).

29. *Id.* at 7, 17.

30. CAL. VEH. CODE § 14601.1 (West 2010); see also *Driving on Suspended License – VC 14601.1*, L. OFF. PARDOE & ASSOC., <https://helpwithtrafficticket.com/driving-on-suspended-license->

transportation system in Los Angeles, those who do remain employed face the unfortunate decision between unemployment or driving to and from work with a suspended license and thereby risking arrest, vehicle impoundment, jail, and further criminalization.³¹

In summary, the true immediate costs of a traffic infraction include hidden fines and fees that are added on top of the base fine, license suspensions and misdemeanor convictions for FTA and FTP, and the choice between unemployment and incarceration for driving with a suspended license.

B. Disproportionate Impact of License Suspensions on Low-Income Communities of Color

Quantitative data reveals that this form of revenue generation is predicated on the backs of low-income communities of color. The table below, which indicates the rate of license suspensions as a result of FTA and FTP in Los Angeles County, is indicative of this disproportionality.

Zip Code	Neighborhood	Poverty Rate ³²	White Population Percent ³³	License Suspension Rate ³⁴
90002	Watts	36.3%	0.8%	6.9%
90059	Willowbrook	37.6%	1.0%	7.7%
90044	Westmont	35.4%	1.1%	7.1%
90230	Culver City	10.8%	38.3%	1.5%
90402	Santa Monica	5.9%	83.2%	0.4%
90210	Beverly Hills	8.8%	82.4%	0.9%

california-vc-14601-1 [https://perma.cc/3RCL-DW53] (discussing the consequences of a 14601.1 violation, including vehicle impoundment for thirty days and a misdemeanor conviction).

31. See BENDER ET AL., *supra* note 15, at 17.

32. E. Bay Cmty. Law Ctr., *Driver License Suspensions in California by Zip Code*, BACK ROAD CAL., <http://maps.ebclc.org/backontheroad> [https://perma.cc/4HQU-JJYB] (displaying an interactive map contrasting the suspension rate and poverty rate in California).

33. *Mapping L.A.: Neighborhoods*, L.A. TIMES, <http://maps.latimes.com/neighborhoods> [https://perma.cc/L4TE-DZ74] (providing demographic data).

34. E. Bay Cmty. Law Ctr., *supra* note 32.

The three neighborhoods in South Los Angeles—Watts, Willowbrook, and Westmont—have disproportionately higher poverty rates and fewer white residents than the other three zip codes profiled, which are from West Los Angeles. On average, the rate of license suspensions from FTA/FTP in these three South Los Angeles neighborhoods is nearly eight times the rate in the three West Los Angeles communities. The stark contrast in suspension rates across Los Angeles County signal a systemic process, rather than random coincidence, that impoverishes and criminalizes communities of color, for the benefit and privilege of white communities.³⁵

C. Racialized Arrests Pursuant to Failure to Appear and Driving with a Suspended License

Traffic court debt expedites formal contact with the criminal justice system by criminalizing one's inability to pay or appear and one's need to drive with a suspended license. The criminalization of traffic violations by traffic courts must be understood in terms of two complementary dynamics. First, to generate revenue, traffic courts can seamlessly threaten and impose criminal punishment when one ignores financial punishment. Second, the power for traffic courts to do so mirrors a larger structural shift resulting in "the fading line between civil and criminal law," whereby civil adjudicatory systems are increasingly relied upon to punish low-level, nonviolent violations.³⁶ Traffic court judges preside over both traffic infractions and misdemeanor traffic tickets,³⁷ thereby liberating crim-

-
35. Cf. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (suggesting that there is a corollary to systemic racism that bestows upon whites a property right in whiteness, and with it, all the privileges that property entails); Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 153 (2016) (describing how mass incarceration, another large system of oppression, "destabilize[s] communities of color, which limits the social, economic, and political advancement of these communities and reinforces their subordination vis-à-vis wealthier and more politically powerful communities").
36. Eagly, *supra* note 7, at 109, 112. Eagly's description of civil sanctions punishing lunch truck vendors through steep fines can be distinguished from the criminalization of traffic violations. While both types of violations are adjudicated in alternative administrative systems, the offense of street vending does not formally constitute a criminal violation, whereas misdemeanor traffic violations are formally classified as criminal. See *id.*; see also Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L.J. 1795, 1798 (1992) ("The purpose of punitive civil sanctions is to punish [criminally], even though their procedural setting is civil."); Carol S. Steiker, Foreword, *Punishment and Procedure: Punishment Theory and the Criminal-Civil Procedural Divide*, 85 GEO L.J. 775, 796–97 (1997) ("[T]he overlap between modern modes of criminal punishment and civil regulation has made it harder to distinguish between the two.").
37. See *Traffic & Ticket Basics*, JUD. COUNCIL CAL., <http://www.courts.ca.gov/8452.htm> [<https://perma.cc/9C9K-PQXN>] (describing misdemeanor traffic tickets, including those for driving without a license and failure to appear, issued by traffic courts in California).

inal courts to adjudicate nontraffic offenses. Nonetheless, because misdemeanor traffic violations are formally classified as criminal, the collateral consequences of a criminal conviction, which I address in Part I.D, carry over to the traffic court context.

One effect of criminalizing traffic violations is that it empowers traffic courts to arrest and jail individuals to collect on unpaid debt. Unsurprisingly, communities of color are disproportionately targeted for arrest and jailing. In Los Angeles County, Blacks comprise 9.2 percent of the population, yet account for 33 percent of those arrested for driving with a suspended license.³⁸ In a span of two years, from September 30, 2013 to September 30, 2015, the Los Angeles County Sheriff's Department (LASD) alone effectuated 4506 arrests pursuant to bench warrants, issued by traffic judges, for FTA.³⁹ Of these arrests, 3858 of them—over 85 percent—were of Black and Hispanic individuals.⁴⁰ In the same time span, LASD effectuated 19,886 arrests for driving with a suspended license, of which 16,474—over 82 percent—were of Black and Hispanic individuals.⁴¹

Transitioning from quantitative to qualitative data, my interviews with individuals reveal that the typical consequences of driving with a suspended license or a warrant for FTA do not end with an arrest. The typical sentence includes jail time, extended probation, and additional fines. One interviewee, a Black woman residing in South Los Angeles, described being arrested approximately five months after a traffic violation.⁴² Because she failed to appear for that violation and had two additional unpaid tickets, the traffic judge issued an arrest warrant for her with a \$50,000 bond. She was booked on a Saturday, and after spending three nights in jail, finally appeared in court the following Tuesday. While in court, she requested to do additional jail time in lieu of fines, hoping to clear the outstanding balance on her tickets. As a result, she spent fifteen additional days

38. BINGHAM ET AL., *supra* note 11, at 1. In contrast, whites comprise 26.8 percent of county residents, but “only 14.8 percent of those arrested for driving with a suspended license.” *Id.*

39. EDBER MACEDO, “A TRADITION OF SERVICE OR OF SURVEILLANCE?: EXPLORING L.A. SHERIFF’S ARRESTS FOR TRAFFIC VIOLATIONS IN COMMUNITIES OF COLOR IN L.A. COUNTY (2015) (depicting arrest data for section 40508 and 14601.1 violations from September 30, 2013 to September 30, 2015 from the Los Angeles County Sheriff’s Department). Data from the Los Angeles Police Department (LAPD) was requested but unavailable at the time of publication of this Comment. It should be noted, from Zhen’s and my experience, that although traffic judges typically do not issue warrants for failure to pay (FTP), because FTP results in license suspension, individuals unable to pay are routinely arrested for driving with a suspended license.

40. *Id.*

41. *Id.*

42. Telephone Interview with Anonymous Arrestee #1 (Oct. 10, 2015). Also, see BINGHAM ET AL., *supra* note 11, at 29, for further discussion of my interview with this interviewee, who is referred to as Ms. Strong in the report.

in jail for her three citations. After serving the time, she discovered that she still had fines associated with each of her convictions.

Similarly, another interviewee, a Black man from Lancaster, a charter city in northern Los Angeles County, highlighted the tension between avoiding the risk of further punishment for driving with a suspended license and needing to drive for emergency purposes.⁴³ This interviewee's license was suspended in 2008 because of his inability to pay a traffic ticket. In 2009, his wife was diagnosed with cancer, requiring him to drive her to chemotherapy treatment three to four times each week. In a span of a couple months, he received four tickets for driving with a suspended license while taking his wife to treatment in Palmdale, a city in Los Angeles County south of Lancaster. Because of his inability to pay these citations, he was eventually arrested pursuant to a bench warrant, and subsequently sentenced to 180 days in jail, one year of probation, and \$2600 in administrative fines and fees. Despite doing the time, this declarant has been unable to pay off the additional fees. His ability to pay is further compromised now that he has a criminal record. Unsurprisingly, he is currently unemployed.

Cumulatively, the quantitative and qualitative arrest data reveal the fine line between a traffic infraction and criminal violation, largely dependent on one's race and income. In a system designed for revenue generation, punishment can be dispensed through fines or criminalization. A traffic infraction can quickly and unexpectedly morph into a criminal violation due to the inability to pay one's traffic court debt. As such, one may not only be confronted with arrest and jail, but also the full spectrum of harrowing consequences of a criminal conviction.

D. Collateral Consequences of the Criminalization of Traffic Violations

Spending time in jail has profound material, psychological, and emotional impacts on individuals and their families both in the short and long term. Short-term incarceration can lead to job and housing loss. A Black male interviewee from Watts, whom I would come to know as E.C., reported that he lost his job at a retailer while spending two days and one night in jail in 2015 from a warrant for failing to pay his \$1.50 Metro fare back in 2009.⁴⁴ A single experience in jail can re-

43. Telephone Interview with Anonymous Arrestee #2 (Oct. 23, 2015). Also, see BINGHAM ET AL., *supra* note 11, at 28, for further discussion of my interview with this interviewee, who is referred to as Norris in the report.

44. Interview with Anonymous Arrestee #3, in L.A., Cal. (Sept. 25, 2015). Also, see BINGHAM ET AL., *supra* note 11, at 30, for further discussion of my interview with this interviewee, who is referred to as Cain in the report.

sult in enduring trauma⁴⁵ or self-policing behavior. Afraid of signaling criminality to law enforcement on patrol, E.C. now removes his ball cap or pulls down his hoodie each time he drives—regardless of distance.⁴⁶

In the long term, because a misdemeanor conviction creates a criminal record, one's eligibility for certain jobs, occupational licenses, and benefits may be permanently foreclosed. Entire families are affected materially and emotionally. A greater burden may be placed on a family member without a criminal record to provide for the family. Alternatively, the social stigma of being unemployed or having a criminal record⁴⁷ may impel the individual to pursue illicit activities⁴⁸ to provide for their family.⁴⁹ Barring a miraculous intervention, the choices left for individuals with criminal records from unpaid traffic violations lead to chronic poverty or incarceration.

E. Traffic Stops as a Pretext for Vehicle Searches and Criminal Investigations

While the previous Subparts descriptively lay out the adjudicative and punitive stages of the system of traffic court debt, it is imperative to situate the driver's encounter with law enforcement as the front end of the system. That is, a police stop for an ordinary traffic violation initiates the cycle of traffic court debt. Interrogating the initial encounter with law enforcement reveals a pattern of

-
45. See, e.g., Debbie Nathan, *What Happened to Sandra Bland?*, NATION (Apr. 21, 2016), <https://www.thenation.com/article/what-happened-to-sandra-bland> [<https://perma.cc/5STK-VN7G>] (revealing that Sandra Bland had long suffered from post-traumatic stress disorder and depression as a result of years of entrapment in cycles of unemployment, traffic stops, traffic-court debt, and jail).
 46. Despite taking these precautions, while driving to church in November 2015, E.C. was pulled over by law enforcement and, prior to being asked for his license and registration, was instructed to step out of his vehicle where he was immediately handcuffed. This incident was fortunately recorded by a church member on her phone. LAPD Internal Affairs has reached out to this individual as a part of their internal investigation of potential racial profiling. Interview with Anonymous Arrestee #3, in L.A., Cal. (Dec. 04, 2015).
 47. DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION chs. 4, 6 (2007) (concluding, from an audit study, that the "mark of a criminal record" influences employers to exclude applicants with criminal records in hiring decisions).
 48. See Emily Badger, *Alton Sterling, Eric Garner and the Double Standard of the Side Hustle*, WASH. POST: WONKBLOG (July 7, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/07/07/alton-sterling-eric-garner-and-the-double-standard-of-the-side-hustle/?utm_term=.d7468a957277 [<https://perma.cc/866A-WBUB>] (arguing that, due to criminal record discrimination and exclusion from the formal economy, "society has pushed people who might prefer legal work into underground alternatives").
 49. The criminalization of traffic court debt adds another layer of complexity to the highly racialized incarceration rate of three out of four male inmates in California being Black and Brown. RYKEN GRATTET & JOSEPH HAYES, PUB. POLICY INST. OF CAL., CALIFORNIA'S CHANGING PRISON POPULATION (2015), http://www.ppic.org/content/pubs/jtf/JTF_PrisonsJTF.pdf [<https://perma.cc/NRX6-VZBX>].

policing in low-income communities of color based on racial profiling. In South Los Angeles, the effects of driver's license suspensions intersect with a "broken windows" policy of policing⁵⁰ that has long aggressively targeted low-income communities of color. In a study of the Los Angeles Police Department (LAPD)'s traffic stops by police division from 2002 to 2008, significant increases in stops were seen across divisions in South Los Angeles—nearly 160 percent in the Central Division, about 145 percent in the Southeast, and just over 120 percent in Newton.⁵¹ Relatedly, a 2006 study of pedestrian and motor vehicle stops by the LAPD revealed marked racial disparities; officers requested Hispanics and Blacks exit their vehicle and be subjected to frisks with much greater frequency than whites.⁵²

Interviews with declarants indicate that racial profiling underwrites a much more nefarious police practice—namely, that law enforcement routinely uses traffic stops as a pretext for more invasive vehicle searches to search for possible crimes. Consider the case of a Black male driver from Westmont in South Los Angeles.⁵³ Like other Black drivers in South Los Angeles, he has been stopped by the LAPD on a number of occasions. In reflecting on his experiences, he describes:

The basis for LAPD officers stopping my vehicle is not always immediately clear At times, LAPD officers have told me that I was pulled over pursuant to a "routine traffic stop." . . . After completing

-
50. The "broken windows" model of policing is defined as curtailing disorderly conduct, such as vandalism and public drinking, with the intention that increased police control over disorder will prevent more serious crimes from occurring. Hing, *supra* note 10, at 574; see also *Broken Windows Policing*, CTR. EVIDENCE-BASED CRIME POL'Y, <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing> [https://perma.cc/GTV7-DTC9]. As a policy, the "broken windows" model was first enacted in New York City by New York Police Department Commissioner William Bratton in the 1990s, and later by LAPD during Bratton's tenure as Chief of Police of Los Angeles beginning in 2002. See ERIC L. ADAMS ET AL., IMPROVING POLICE-COMMUNITY RELATIONS: A REPORT FROM A SERIES OF TOWN HALL MEETINGS IN BROOKLYN AND MANHATTAN 23, 32–33 (2015), <http://manhattanbp.nyc.gov/downloads/pdf/NYPD%20Town%20Hall%20Report.pdf> [https://perma.cc/LNY4-TPBM].
 51. CHRISTOPHER STONE ET AL., POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD 23 fig.14 (2009), <http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf> [https://perma.cc/PEK4-436H] (graphing the percentage increase in LAPD stops by police division from 2002–08).
 52. GEOFFREY P. ALPERT ET AL., ANALYSIS GRP., INC., PEDESTRIAN AND MOTOR VEHICLE POST-STOP DATA ANALYSIS REPORT 25–26 (2006), http://www.analysisgroup.com/uploaded/files/content/insights/cases/lapd_data_analysis_report_07-5-06.pdf [https://perma.cc/HG5G-Y4GG].
 53. Telephone Interview with Anonymous Driver #1 (Oct. 8, 2015) (on file with author).

the search and turning up nothing, they will cite me for a minor traffic violation.

....

... I am asked to get out of the car approximately 75 percent of the time. When I am asked to get out of the car [by the LAPD] I am always handcuffed and placed in the back of the police car or seated on the curb [while the officers search my vehicle].⁵⁴

Another Black male resident of Compton, South Los Angeles, was stopped by the LAPD on Wilmington and Rosecrans avenues, a major intersection in his neighborhood, while on his way to the movies in his pickup truck.⁵⁵ In describing the stop, he recalls:

After giving [the officers] my paperwork, they said, “We noticed your seatbelt was not on. Get out of the car.” I stood on the curb as directed, while they searched my vehicle and went under my seats, looked inside my glove compartment, and looked through the dashboard and backseat. After they could not find anything, they gave me a ticket for no seatbelt and sent me on my way.⁵⁶

The stories of these two drivers signal a deeply troubling rationale behind “routine traffic stops” by the LAPD: Traffic stops are merely a pretext for vehicle searches to further race-based nontraffic criminal investigations, and citations are issued ex post facto to justify illegal searches when they yield neither contraband nor weapons. This rationale invites an inquiry into the constitutionality of both individualized traffic stops and the traffic enforcement system as a whole.⁵⁷ If the LAPD regularly stops and searches vehicles without suspicion of a specific traffic offense, such a practice would likely violate the Fourth Amendment even under the relaxed standard of *Whren v. United States*.⁵⁸ In the wake of *Utah v. Strieff*,⁵⁹

54. *Id.* Also, see BINGHAM ET AL., *supra* note 11, at 28, for shortened version of my interview with this interviewee, who is referred to as Clifton in the report.

55. Interview with Anonymous Driver #2, in L.A., Cal. (Oct. 2, 2015) (on file with author).

56. *Id.*

57. Jordan Woods has suggested that the decriminalization of minor traffic offenses in twenty-two states has increased the use of traffic stops as a crime-control policy (such as drug law enforcement). See Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672 (2015). His finding does not apply to California since minor traffic violations are criminalized. However, as my qualitative data suggests, law enforcement agencies in Los Angeles County routinely use traffic stops for crime-control.

58. 517 U.S. 806 (1996) (holding that the detention of a motorist is reasonable where the officer, regardless of subjective intent, had probable cause to believe the motorist had violated a civil traffic law). It should be noted that although law enforcement needs probable cause of a traffic offense to search a vehicle under *Whren*, police may consider a driver’s race as one of multiple relevant factors

however, the illegality of an otherwise unlawful traffic stop is forgiven upon the discovery of an outstanding warrant, including one for unpaid traffic court debt.⁶⁰ Thus, by issuing arrest warrants for FTA, traffic court judges enable a vicious cycle of policing in low-income communities of color where the likelihood of outstanding traffic warrants is high. In turn, aggressive policing through traffic stops both reinforces traditional stereotypes of criminality among residents of these communities and produces new “criminals” by entrapping drivers without contraband in cycles of traffic court debt. In other words, warrants for FTA incentivize policing based on two unconstitutional objectives—discovering crime where no particularized suspicion exists and generating revenue.

Part I disaggregated the system of traffic court debt into a series of component steps constituting a larger pathway to indebtedness and incarceration for indigent individuals of color caught in its web, which includes (1) policing practices; (2) predatory traffic court procedures; (3) financial punishment in the form of excessive fines and fees; (4) license suspensions and criminal punishment for missed court appearances or payments; and (5) arrests, jail time, and other collateral consequences. For Zhen and me, far from our initial understanding of traffic court debt constituted merely by excessive fines and fees, when we listened to the specific range of problems experienced by traffic defendants, we instead realized that traffic court debt was a massively intricate, insurmountable, and entrenched statewide system.

II. A MULTIFACETED APPROACH TO CHALLENGING TRAFFIC COURT DEBT

In Part II, I explicate the various modes of advocacy that Zhen and I pursued in combating this structural problem. Ultimately, Part II illustrates that when Zhen and I prioritized professional strategies over a collaborative approach with community members, we ended up merely challenging one facet of traffic court

to justify a traffic stop based on reasonable suspicion. *See* *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975).

59. 136 S. Ct. 2056 (2016).

60. *Id.* at 2063 (ruling that an outstanding warrant constitutes a “critical intervening circumstance” that sufficiently attenuates or breaks the causal chain between an unconstitutional stop and the discovery of evidence). In characterizing the majority opinion, Justice Sotomayor writes:

This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant.

Id. at 2064 (Sotomayor, J., dissenting).

debt—license suspensions—instead of the entire system. Absent meaningful grassroots participation, the results of our professional efforts to challenge license suspensions appear precarious.

Part II is organized into four Subparts that correspond to each mode of advocacy Zhen and I pursued: direct representation, policy advocacy, impact litigation, and community organizing. Later, in Part V, I apply my theory of rebellious social movement lawyering in constructively critiquing our work and hypothesizing ways in which these modes of advocacy could have been deployed toward grassroots empowerment and social movement building.

A. Direct Representation

I began my externship at A New Way of Life in October 2015 assisting Zhen with the direct representation of indigent clients. We pursued this mode of advocacy both because of the sheer magnitude of need for pro bono representation and because our professional training as public defenders⁶¹ shaped our pragmatic goal of making a meaningful difference in a handful of lives of those who faced insurmountable traffic court debt and license suspensions. Moreover, because of the criminalization of unpaid traffic tickets, we believed that each defendant should be guaranteed a right to counsel in traffic court.⁶² In reality, the situation we encountered was worse than a lack of representation—defendants were routinely denied the right to present a meaningful defense at all.

Without assistance of counsel, the vast majority of indigent defendants cycle in and out of traffic court ignorant of their rights, alone to face a byzantine system that deliberately reduces their humanity to inputs of revenue generation. Far from being neutral arbiters ensuring the due process rights of defendants, judges are incentivized to collect, since paid tickets fund their paychecks.⁶³ Because judges fail to disclose the hidden fines and fees associated with pleading guilty or no contest, defendants routinely waive their constitutional right to trial. Only when defendants go to the clerk's office to set up a payment plan do they learn that their actual fine is at least five times the base amount. Even repeat defendants who have experienced this predatory scheme in the past may still plead no contest. The resident from Compton views a not guilty plea as a waste of time,

61. Zhen and I tailored our legal education toward public defense work. I clerked at the Orleans Public Defenders during my first summer. Zhen clerked at The Bronx Defenders during her second summer.

62. We believed in extending *Gideon v. Wainwright's* guarantee of a criminal defendant's right to counsel to traffic court defendants because of the criminal implications of an unpaid traffic ticket. See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

63. See *supra* note 17.

energy, and resources, believing that a judge will almost mechanically side with a police officer's testimony over the unrepresented defendant at trial.⁶⁴ Unfortunately, based on my trial observations as well as the dearth of self-help materials available to—and lack of substantive trial training among—unrepresented litigants, his view is fairly representative of a *pro se* defendant's actual experience.

In contrast, Zhen and I discovered early on that representation by counsel can be determinative in dropping the charge against a defendant or in waiving the fines and fees at sentencing. Officers were likely to work out a deal with us prior to trial. An officer who had poor recollection of the circumstances behind the citation sometimes dismissed the charge altogether. Alternatively, even when an officer recalled the incident, we successfully convinced some officers to join us in motioning the court for a reduced financial penalty based on portraying our client's humanity and indigency.

Some judges were also more sympathetic to defendants whom we represented. During a sidebar conference, a judge told Zhen that whenever clients were represented by her, the judge discretionarily waived all fines and fees for the client in the interest of justice, regardless of trial outcome, because he knew that she only represented indigent defendants. Thus, we were successful in achieving our goal of making a meaningful difference among the handful of defendants we represented from debt and its reverberating consequences—if only for a single occasion at a time.

Despite our success with individual cases, Zhen and I became increasingly frustrated by how much work each case demanded for only an individualized effect. Moreover, we were concerned that our individualized courtroom victories reified the predatory procedures of the court, decreasing the likelihood that *pro se* defendants would receive favorable outcomes.⁶⁵ These concerns catalyzed a pragmatic shift from primarily engaging in direct representation to adopting a more ambitious vision of systemic reform.

At the same time, we recognized that direct representation opened the door to broader advocacy in two ways. First, the more time we invested in court, the greater the degree of precise knowledge we possessed of the court's predatory procedures. We appreciated this dialectic, as it informed other strategies, such as impact litigation, to challenge the rampant due process violations we witnessed.

64. Interview Anonymous Driver #2, *supra* note 55.

65. Specifically, if judges issued favorable outcomes for our clients because of our reputation as pro bono attorneys who only represented indigent clients, we were concerned that we might create a false belief among judges that clients represented by us are deserving of lighter sentences, as compared to *pro se* defendants.

Second, because of my community organizing background,⁶⁶ we relished the opportunity of organizing with individuals who were directly impacted by traffic court debt. Without providing successful representation in traffic court, it is doubtful that we could have met and recruited community members who would assist us in launching the grassroots organizing off the ground.

This foregoing paragraph anticipates the fluidity in tactics that is the cornerstone in my theory of rebellious social movement lawyering. Rather than being guided by rebellious social movement lawyering principles, however, our decision to shift strategies was a response to the practical limitations of direct representation and our desire to effect systemic change along the lines of our preexisting training and skillsets as traditional legal professionals and, for me, a community organizer.

B. Policy Advocacy

For Zhen, the pragmatic shift away from purely direct representation predated my arrival. Seeking professional guidance in her first months as a newly barred attorney in 2014, Zhen engaged in regular phone conversations with practitioners across the state who had been providing analogous legal services in traffic courts for years.⁶⁷ It became evident to each participant that their direct representation was largely ineffective for clients whose licenses had already been suspended, regardless of jurisdiction. From county to county, judges resisted granting indigency hearings to clients whose suspensions resulted from an FTA or FTP absent the payment of “total bail.”⁶⁸ Thus, a consensus congealed around a legislative strategy to end license suspensions as a debt collection mechanism.

To generate political traction, the participants formally announced a coalition, known as Back on the Road California (the BOTR coalition). In April 2015, the BOTR coalition published a report entitled *Not Just a Ferguson Problem—How Traffic Courts Drive Inequality in California*. Through a meticulous

66. I first discovered the value of community organizing by collaborating with workers employed at the University of Washington in an intensive, two-year anti-budget-cuts campaign that achieved small-scale success in the form of job retention among custodial and academic staff. See Cydney Gillis, *UW Poor? Sell Some Real Estate, Picketeer Says*, REAL CHANGE (May 5, 2010), <http://realchangenews.org/2010/05/05/uw-poor-sell-some-real-estate-picketeer-says> [https://perma.cc/P75E-ERUQ]; Lindsay Toler, *UW Custodians, Students, Rally Against Cost-Cutting Shift Switch*, SEATTLE TIMES (June 11, 2009, 6:01 PM), <http://www.seattletimes.com/seattle-news/uw-custodians-students-rally-against-cost-cutting-shift-switch> [https://perma.cc/38C5-5B2J].

67. These other practitioners were advocates from Western Center on Law & Poverty, East Bay Community Law Center, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Legal Services for Prisoners With Children.

68. See *supra* note 25 and accompanying text.

breakdown of court fines and fees, interwoven with client narratives illustrating the devastating effect of traffic court debt, the report built a compelling case to end license suspensions altogether.⁶⁹

The report received wide coverage locally and nationally,⁷⁰ prompting Governor Jerry Brown to sign a “one-time amnesty program for unpaid traffic . . . tickets” on June 24, 2015.⁷¹ Becoming effective on October 1, 2015, with an end date of March 31, 2017, this temporary program provided material relief for some indigent applicants whose licenses were suspended. Theoretically, anyone “in good standing” with a license suspension from an unpaid traffic ticket qualified for license reinstatement, while a narrower subset of these individuals were eligible for an additional debt reduction of up to 80 percent.⁷²

On its face, however, the amnesty program was limited in scope and efficacy. First, because the program applied only retroactively to already-issued tickets, indigent individuals ticketed during the program and after its termination were provided no relief from the familiar cycles of license suspensions and criminal justice system involvement without recourse. Second, under the program, applicants who were ticketed after January 1, 2013, were categorically ineligible for debt reduction.⁷³ Although these applicants would have benefited from license reinstatement, their financial obligations to the state remained excessive and, for most, impossible to meet. For these individuals, there is a high likelihood of wage garnishment, tax levies, and other debt collection methods due to a missed payment.

In practice, the amnesty program was even further constrained by the discretion afforded to local counties. Just a couple weeks before its enactment, the Judicial Council, the policymaking body for the California judicial system, advised that “the amnesty program does not contemplate a zero [monthly payment].”⁷⁴ Thus, even if an applicant qualified for an 80 percent debt reduction

69. BENDER ET AL., *supra* note 15.

70. See, e.g., Timothy Williams, *Economic Disparity Is Seen in California Driver's License Suspensions*, N.Y. TIMES (Apr. 8, 2015), http://www.nytimes.com/2015/04/09/us/disparity-is-seen-in-california-drivers-license-suspensions.html?_r=1 [<https://perma.cc/D6VT-RRUW>].

71. *Traffic Ticket and Infraction Amnesty Program*, CAL. ST. ASS'N COUNTIES, <http://www.counties.org/traffic-ticket-infraction-amnesty-program?page> [<https://perma.cc/5VNA-44YV>].

72. The narrower subset is defined as persons who can demonstrate indigency and who had not made a payment since September 30, 2015 on tickets for which payment was due on or before January 1, 2013. *Traffic Tickets/Infractions Amnesty Program*, JUD. COUNCIL CAL., <http://www.courts.ca.gov/trafficamnesty.htm> [<https://perma.cc/P6RZ-WXUQ>].

73. CAL. VEH. CODE § 42008.8(i)(3) (West Supp. 2017).

74. Judicial Council of Cal., Informational Webinar (Sept. 15, 2015). Information about the webinar can be located at *Ticket Amnesty Program Informatinal Sessions Scheduled Next Week for Local Partners*, LEAGUE CAL. CITIES <https://www.cacities.org/Top/News/News-Articles/2015/September/Ticket-Amnesty-Program-Informational-Sessions-Sche> [<https://perma.cc/K93J-BQPZ>].

due to inability to pay, some courts interpreted the Judicial Council's advice by mandating a \$25 minimum upfront monthly payment toward the remaining 20 percent owed before granting a license reinstatement.⁷⁵ Moreover, courts uniformly required qualified applicants to pay a nonnegotiable \$50 program participation fee,⁷⁶ in addition to a license reinstatement fee of \$55 to the DMV.⁷⁷ For most applicants needing debt relief and license reinstatement, the aggregation of new fees strikingly resembled the initial traffic court fees that created their need for amnesty in the first place.

The enactment of the amnesty program spurred a new round of direct representation. As my externship overlapped with the enactment, I assisted Zhen in hosting legal clinics and community presentations designed to promote the program and to assist individuals with enrollment. As before, our direct services advocacy allowed us to become fully cognizant of the program's limitations, including the new mandatory enrollment fees that proved to be an insurmountable barrier for many prospective applicants, which in turn provided the content for proposed legislative fixes and catalyzed a shift to impact litigation.

Far from abandoning legislative advocacy, we appreciated the significant political ground gained by the initial report through the Governor's initiation of the amnesty program. On April 11, 2016, the BOTR coalition published a second report, titled *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*.⁷⁸ This report enhanced the analysis of traffic court debt by contextualizing license suspensions within the larger framework of racialized policing and involvement in the criminal justice system. By assuming a race-conscious framework, we combined our grounded observations of the racial dynamics of traffic court with the broader social momentum against police violence and mass incarceration, by which we hoped to compel urgent legislative action to end the use of license suspensions.

75. This practice by the courts violated section of the California Vehicle Code, a provision of the amnesty program, which allows for a \$0 monthly payment plan for those who lack the ability to pay, as defined under sections 68632 to 68634 of the California Government Code. See CAL. VEH. CODE § 42008.8 (West Supp. 2017); CAL. GOV'T CODE §§ 68632–68634 (West 2009 & Supp. 2017).

76. Sam Levin, *California Traffic Tickets Amnesty Program Leaves Many Behind*, E. BAY EXPRESS (Nov. 11, 2015), <http://www.eastbayexpress.com/oakland/california-traffic-tickets-amnesty-program-leaves-many-behind/Content?oid=4572407> [<https://perma.cc/VZR8-SVDW>].

77. *Traffic Tickets/Infractions Amnesty Program*, *supra* note 72.

78. BINGHAM ET AL., *supra* note 11.

C. Impact Litigation

Given the underwhelming relief that the amnesty program actually provided and the glacial pace at which legislative reform typically occurs, the BOTR coalition decided that litigation was also necessary to disrupt the judicial pathway to driver's license suspensions through notification to the DMV to suspend licenses upon an individual's FTA or FTP. Because different counties adhered to localized policies for ability-to-pay proceedings, the coalition agreed that a county-by-county approach would usher in the most effective change for local populations until statewide legislative reform occurred.

On June 15, 2016, a team of coalition members and local advocates in Northern California⁷⁹ filed a lawsuit against the Solano County Superior Court for declaratory and injunctive relief from the court's systematic "failure to provide a meaningful opportunity to be heard on the issue of ability to pay prior to referring a traffic defendant to the DMV for driver's license suspension" for an FTA or FTP.⁸⁰ This, the complaint stated, violated statutory authority and the state and federal constitutional Due Process and Equal Protection clauses.⁸¹ On the heels of the Northern California litigation, we convened with a team of advocates in Southern California⁸² and filed an analogous lawsuit against the Los Angeles County Superior Court on August 2, 2016.⁸³

Two components of the Los Angeles County lawsuit are worth mentioning. First, we identified our plaintiffs from our continual engagement in direct representation. Had we fully transitioned from legal services to legislative advocacy, we would have been severely limited in our capacity to locate ideal complainants. Moreover, those of us who represented clients directly influenced the team's conception of the ideal plaintiff from a fictionalized caricature of a law-abiding, indigent, one-time minor traffic offender to an individual more truly representative

79. The team included the American Civil Liberties Union (ACLU) of Northern California, Bay Area Legal Aid, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Prisoners With Children, Western Center on Law & Poverty, and Pillsbury Winthrop Shaw Pittman LLP. Press Release, ACLU of N. Cal., CA Legal Orgs Bring First-of-its-kind Lawsuit Challenging Harmful Driver's License Suspension Policies (June 15, 2016), <https://www.aclunc.org/news/ca-legal-orgs-bring-first-its-kind-lawsuit-challenging-harmful-driver-s-license-suspension>.

80. Verified Complaint for Declaratory and Injunctive Relief at 15, *Rubicon Programs v. Superior Court*, No. FCS047212 (Cal. Super. Ct. June 15, 2016).

81. *Id.*

82. The team included A New Way of Life, Western Center on Law & Poverty, Rapkin & Associates LLP, Schonbrun Seplow Harris & Hoffman LLP, and Clare Pastore, Esq. of USC Gould School of Law.

83. Complaint for Declaratory and Injunctive Relief, *Alvarado v. Superior Court*, No. BC628849 (Cal. Super. Ct. filed Aug. 2, 2016).

of the residents of color at large in Los Angeles County⁸⁴—one with multiple traffic stops, tickets, and arrests pursuant to traffic warrants. Ultimately, our two plaintiffs, one Latina and one Black woman, honestly reflected the everyday experiences of low-income drivers of color with the law and the traffic court system in Los Angeles County.

Second, our complaint differed from the Solano County lawsuit in one significant sense. Along with alleging statutory and constitutional violations, we alleged that the practice of license suspensions absent an indigency hearing was a violation of antidiscrimination law.⁸⁵ A few of us were adamant about including a race-conscious remedy in the complaint.⁸⁶ According to Zhen, “[t]o be an attorney representing people on traffic matters means that you . . . are not only fighting the criminalization of poverty, but the criminalization of driving while Black, on a daily basis.”⁸⁷ For her, to remain genuine to the material reality of her clients, the litigation had to be informed under a racial justice lens. In a long summer punctuated by the deaths of Philando Castile and Alton Sterling,⁸⁸ I felt strongly about the need to connect our litigation to police-caused deaths at traffic stops.⁸⁹

-
84. Cf. Osagie K. Obasogie & Zachary Newman, *Black Lives Matter and Respectability Politics in Local News Accounts of Officer-Involved Civilian Deaths: An Early Empirical Assessment*, 2016 WIS. L. REV. 541, 543 (noting that despite the prevalence of BLM, the mainstream press continues to embrace a politics of respectability, or “the notion that minorities can best respond to *structural* racism by *individually* behaving in a ‘respectable’ manner,” thereby shifting the blame onto so-called disrespectful Black victims of police violence).
85. The complaint’s Fifth Cause of Action alleges a violation of California Government Code section 11135. Complaint for Declaratory and Injunctive Relief, *supra* note 80, at 17. At the time the complaint was filed, section 11135 of the California Government Code provided:
 No person in the State of California shall, on the basis of race, national origin, ethnic group identification . . . be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives financial assistance from the state.
 CAL. GOV’T CODE § 11135 (West 2005) (amended 2017).
86. Like the Solano County lawsuit, most lawsuits filed against traffic court and criminal justice debt nationwide have been framed as issues of poverty without mention of race. See, e.g., Class Action Complaint, *Stinnie v. Holcomb*, No. 3:16-CV-00044 (W.D. Va. Mar. 13, 2017), 2016 WL 6695431 (framing the legal problem of, and remedy to, license suspensions in Virginia as a poverty issue).
87. E-mail from Theresa Zhen, Staff Attorney, E. Bay Cmty. Law Ctr., to author (Dec. 6, 2016, 6:11 PST) (on file with author).
88. See generally Leah Donnell, *Two Days, Two Deaths: The Police Shootings of Alton Sterling and Philando Castile*, NPR: CODE SWITCH (July 7, 2016, 3:20 PM), <http://www.npr.org/sections/codeswitch/2016/07/07/485078670/two-days-two-deaths-the-police-shootings-of-alton-sterling-and-philando-castile>.
89. “The issue of bias in policing has been brought to forefront of public awareness recently due to its sometimes tragic results, including the deaths of motorists Philando Castile and Sandra Bland, whose deaths occurred after the escalation of routine traffic stops.” Complaint for Declaratory and Injunctive Relief, *supra* note 80, at 3.

Although the outcome of our litigation may not ultimately turn on the anti-discrimination claim, our race-conscious framing constituted a logical progression of the analysis we forged in the second report, and plays an important function in symbolically channeling the racial discontent on the streets⁹⁰ to the formally colorblind culture of the judicial system.⁹¹ Moreover, as a matter of trial strategy, by including a race-based claim, we opened the door to the possibility of convincing a sympathetic judge concerned about the racial impact of license suspensions to rule in our favor.⁹²

D. Community Organizing

From the moment I set foot in the Metropolitan Courthouse in downtown Los Angeles for the first time, it dawned on me how naïve I had been in hoping that my legal education alone could change such a massively unjust system. That morning, I witnessed nearly one hundred low-income Black and Brown defendants pleading guilty and no contest in succession during arraignment, much like animals unknowingly being shuttled into a slaughterhouse. I felt overwhelmed by my own insignificance next to the magnitude of the problem.

When I transitioned from observing arraignments to trials in the afternoon, however, I caught a glimpse of an alternate mechanism for change. A single police officer litigated a series of cases on behalf of the state for which he issued the cita-

90. Where a client directly identifies as a movement participant or generally sympathizes with the goals of a broader social movement, client-centered representation might entail choosing a theme that mirrors the lived experiences of those situated in the movement. In 1968, in defending leaders of the East Los Angeles Chicano movement in a criminal case, attorney Oscar Acosta “merged promising legal theories based on the First Amendment and insufficiency of evidence with a more tenuous race-based claim that the absence of Mexican Americans on the grand jury violated equal protection.” Eagly, *supra* note 7, at 103. Acosta raised the race-based claim “because its strategic placement in the litigation allowed them to frame their overall defense around the very theme that the defendants embraced—that of promoting a nonwhite Chicano identity and revealing pervasive . . . racism.” *Id.*; see also IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 27–40 (2003).

91. See, e.g., Amanda Carlin, Comment, *The Courtroom as White Space: Racial Performance as Noncredibility*, 63 UCLA L. REV. 450, 450 (2016) (arguing that an “invisible baseline of whiteness” masking as neutrality undergirds courtroom protocol); cf. Alan J. Gocha, *A Call for Realism in the Justice System: Why Criminal Defense Attorneys Should Take Race Into Account When Advising Clients*, 28 GEO. J. LEGAL ETHICS 547 (2015) (arguing that a colorblind culture among criminal defense attorneys prevents minority defendants from receiving competent and diligent advice given the racially disproportionate conviction rates and sentence lengths).

92. Cf. Hiroshi Motomura, *The Rights of Others: Legal Claims and Immigration Outside the Law*, 59 DUKE L.J. 1723, 1739, 1743 (arguing that litigants challenging immigration laws might want to strategically raise equal protection claims in addition to their stronger legal argument based on preemption because “[a] judge concerned that racial or ethnic animus is the impetus for a law that targets unauthorized migrants can channel those concerns into the preemption analysis”).

tion. The first two trials resulted in two quick convictions and financial penalties that outweighed the violation, signaling a pattern of judicial deference to law enforcement. Then, during the third trial, something remarkable occurred. Instead of pleading his case to the judge,⁹³ the defendant, a Black male, politicized his trial.⁹⁴ He began by emphatically stating that he paid \$800, just days before, for another conviction issued by the same judge for a citation written by the same officer. He continued by accusing this officer of patrolling every day in his neighborhood in South Los Angeles,⁹⁵ before directly addressing both the officer and the judge: “I don’t know what kind of money *you guys* have, but we don’t have this kind of money where I’m from!” After this statement, cheers erupted from the gallery among the defendants awaiting their trials for tickets issued by the same officer. The defendant then pointed to the officer, asking, “How about you give me that motorcycle and let me patrol *your* neighborhood?” Laughter and cheers continued, prompting the bailiff to throw out an individual in the gallery. The defendant closed with the following punchline, “I was driving home from church that day, feeling positive and filled with the Holy Spirit. And then all of the sudden the devil stops me.” On cue, the officer turned his head and, in disbelief, asked the defendant, “You calling me the devil?” The judge abruptly ended the trial, finding the defendant guilty and imposing both a financial sentence and traffic school on the defendant.

This trial revealed the deep anger and mistrust of the traffic court system shared by indigent traffic court defendants of color. Instead of remaining silent and complacent in the gallery, the remaining defendants awaiting their trials fed off the defendant’s political performance, their cheers an indictment of an onerous and predatory system. The subversion of a formal trial process, wherein the defendant placed the judge and police officer on trial before a jury of the defendant’s peers—the other defendants in the gallery—provided a glimpse of the possibility of transforming the system through collective disruption. This moment deeply resonated with my community organizing background. As a single advocate, I felt insignificant and powerless, but this trial demonstrated to me that if even a

93. The defendant was cited for unsafe lane change under California Vehicle Code section 21658 governing “Laned roadways.” CAL. VEH. CODE § 21658 (West 2000).

94. After the trial, the defendant told me that he had been unsuccessful in his previous trials defending on the merits of the citation, given the judge’s blanket acceptance of the officer’s testimony. Thus, for this trial, the defendant felt that he had nothing more to lose by voicing his frustration at the system. Interview with Anonymous Defendant, in L.A., Cal. (Sept. 11, 2015).

95. According to the defendant, this officer regularly patrolled the 90044 zip code in Westmont, South Los Angeles, and could frequently be found targeting Black and Brown drivers on the intersection of West Manchester and South Figueroa. *Id.*

fraction of the number of unrepresented defendants collectively asserted their power, by those sheer numbers, there was a possibility of systemic change.

When I pitched the idea of community organizing, Zhen was enthusiastically supportive. She connected me with one of her clients, E.C.,⁹⁶ whom she described as particularly vocal about his inability to escape cycles of traffic tickets and debt. What E.C. lacked in formal organizing experience, he made up for with unbridled excitement and eagerness to jump right in. Together, the three of us began hosting meetings twice a month, open to the public, in a conference room at Ascot Library in Watts, South Los Angeles.

Zhen and I shared an organizing philosophy premised on participatory democracy and collective decisionmaking. The overall purpose of these meetings was to empower community members affected by traffic court debt into grassroots organizers capable of leading a local campaign for traffic court reform. Our initial goal was to raise the community's baseline level of knowledge of the traffic court system. Instead of us formulating the problem to attendees, we deliberately assumed the role of facilitators, allowing attendees to create knowledge by sharing stories and listening to each other's experiences. Our assumption was that through repeated encounters with police and traffic court debt, attendees already possessed an acute awareness of the problem.

Far from merely ensuring participation among all attendees, though, we actively facilitated in two ways. First, we synthesized the commonalities among individual experiences to emphasize the collective effects of the system preying on low-income Black and Brown communities, and in turn, foster solidarity. Second, we broke down common experiences into the concrete steps of the larger traffic court system, much in the same way I characterize the system in Part I. We obtained a clearer picture of the concrete steps over time; as our semimonthly meetings progressed, the content of the community conversations blossomed from fines and fees to traffic stops, vehicle searches, and arrests and jail time subsequent to traffic violations. In turn, everyone in the meetings, Zhen and myself included, developed a deeper understanding of the multilayered systemic nature of traffic court debt.

Aside from developing the collective consciousness of traffic court debt, our goal was to raise the capacity of attendees to lead a grassroots organizing campaign. We believed that transformation into organizers occurred through actual practice. After a few initial meetings, I invited the most dedicated attendees—E.C. and two Black women—to separate planning meetings, where I trained

96. This client is Anonymous Arrestee #3. See *supra* note 44 and accompanying text.

these emerging leaders to independently lead subsequent public meetings at Ascot Library.

From the community meetings, discussions around possible campaigns, specific demands, and preparation for concrete action emerged. While Zhen and I envisioned an organizing campaign that would directly complement our policy advocacy for eliminating license suspensions, the impulse of regular participants at the meetings took a different direction, reflecting the material circumstances they faced on the ground to which Zhen and I were ignorant. By November, one repeated refrain in meetings was the increasing use of DUI checkpoints in South Los Angeles.⁹⁷ Attendees described the police routine of not only checking for sobriety at the checkpoints, but also demanding the production of valid license and registration.⁹⁸ Drivers who were visibly and completely sober, but whose licenses were suspended, faced arrest and vehicle impoundment. The increasing use of DUI checkpoints as proxies for license suspension checks prompted the development of a campaign against this form of policing.

To supplement grassroots knowledge of the issue, I developed a Know Your Rights workshop designed to disseminate knowledge of drivers' legal rights at DUI checkpoints. Through this workshop, I hoped that other participants could lead similar presentations of their own,⁹⁹ and to discuss how to exercise these rights collectively¹⁰⁰ as a form of political action—for example, community cop

97. LAPD deploys DUI checkpoints disproportionately in low-income communities of color. See Dennis Romero, *When It Comes to DUI Crackdowns, Westside Residents Get a Pass*, LA WEEKLY (Apr. 28, 2016, 6:02 AM), <http://www.laweekly.com/news/when-it-comes-to-dui-crackdowns-westside-residents-get-a-pass-6871323> [https://perma.cc/K2LR-7YK7] (“By far the most checkpoints or DUI saturation patrols . . . in 2015 took place in greater South Los Angeles.”).

98. Similar to what interviewees told us about the pretextual nature of traffic stops, as discussed in Part I.E, legal advocates should consider interrogating the constitutionality of DUI checkpoints in Los Angeles County under the Fourth Amendment. The Supreme Court has held that suspicionless stops at DUI checkpoints are constitutional under the special needs doctrine so long as police temporarily stop each vehicle to check for sobriety. See *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444 (1990). It remains an open question, however, whether police can also check for license and registration at DUI checkpoints. In *Sitz*, the police checked for the driver’s license and registration only upon detection of signs of intoxication. *Id.* at 447.

99. I stressed to workshop participants to be careful in giving legal information, as opposed to legal advice, to other community members who regularly experience DUI checkpoints.

100. I emphasized that rights should be exercised collectively, as opposed to individually. In so doing, I reiterated an important distinction highlighted by UCLA Law Professor Devon Carbado between the legality and practicality of exerting rights. Carbado cautioned that it would be unwise for Black and Brown drivers to assert their rights during individual police encounters because of the practical power imbalance between the officer and the driver. Devon W. Carbado, Professor of Law, UCLA, Lecture at Loyola Law School: Policing Communities of Color: Practicality vs. Legality (Nov. 12, 2015). Information about this event can be found at *Policing Communities of Color: Practicality vs. Legality*, ALLEVENTS.IN, <https://allevents.in/events/policing-communities-of->

watch, overloading checkpoints by collectively driving through and having each driver question the legitimacy of certain lines of police questioning, and setting up neighborhood warnings a few blocks ahead of checkpoints. Additionally, in response to significant interest from attendees for skills-building trainings to prepare them for effective advocacy, I developed a public speaking workshop, where each attendee practiced persuasive speeches and responses to simulated media interviews in front of the larger group, which provided constructive feedback on the performance.¹⁰¹

Ultimately, the DUI campaign never surfaced. Instead, the demands from Zhen's and my professional responsibilities curtailed the positive strides in collective democracy and personal growth that developed among community members in the previous months.¹⁰² Because Zhen and I lacked a rebellious social movement lawyering orientation, we failed to fully embrace the value of grassroots organizing, and instead confined it to its own experimental sphere while we gravitated toward our professional conditioning; instead of respecting the decisionmaking of the group, we subordinated it and steered the grassroots involvement to token media appearances in support of the launch of the second policy report and the litigation. In its impotent, contrived form, the organizing component of our advocacy concluded after a few of our original members spoke to legislators about the impact of license suspensions on May 9, 2016, during Quest for Democracy Advocacy Day, an annual lobby day at the state capitol in Sacramento.¹⁰³ Though empowering for the speakers to train and prepare as individuals for their public speeches, the speeches did little to move the needle toward a legislative end to license suspensions.

Notwithstanding Zhen's and my zealous and multifaceted approach to advocacy, at times in collaboration with dozens of professional advocates

color-practicality-vs-legality-a-candid-conversation-with-judge-david-s-cunn/873696212726168# [https://perma.cc/3D3G-PBUY].

101. E.C. attributed his successful interview on license suspensions with a local television station to participation in this workshop. See Miriam Hernandez, *Blacks, Latinos Lose Driver's License for Unpaid Fines at Disproportionate Numbers: Study*, ABC7 (Apr. 11, 2016), <http://abc7.com/1287012> [https://perma.cc/XY6T-ADZX] (containing the interview, both in print and through news footage segment, with E.C.).
102. By the time the idea to form a campaign around DUI checkpoints was solidified in late November, I was entering final exams, and the demands of the second report and forthcoming litigation engulfed Zhen. Because our community meetings had not yet progressed into a concrete campaign implementing collective action, attendees had not yet developed the grassroots leadership capacity to independently analyze and lead collective action scenarios.
103. See *LSPC Newsletter May 2016: Quest for Democracy*, LEGAL SERVS. PRISONERS WITH CHILDREN (May 2016), <http://hosted-p0.vresp.com/325464/cad7ed5dc4/ARCHIVE> [https://perma.cc/PH7Z-MWKH] (discussing #Q4D activists advocating for SB-881, a bill to stop suspension of driver's licenses for failure to pay court fines).

statewide, traffic court debt remains a systemic barrier entrapping tens of thousands of low-income Californians of color in cycles of debt and criminal justice system involvement. Absent creative new democratic, grassroots strategies, the structural behemoth of traffic court debt will likely remain a fixture. Indeed, our narrow gaze on license suspensions ignored the systemic problem of traffic court debt, which generates revenue for the state through a complex web of mechanisms.

At best, our professionally-driven campaign and strategies have accomplished limited, temporary gains. Even then, the gains are precarious. At the time of writing, both lawsuits remain pending.¹⁰⁴ Although a promising legislative bill, SB-881, was proposed by Senator Robert Hertzberg in January 2016 to end the use of license suspensions as a debt collection mechanism, that component was completely excised from the final version passed in September.¹⁰⁵ The provisional band-aid of the amnesty program finally peeled off on March 31, 2017.¹⁰⁶ In other words, our pursuit of legal and legislative modes of advocacy, conducted in a professional vacuum, have left us in a strikingly similar position to where we began—perhaps worse, given the new political landscape in Washington, D.C.¹⁰⁷

Confronted with this sobering reality, I sought to find meaning in the brief glimpses of a new possibility—one informed by participatory democracy—that both Zhen and I experienced in our brief grassroots community organizing. In

104. A third lawsuit, also pending, has since been filed against the DMV for illegally suspending driver's licenses prior to a willfulness determination hearing. Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, *Hernandez v. Cal. Dep't of Motor Vehicles*, No. RG16836460 (Cal. Super. Ct. filed Oct. 25, 2016).

105. *SB-881 Vehicles: Violations: Payments of Fines and Bail*, CAL. LEGIS. INFO. (Sept. 28, 2016), http://leginfo.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201520160SB881&cversion=20150SB88199INT [<https://perma.cc/L9CL-BXJZ>] (comparing the text of SB-881 in its current iteration to its original version).

106. The Judicial Council has proposed adoption of rules 4.106, 4.107, and 4.335. See JUDICIAL COUNCIL OF CAL., INVITATION TO COMMENT: SP16-08, at 3–5 (2016), <http://www.courts.ca.gov/documents/SP16-08.pdf> [<https://perma.cc/U8FN-WRH3>]. These rules would require courts to “provide the defendant with notice and an opportunity to be heard on ability to pay” before referral to the DMV for license suspension. *Id.* at 4. However, given the weak language of “notice” in the proposed rules and the wide discretion afforded to counties in implementing Council rules, as discussed in Part II.B, with the execution of the amnesty program, individuals will likely not benefit from the adoption of minor rule changes alone.

107. Under President Obama, the Department of Justice (DOJ) issued a “Dear Colleague” letter in March 2016 to judicial officers emphasizing the importance of ability to pay in the enforcement of fines and fees. Dear Colleague Letter from Vanita Gupta & Lisa Foster, Civil Rights Div., U.S. Dep’t of Justice, Law Enforcement Fines and Fees (Mar. 14, 2016), <https://www.justice.gov/crt/file/832461/download> [<https://perma.cc/Y39J-5YSM>]. Moreover, the DOJ filed a statement of interest supporting a class action challenging the constitutionality of license suspensions absent an ability-to-pay proceeding in Virginia. Statement of Interest of United States, *Stinnie v. Holcomb*, No. 3:16-CV-00044 (W.D. Va. Mar. 13, 2017), 2016 WL 6892275.

Part III, I detail the intellectual legal influences that inform my analysis of these experiences. Building off these legal influences, in Part IV, I contribute my theory of rebellious social movement lawyering. Finally, in Part V, I apply my theory to critique the professionally-driven mentality that grounded our approach to advocacy.

III. REBELLIOUS LAWYERING: AN ACTIVIST THEORY OF LAWYERING

In Part III, I lay out one specific tradition within progressive legal scholarship—rebellious lawyering—that has shaped my understanding of my yearlong advocacy challenging traffic court debt, and under which my theory of rebellious social movement lawyering most appropriately falls.

Since the 1970s, two main progressive legal traditions have emerged to replace legal liberalism, the reigning philosophy from the Warren Court era that favored litigation as the primary mechanism for structural social change.¹⁰⁸ Even the most optimistic account of Warren Court activism failed to withstand a long-term, contemporary analysis against the realities of resegregation,¹⁰⁹ retrenchment of race conscious remedial plans,¹¹⁰ and the ascent of individual over collective rights under a neoliberal regime of law and politics.¹¹¹ Thus, the new traditions

108. See generally ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* (Yale Univ. Press 2d ed. 1986) (1962); Michael McCann & Jeffrey Dudas, *Retrenchment... and Resurgence?: Mapping the Changing Context of Movement Lawyering in the United States*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 37, 37–49 (Austin Sarat & Stuart A. Scheingold eds., 2006); ANTHONY JAMES SEBOK, *LEGAL POSITIVISM IN AMERICAN JURISPRUDENCE* (1998); Scott L. Cummings, *Movement Lawyering*, 2017 ILL. L. REV. (forthcoming 2018).

109. In fact, far from remaining idle, the Supreme Court has actively struck down race-conscious plans by public school districts designed to combat resegregation. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (plurality opinion).

110. In a series of monumental decisions, beginning with *Washington v. Davis*, 426 U.S. 229 (1976), the Nixon-appointed Burger Court undermined the Warren Court's activist orientation toward Equal Protection jurisprudence. Critical Race scholars have characterized the hostility of the Burger Court's racial jurisprudence beginning in the 1970s as "the era of rationalization," "color-blind constitutionalism," and "intentional blindness." See Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1102–18 (1978); Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind"*, 44 STAN. L. REV. 1, 1–3 (1991); Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1853–59 (2012).

111. See, e.g., DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005); Deborah Dinner, *Beyond "Best Practices": Employment-Discrimination Law in the Neoliberal Era*, 92 IND. L.J. 1059 (2017).

sought to subordinate law and the role of lawyers by instead emphasizing grassroots power as the primary mechanism for social change.¹¹²

The first of these traditions, movement lawyering, was from the outset a theoretical response to the intellectual bankruptcy of legal liberalism.¹¹³ Movement lawyering attempted a reinterpretation of Warren Court decisions through contextualizing landmark court victories against a backdrop of the massively disruptive pressures exerted by the Civil Rights Movement.¹¹⁴ In its contemporary iteration, movement lawyering describes a “model of practice in which lawyers accountable to marginalized constituencies mobilize law to build power to produce enduring social change through deliberate strategies of linked legal and political advocacy.”¹¹⁵ Thus, unlike legal liberalism, lawyers are accountable to “mobilized clients”¹¹⁶ and deploy legal strategies as part of a broader “integrated advocacy”¹¹⁷

-
112. See Scott L. Cummings & Ingrid V. Eagly, *After Public Interest Law*, 100 NW. U. L. REV. 1251 (2006) [hereinafter Cummings & Eagly, *After Public Interest Law*] (advocating for a paradigm shift in the profession of public interest lawyering in response to the limitations of the traditional tools of litigation and direct representation). See generally Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001) [hereinafter Cummings & Eagly, *Critical Reflection*].
113. Movement lawyering arose in the 1970s in response to two foundational problems with legal liberalism: “the accountability of lawyers to movement constituencies and the efficacy of law in producing social change.” Cummings, *supra* note 108 (manuscript at 6). For a critique on accountability, see for example, SUSAN M. OLSON, CLIENTS AND LAWYERS: SECURING THE RIGHTS OF DISABLED PERSONS (1984), arguing that lawyer domination occurs at two levels: (1) controlling the substance and management of litigation, and (2) creating dependence on lawyers. Also, see Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976), which argues that the NAACP Legal Defense Fund litigated desegregation despite grassroots communities demanding improved quality of education rather than integrated schools. For a critique on efficacy, see for example, GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 338 (1991), which states: “U.S. courts can almost never be effective producers of significant social reform.” Also, see STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE 95 (1974), which states: “[T]he problem with litigative approaches may be less with the strategy than with the strategists.”
114. See SCHEINGOLD, *supra* note 113, at 95; see also ROSENBERG, *supra* note 113, at 336–43 (suggesting that *Brown v. Board of Education*, 347 U.S. 483 (1954), produced no meaningful change in the following decade before the arrival of the 1964 Civil Rights Act); Michael J. Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7, 10 (1994) (“[R]acial change in America was inevitable owing to a variety of deep-seated social, political, and economic forces. These impulses for racial change . . . would have undermined Jim Crow regardless of Supreme Court intervention . . .”).
115. Cummings, *supra* note 108 (manuscript at 8).
116. “Mobilized clients” are “politically activated clients,” such as social movement organizations, “that have the power to set [an] agenda and execute campaigns.” *Id.* (manuscript at 8, 13). Scott Cummings further explains: “Examples of movement lawyering from practice spotlight lawyers representing activist organizations, not the vulnerable or disorganized clients emphasized in the legal liberal model.” *Id.* (manuscript at 45) (footnote omitted).

that recognizes the importance of mass mobilization in structural social change. Like legal liberalism, though, movement lawyering both contemplates the need for legal advocacy¹¹⁸ and mostly relegates the role of lawyers along their formal, professional identities in which lawyers litigate, while organizers organize.¹¹⁹ Because I intuitively felt that legal advocacy, while important, was not necessary for structural social change, and because my own identity in traffic court advocacy fluidly shifted between legal advocate and organizer, I gravitated toward the second tradition to arise from the critique of legal liberalism: rebellious lawyering.

Rebellious lawyering generated its theoretical currency from practitioners reflecting on their own attempts at creative community lawyering.¹²⁰ Rebellious lawyers seek to achieve social change through direct collaboration with community members at the grassroots level. In other words, whereas movement lawyering characterizes lawyers as representing preexisting activist organizations, rebellious lawyers build such organizations from among their legal services clients. In Subpart A, I lay out the theory of rebellious lawyering and its progeny. In Subpart B, I describe one major shortcoming in the theory, its limited scalability, which I attempt to address in Part IV with my theory of rebellious social movement lawyering.

A. The Rebellious Approach to Advocacy

Rebellious lawyering conceptualizes social change as a dynamic process of collaborative problem solving between community members and lawyers.¹²¹ According to Gerald López, instead of distancing themselves from actively

117. “[I]ntegrated advocacy rests on a complex understanding of the political and social system that links together different types of institutions and different ways that law operates within them.” *Id.* (manuscript at 63). Because of these linkages, movement lawyers must seize on “opportunities for law to be produced and used as a tool to constrain power.” *Id.* (manuscript at 64).

118. Movement lawyering is an “affirmation of a positive role for lawyers and legal expertise in support of movement-led campaigns.” *Id.* (manuscript at 15). Ultimately, Cummings concludes that movement lawyering is not so much a departure from legal liberalism—specifically, its emphasis on legal activism—than it is an “effort to redeem it on different grounds” through “democratic principles of inclusion, equality, and participation.” *Id.* (manuscript at 81–82).

119. For example, low-wage immigrant worker members and organizers of the labor group Restaurant Opportunities Center of New York “themselves defined the problem area, chose targets within the industry, and directed public protest and media advocacy with lawyers supporting these activities through affirmative and defensive legal action.” Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1917 (2007).

120. See *supra* note 6 and accompanying text.

121. In contrast, López characterizes the reigning conventional approach to lawyering as “[r]egnant,” in which lawyers lead efforts to social change through the largely dichotomous approaches of “service” and “impact” work. LÓPEZ, *supra* note 6, at 23–24. Under this framework, Zhen’s and my advocacy was “regnant” lawyering.

organizing in the manner of movement lawyers, rebellious lawyering involves “teaching self-help and lay lawyering”—that is, “helping people to see that they can identify, understand, and contribute to solving their own and others’ problems.”¹²² López’s articulation of teaching, then, is not so much a process of the teacher depositing foreign knowledge into student, but rather a process where lawyers inspire confidence in community members by validating their existing lay methods of problem solving. López deliberately elevates these lay methods of problem solving—methods he calls *lay lawyering*¹²³—as possessing equal if not greater importance than professionalized lawyering because community intuitions and traditions have ensured survival, resistance, and progress for generations despite systematic subordination.

Insofar as lawyers specialize in legal knowledge, they should also promote legal literacy among community members. In this way, community members are equipped with a complete arsenal of both legal and nonlegal tactics they are empowered to strategically deploy in their advocacy.¹²⁴ As much as rebellious lawyers teach the law, they learn from community members about lay lawyering. Thus, rebellious lawyering is a collaborative, rather than professionalized, approach to problem solving, whereby each member of the community is valuable precisely because they contribute their own sets of skills and knowledge to the grassroots organization. Rebellious lawyers “must know how to work with (not just on behalf of)” community members and must “understand how to educate those with whom they work, particularly about law and professional lawyering, and, at the same time, they must open themselves up to being educated by all those with whom they come in contact, particularly about the traditions and experiences of life on the bottom and at the margins.”¹²⁵

Ascanio Piomelli develops the intellectual foundation of the collaborative approach to rebellious lawyering even further. He situates the collaborative approach within “a participatory democratic tradition of active self-government by engaged citizens.”¹²⁶ Encouraging clients to actively participate together with lawyers in

122. *Id.* at 70; see also Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).

123. López, *supra* note 122.

124. This is in stark contrast to the widely embraced professional model of community organizing, or what López terms “orthodox organizing,” where specialized community organizers dictate the demands and direction of a community organizing campaign. LÓPEZ, *supra* note 6, at 331–78.

125. *Id.* at 37.

126. Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 541 (2006). Piomelli contrasts participatory democracy and “protective” democracy, a republican system of governance “entail[ing] a selection of expert leaders by majority vote [and having] its foundation in popular consent.” *Id.* at 548 (emphasis omitted). Under “protective” democracy, citizens do not regularly engage in public life. See *id.* at 548–49. Participatory democracy has been expressed throughout history in Athenian democracy, Jeffersonian ward democracy, John Dewey’s

collective decisionmaking and action¹²⁷ must be understood as a “profound commitment to *democracy*. . . . *At its core, collaborative lawyering is an effort to practice, promote, and deepen democracy*—more precisely, a participatory democracy in which individuals and communities flourish by unleashing their full energies and potential in joint public action.”¹²⁸ Participatory democracy rejects an “[e]xclusive [r]eliance on [f]ormal [r]epresentation,” recognizing that formal representatives necessarily imply the inferiority of the represented.¹²⁹ Instead, participatory democracy appreciates that “intelligence and problem-solving competence are broadly distributed throughout society, rather than concentrated in the ranks of the well-educated or well-to-do.”¹³⁰ Relatedly, participatory democracy validates the “omnipresence of resistance”¹³¹ among community members in the face of oppression—that is, “even in apparently quiescent times . . . resistance is visible . . . in the microdynamics of everyday life”¹³²—by redeploying individual acts of subversion as a collective strategy to solve problems.

For Piomelli, the role of rebellious lawyers is fluid precisely because of the horizontal model to democratic decisionmaking. Thus, while rebellious lawyers might litigate, they might also be required to battle “side-by-side” with clients and community members when collective decisions de-emphasize legal tactics and lead to an “adversarial approach” through “pressure tactics.”¹³³ Of course, lawyers should contribute their legal expertise, but a collaborative approach “encourage[s] joint exploration of other arenas or avenues where clients and allies can engage in their own persuasive efforts so they are not always in the position of being

vision of democracy as a way of life, Benjamin Barber’s “strong democracy,” and in the grassroots democratic practices of the Student Nonviolent Coordinating Committee and the early New Left. *Id.* at 549–50, 582.

127. Compare López, *supra* note 122 (centering the concept of problem solving on persuasive storytelling, in which individual clients frame their narratives in a relatable register, as pivotal to obtaining desired responses from institutional actors), with Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 488 (2000) (expressly including collective action in his concept of persuasive storytelling).
128. Piomelli, *supra* note 126, at 548. As Ascanio Piomelli describes: “[Collaborative lawyering] entails lawyers, clients, communities, and allies deliberating together to frame problems *and then acting together* to implement agreed-upon tactics and strategies.” *Id.* at 600.
129. *Id.* at 605.
130. *Id.* at 604; see Piomelli, *supra* note 127, at 448 (“Once we stop viewing lower-income clients as frail, downtrodden victims, and instead genuinely treat them as partners possessing problem-solving skills, knowledge, and ideas worth considering and harnessing, we can replace the paralyzing fear of changing clients with an openness to being changed by them.”).
131. Piomelli, *supra* note 5, at 428.
132. Lucie E. White, *Seeking “. . . The Faces of Otherness . . .”: A Response to Professors Sarat, Felstiner, and Cabn*, 77 CORNELL L. REV. 1499, 1504 (1992); see, e.g., ROBIN D.G. KELLEY, *RACE REBELS: CULTURE, POLITICS, AND THE BLACK WORKING CLASS* 8–9 (1994) (characterizing daily acts of resistance—invisible to management—by Black workers in their workplace as “infrapolitics”).
133. See Piomelli, *supra* note 126, at 608.

spoken for by others.”¹³⁴ In other words, where movement lawyering views legal advocacy as necessary for change, rebellious lawyering contemplates legal advocacy as only one possibility. To the extent that litigation is chosen as a strategy and results in courtroom victory, the legal remedies will be more effective because of the active leadership, investment, and engagement by clients and their communities deploying complementary pressure tactics throughout the litigation process. Once the litigation ceases, “ongoing pressure from a popular base is necessary to keep court decisions . . . in force . . . and concerted public action upon those rights is necessary to ensure they enduringly penetrate people’s everyday lives.”¹³⁵

Through her theory of third-dimensional lawyering, Lucie White resolves the somewhat precarious dynamic of rebellious lawyers raising critical consciousness while avoiding the subordination of clients.¹³⁶ Drawing from Paulo Freire, White grounds nonhierarchical consciousness raising through a “dialogic process of reflection and action.”¹³⁷ Pedagogically, though the rebellious lawyer does not monopolize the teacher role, her heavy lifting is on the front-end. She brings clients together, promotes a culture of trust, “sets a tone in which collective learning can take place, and teaches a practice of critical reflection by leading the group through its first sessions and helping it plan its first actions.”¹³⁸ In “striv[ing] to open the norms of her profession to critique by the group,” the rebellious lawyer uses these initial sessions to teach clients to challenge subordination and reconceive themselves as agents of change.¹³⁹ The key is to supplement critical analysis with concrete action. Thus, “the lawyer must [also] help the client-group [in] devis[ing] concrete actions that challenge the patterns of domination that they identify.”¹⁴⁰ Through collective action, clients live out their transformation into organizers; their ability to reflect similarly evolves from abstractly critiquing domination to dynamically strategizing new ways of resistance against domination. After developing confidence through action, community

134. *Id.* at 606.

135. *Id.* at 608.

136. See generally Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699. Third-dimensional lawyering is juxtaposed against lawyering in the first dimension, embodied by the traditional litigation-first public interest lawyer, and lawyering in the second dimension, embodied by the top-down lawyer who desires but controls mass mobilization through a legal frame and fails to “respond to subordinated client[s] . . . interpretation[s] of their own suffering or . . . more realistic assessment[s] of their options.” *Id.* at 754–60.

137. *Id.* at 761 (referring to PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 1970)).

138. *Id.* at 762.

139. *Id.* at 763.

140. *Id.*

members collaborate with rebellious lawyers as organizing equals in resisting subordination.

While collaboration has been its centerpiece, rebellious lawyering insists that such an approach be deployed to challenge “institutional and structural power” in order to “alter[] the material conditions in which clients live.”¹⁴¹ In other words, rebellious lawyering is concerned with more than resisting the inherent domination within an attorney–client relationship or even immediate symptoms of structural problems. Instead, López calls for rebellious lawyers to “work with others in . . . executing strategies aimed at responding immediately to particular problems *and*, [underlying systemic causes of] social and political subordination.”¹⁴² Specifically, he counsels rebellious lawyers to practically engage in the “study of power”¹⁴³—and to approach their advocacy with an appreciation of “international, national, and regional matters [and their] interplay with . . . local affairs.”¹⁴⁴ As Subpart B shows, though, while the theory contemplates broad structural change, case studies in rebellious lawyering fail to illustrate how rebellious lawyers wage collaborative battles for structural social change where the underlying structures lie at the state, federal, or international level. Thus, as a practitioner-in-training searching for a method to challenge the statewide system of traffic court debt, I found myself in need of discovering the solution on my own.

B. The Limited Scalability of Rebellious Lawyering Case Studies

Although rebellious lawyering contemplates addressing the “structural dimensions of problems,”¹⁴⁵ case studies reveal that rebellious lawyering is most effective in achieving structural change at a neighborhood or citywide level.¹⁴⁶ In

141. Piomelli, *supra* note 127, at 485.

142. LÓPEZ, *supra* note 6, at 38.

143. Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 11 (1989) (transcribing Gerald P. López, Address at Stanford Law School (Mar. 8, 1989)). The study of power does not only include precisely defining the institutional sources of power that cause inequity, but also reframing power as the process in which community members collectively exercise to “alter the status quo.” See Piomelli, *supra* note 5, at 406.

144. LÓPEZ, *supra* note 6, at 38; see also Piomelli, *supra* note 5, at 404 (“I would strive for fluency [in the] broader political world of the city, state, and nation. I would embrace, as central to my practice, understanding these worlds and translating between them.”).

145. Piomelli, *supra* note 127, at 487.

146. Though it is beyond the scope of this Comment, one potential reason for the limited scale of structural battles might lie in the theoretical affinity between rebellious lawyering and Foucault’s relational conception of power. According to Piomelli, Foucault was less interested in analyzing systemic power than what Foucault termed “an analytics of power,” or power *relations* manifesting across levels of society. See Piomelli, *supra* note 5, at 421 (quoting 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: AN INTRODUCTION* 82 (Robert Hurley trans., Pantheon Books 1978) (1976)). Thus, Foucault studied power relations at the individual rather than institutional level,

particular, case studies have failed to demonstrate how rebellious lawyering compels institutional actors at the statewide level or higher to concede to demands. For example, though Piomelli frames his powerful case study of maintaining the affordability of rent in East Palo Alto, California as a structural challenge, the institutional target remained at the City Council level.¹⁴⁷ Thus, localized collaborative strategies—in the forms of massive turnout and participation of tenants at Rent Board and City Council meetings, recruitment efforts initiated by tenant-organizers at “private arenas in which the politicians operated,” such as local coffee shops and churches, and the lawyer’s recruitment of the City Attorney to the cause—exerted sufficient collective pressure to remove the hostile landlords and gentrifiers from seats on the city’s Rent Board, thereby successfully preserving rent control.¹⁴⁸ What Piomelli’s case study does not touch on is how such localized efforts shift in response to statewide causes of gentrification, such as state-initiated tax incentives or the construction of a regional public transportation system, which might effectively negate a successful victory at the city level.

In fact, Piomelli’s writing elsewhere implies that where structural causes are rooted beyond the city level, rebellious lawyering at the localized level might be insufficient. In critiquing Michel Foucault’s difficulty analyzing institutionalized power,¹⁴⁹ Piomelli highlights, through a case study, this precise tension between localized means and broader structural ends, but fails to offer a solution. The case study examines the expansion of an electric power plant into a poor neighborhood of color in San Francisco, which would produce more power for the city at the expense of dangerous health risks to the neighborhood’s residents.¹⁵⁰ In mapping out various institutional sources of power that could impact the local plant expansion, Piomelli identifies the Federal Reserve Board and the Federal Energy Regulatory Commission.¹⁵¹ The crucial question he raises is “how any conduct by the clients, the neighborhood, or even the city could register an impact on” these federal entities, given their geographical distance and relative insignificance as a small neighborhood.¹⁵² Unfortunately, Piomelli does not attempt to answer

focusing on “doctors, therapists, counselors, other learned professionals, philanthropists, educators, supervisors, parents, spouses, intimate partners, and the like.” *Id.* at 429. Though Piomelli ultimately draws a line between rebellious lawyering and Foucault on Foucault’s lack of systemic analysis, that much of rebellious lawyering literature focuses on a collaborative approach rather than identifying systemic causation might arguably be symptomatic of Foucault’s lingering influence on the theory. *See id.* at 475–76.

147. Piomelli, *supra* note 127, at 492–514.

148. *Id.* at 504–06.

149. *See supra* note 146 and accompanying text.

150. Piomelli, *supra* note 5, at 401–02.

151. *Id.* at 476.

152. *Id.*

his own question, but instead hypothesizes collaborative solutions that remain purely localized at the city level.¹⁵³

The limitation of scalability is similarly echoed in other case studies illustrative of rebellious lawyering. Founded in 1992 by Jennifer Gordon, the Workplace Project, in just five years, blossomed from a legal services agency to a “vibrant membership organization of immigrant workers with the mission of fighting the low wages, high level of injuries, and pervasive abuses of immigrant work in Long Island” through collective action.¹⁵⁴ Through community organizing driven by worker-members rather than litigation, the Workplace Project secured material gains for aggrieved workers.¹⁵⁵ For all its success, the Workplace Project failed to achieve widespread, sustainable systemic change. In other words, organizing merely replaced legal services as a more effective mechanism for achieving one-time, individualized victories for workers denied full compensation. As Scott Cummings and Ingrid Eagly astutely observe, “one of the paradoxes of the [Workplace Project’s] approach was that it used *collective* organizing to seek *individual* redress, with the workers’ financial recovery tied to the enforcement of legal minimums.”¹⁵⁶

In light of the challenge contemporary rebellious lawyers face in replicating their organizing victories on a larger scale, Cummings and Eagly issued a call for practitioner-scholars to “define more precisely the ways community-based organizing can change broader political and economic structures to benefit marginalized communities. Future scholarship should be devoted to explicating the links between local organizing and larger institutional reform.”¹⁵⁷ By synthesizing the

153. Piomelli proposes pressuring the city’s health department and the city government to encourage city officials not to cooperate with plant expansion. *Id.* at 405.

154. JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* 68 (2005). It must be noted that Gordon has never identified herself as a rebellious lawyer. Nonetheless, through its lawyers embracing a dynamic role of organizing with clients, the Workplace Project provides one powerful, contemporary illustration of the principles of rebellious lawyering in practice.

155. One common organizing strategy included collective shaming by Workplace Project members through a picket or public boycott, which often succeeded in compelling an employer to concede to a worker’s demand. For examples of additional public shaming tactics, see *id.* at 86, 98.

156. Cummings & Eagly, *After Public Interest Law*, *supra* note 112, at 1275.

157. Cummings & Eagly, *Critical Reflection*, *supra* note 112, at 487. In contrast, Hing’s account of the Immigrant Legal Resource Center (ILRC) provides one example of how a rebelliously-oriented immigrant legal services support center achieved “systemic changes” at the federal level, such as the passage of the Family Unity law in 1990, through coordination of localized campaigns with Washington, D.C.-based immigrant advocacy groups. Hing, *supra* note 7, at 267, 281–82, 346. It is beyond this Comment’s scope to assess the structure of a national legal services resource center like ILRC, which provides legal and organizing training to, and partners with, various community-based organizations and their respective localized campaigns, but does not directly build and sustain one grassroots organizing group and localized campaign on its own. *See id.* at 269–70. Rather, this

collaborative principles of rebellious lawyering with a more explicit focus on the necessity of social movements in achieving broader structural change, my theory of rebellious social movement lawyering begins to answer this call.

IV. REBELLIOUS SOCIAL MOVEMENT LAWYERING

In Part III, I explicated the intellectual predicate of rebellious lawyering in order to situate my theory of rebellious social movement lawyering squarely within that tradition. Similar to other rebellious lawyering literature, my theoretical contribution derives from reflecting on my own advocacy—and the lessons from my failures—to eliminate the system of traffic court debt in California. Beyond existing rebellious lawyering scholarship, however, I contemplate how community empowerment at a localized level might pragmatically reach critical mass to effect widespread systemic change. Rebellious social movement lawyering, then, is a practical methodology that synthesizes the grassroots democratic impulse of rebellious lawyering with a social movement orientation.

In Subpart A, I discuss the principles: the ideology underlying rebellious social movement lawyering. In Subpart B, I describe the processes: the approach undertaken in advancing the rebellious social movement lawyer's principles.

A. Principles of Rebellious Social Movement Lawyering

Two overarching principles guide rebellious social movement lawyers. First, drawing from the movement lawyering tradition, rebellious social movement lawyering conceives of broad-based social movements as the primary mechanism for sustainable structural change beyond the localized level.¹⁵⁸ Absent a critical mass of individuals directly participating in a broad-based social movement transcending a finite geography—as opposed to a localized grassroots campaign—social change will be limited in scale, application, and duration. Embedded in this principle is the fundamental notion that legal mechanisms alone cannot achieve structural change because the law constitutes unequal power relations.¹⁵⁹ Instead, structural change occurs when policymakers, as representatives

Comment's focus is on how a localized organizing group and campaign might expand into a broader movement, possibly partnering with a national support center such as ILRC, while retaining its participatory democratic character in the process.

158. Movement lawyering explicitly adopts “social movements as the engines of ambitious, bottom-up political and cultural transformation.” Cummings, *supra* note 108 (manuscript at 15).

159. Cf. Akbar, *supra* note 10, at 357 (“Law cultivates [police] violence as it facilitates a routine disregard by those of us who are not living in decimated communities, and keeps in place the socioeconomic conditions that allow such inequality to persist.”); Charles R. Lawrence III, *The Fire This Time*:

of class interests hostile to low-income communities of color, are compelled to concede power by the disruptive pressures from the mass mobilization of a social movement.¹⁶⁰

While a social movement orientation provides an overarching framework of structural social change, standing alone, this principle fails to conceive of how to first build, and then sustain, a social movement, or how to interact with an existing social movement in a meaningful way that will endure beyond formal victories. Here, rebellious lawyering's emphasis on community empowerment provides a useful point of departure for building and maintaining a vibrant social movement.

Thus, the second principle underlying rebellious social movement lawyering is grassroots democracy.¹⁶¹ When community members directly affected by injustice are empowered to take ownership of their own struggle, they will initiate a campaign that is directly responsive to community needs. In other words, rebellious social movement lawyers will constantly engage in what Mari Matsuda terms "looking to the bottom," for both a material understanding of systemic injustices and a solution through organizing by affected individuals.¹⁶²

Black Lives Matter, Abolitionist Pedagogy and the Law, 65 J. LEGAL EDUC. 381, 386 (2016) ("[R]acial power is exercised through the violence and ideology of law.").

160. See Freeman & Freeman, *supra* note 35, at 155, 150 (arguing that while legal and policy changes might constitute a "flea bite to such elephantine systems of oppression," mass mobilization is needed to "change the severely disproportionate allocations of power that create and reinforce the systems of oppression that produce unjust laws and policies"); see also Lawrence, *supra* note 159, at 387 ("[R]evolutionary transformation comes out of active resistance. It comes from what people in the movement learn about themselves, about their condition, and about their power to change that condition.").

161. Cf. Piomelli, *supra* note 126.

162. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987). Rebellious social movement lawyering is a validation of the creativity and self-activity of those who are directly affected on the one hand, and a rejection of exclusively paternalistic, philanthropic, and professionally-driven change on the other. The Black radical tradition, which developed in the United States as a theoretical counterpoint to the Civil Rights Movement, provides illustrations of celebrating the grassroots impulses and rebellious activities of Black rank-and-file workers during the heyday of American industrialism, while rejecting "the intellectuals who are detached from the working class." PAUL ROMANO, *THE AMERICAN WORKER: PART 1: LIFE IN THE FACTORY 1* (Prole.Info ed.) (1947), <http://www.prole.info/pdfs/americanworker.pdf> [<https://perma.cc/3TYL-PUDQ>]. Romano, who was an auto worker in his late twenties, wrote a pamphlet describing the "innermost thoughts" and actions of rank-and-file mass production workers like himself, in order "to illustrate to the workers themselves that sometimes when their conditions seem everlasting and hopeless, they are in actuality revealing by their every-day reactions and expressions that they are the road to a far-reaching change." *Id.*; see also C.L.R. JAMES & GRACE C. LEE, *FACING REALITY 5* (Bewick Editions ed., 1974) (chronicling the "strivings, . . . struggles, [and] methods" of "ordinary working people in factories, mines, fields, and offices" to "regain control over their own conditions of life and their relations with one another").

In order to take ownership, clients must independently arrive at a conviction in the necessity of community organizing. Thus, rebellious social movement lawyers consciously assume a dialogical approach to consciousness raising. Instead of defining a problem and dictating the necessity of organizing to clients, lawyers facilitate a space where clients come together and collectively discuss their problems. Through the practice of listening to others articulate similar problems to oneself, the individualized nature of legal problems—specifically, the self-blame, shame, and internalized victimization—withers away and in its place, a new baseline understanding of the systemic nature of their problems begins to develop. By visualizing others in the community who are similarly harmed by the problem, clients begin to imagine the possibilities of attacking the problem through collaboration and organizing.

Because organizing campaigns are created by clients responsive to their particularized lived reality, campaigns will undoubtedly entail a symptomatic character at the local level. So long as they are not substituted for the end goal of structural reform, localized, symptomatic struggles are not in themselves problematic. Localized, symptomatic campaigns increase confidence among new organizers through smaller-scale individualized victories, sharpen participatory democracy and collaboration as ways of life,¹⁶³ train strategic thinking and organizing skills, and develop leaders from the grassroots. Rebellious social movement lawyers, however, have an additional responsibility to educate and encourage clients-turned-organizers¹⁶⁴ to develop social movement consciousness.

Where rebellious social movement lawyering departs from rebellious lawyering, then, is in the expanded role of lawyers to train grassroots organizers in acquiring (1) a critical analysis of the distinction between formal and substantive change, and (2) the necessity of a broad-based social movement to challenge the systemic nature of immediate problems. Concretely, to facilitate this analytical mindset, lawyers might develop an accessible curriculum of readings on the history of social movements and movement organizations that highlight the tension between symptomatic change and structural reform,¹⁶⁵ the importance of

163. See Piomelli, *supra* note 126, at 599–602 (arguing that democracy as “a way of life” extends to all relationships (quoting JOHN DEWEY, *FREEDOM AND CULTURE* 101 (Prometheus Books 1989) (1939))).

164. Henceforth, I use the term “grassroots organizers” or “organizers” to describe clients who have undergone transformation through participation in localized, symptomatic struggles.

165. See, e.g., CLAYBORNE CARSON, *IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960s* (1981); ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* (2002); BARBARA RANSBY, *ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* (2003); WILLIAM W. SALES, JR., *FROM CIVIL RIGHTS TO BLACK LIBERATION: MALCOLM X AND THE ORGANIZATION OF AFRO-AMERICAN UNITY* (1994).

intersectionality¹⁶⁶ and class solidarity across identity-based lines,¹⁶⁷ and the need to forge broader coalitions in building an inclusive social movement.¹⁶⁸ As lawyers and organizers collectively discuss such readings, lessons of the past are digested, thereby sharpening the group's analysis, resiliency, and ability to manage seemingly new but historically similar situations.

Once such an analytical mindset is developed, lawyers and organizers, collaborating as equal members of the grassroots organizing group, will make strategic determinations based on how a proposed tactic or campaign enhances grassroots democracy, social movement building, or both. There is no specific formula for how these strategic determinations will be made. Instead, members must weigh the merits of either continuing a localized, symptomatic campaign or pursuing a broader movement for systemic change. Relevant factors might include the current size of the grassroots organizing group,¹⁶⁹ the readiness and confidence level of existing members to jump into a more ambitious campaign, the material well-being of members, the vulnerability of a target,¹⁷⁰ and the existence of an independent vibrant social movement.

This final factor may influence the timing of the group's transition from a purely localized, symptomatic character to an active movement organization demanding broader structural reform. Where an independent social movement already exists, this transition might begin with group members collectively brainstorming theoretical connections between their symptomatic struggle and the movement. These connections are necessary to convince other movement constituents to meaningfully incorporate the group's symptomatic demands, so as

-
166. See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991) (defining "intersectionality" as the various ways in which multiple social categories shape the complexity of lived experiences). Without an intersectional approach, campaigns and movements might exclude similarly affected individuals with nonconforming or multiple identities, thereby limiting the numerical strength, efficacy, and demands of the movement.
167. See, e.g., DAN GEORGAKAS & MARVIN SURKIN, DETROIT: I DO MIND DYING: A STUDY IN URBAN REVOLUTION (1975) (describing how Black and white workers in Detroit collectively organized against employers following the 1967 Detroit riot).
168. See, e.g., LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY (2002) (arguing that coalitions for change must begin with marginalized groups and then percolate outward).
169. If the size of the group is small, a localized campaign addressing winnable bread-and-butter issues might attract and retain new similarly-affected participants.
170. One organizing strategy is to continue pressuring a target who is more susceptible to collective action, when immediate gains are won. Doing so would materially benefit individuals denied those immediate remedies, and could recruit new members and develop confidence in the group's collective ability to solve problems. Even if such a target is not directly responsible for the underlying systemic harm, the group might consider continuing to pressure the target, leveraging the target's institutional position relative to the third-party actor responsible for the harm.

to allow the group to participate without compromising the integrity of their demands. By connecting with a movement, the group simultaneously expands the scale of what was once a localized campaign and targets the underlying structures producing the harm. Where an independent movement does not exist in which theoretical connections can be readily made, the group might focus on expanding the scale of their localized campaign by creating linkages with other preexisting localized struggles and among other similarly-situated individuals to initiate a social movement.

In elevating grassroots democracy as a foundational principle, my theory offers a response to two unresolved questions raised by movement lawyering literature as to the role of movement lawyers regarding (1) “how much deference to accord to the decision making processes of social movement clients, whether to pursue strategies of elite negotiation or grassroots disruption, and how to evaluate the pros and cons of litigation as a social movement tactic,”¹⁷¹ and (2) how to act when no movement exists.¹⁷² My departure from movement lawyering’s focus on the lawyer’s relationship to “mobilized clients” is key.¹⁷³ Because I argue that instead of collaborating with “mobilized clients,” rebellious social movement lawyers should directly build power among legal services clients and community members in a grassroots organizing group, and thus contribute as equal participants in that context, the question of deference, strategies, and evaluation is directly resolved through democratic decisionmaking at the level of the grassroots organizing group. In other words, rebellious social movement lawyering contemplates that just as clients are transformed into organizers, lawyers are similarly transformed into organizers who jointly participate in the organizing group. Where the organizing group participates as a member organization of a larger coalition or social movement, a strategy will first be democratically decided within the group, and then proposed for adoption at the coalition level. Similarly, where no movement exists, lawyers should build a grassroots organizing group, which, over the course of waging a localized, symptomatic campaign, transitions into conscious movement building activity.

For rebellious social movement lawyers, then, grassroots democracy is the nonnegotiable linchpin of a social movement’s viability. Lawyers must play an active role in creating a culture of participatory democracy at the grassroots level before organizing within an existing social movement. Throughout history, many social movements eventually waned or splintered because of the lack of

171. Cummings, *supra* note 108 (manuscript at 8).

172. *Id.* at 47–48.

173. See *supra* note 116 and accompanying text.

democratic mechanisms to disseminate leadership and decisionmaking among movement participants.¹⁷⁴ Movement organizations—“mobilized clients”—of the past generally assumed a top-heavy hierarchical structure, which not only disempowered, but in many cases led to, the departure of their members.¹⁷⁵ Because my theory of rebellious social movement lawyering begins with localized, symptomatic campaigns that instill the value of grassroots democracy, seasoned grassroots organizers of these struggles who later join an existing movement or initiate a new movement will inject and insist on a participatory-democratic culture at the movement level. With greater democratic participation and decisionmaking among movement participants, broad-based social movements will be able to adapt to shifting adversities, attract new leaders from the grassroots, and survive beyond formal change.

B. Processes of Rebellious Social Movement Lawyering

This Subpart discusses the processes adhered to by rebellious social movement lawyers in living out their two underlying principles. First, lawyers must *act with deliberation* toward enhancing grassroots democracy and building a social movement. Deliberation entails constant reflection on how their actions advance these goals. Lawyers must take heed of the overall campaign direction. Because localized, symptomatic campaigns can be in tension with larger movement building, in that symptomatic demands might reflect individualized grievances rather than structural change, lawyers must reflect like dialecticians. It is not enough to assess the merits of a chosen strategy based on immediate outcomes; one must also consider how a strategy might reinforce complacency among

174. See, e.g., Fredrick C. Harris, *The Next Civil Rights Movement?*, DISSENT MAG. (2015), <https://www.dissentmagazine.org/article/black-lives-matter-new-civil-rights-movement-fredrick-harris> [<https://perma.cc/NG94-MQDF>] (describing the risk of longevity of civil rights organizations due to “[c]harismatic leaders [who] can be co-opted by powerful interests, place their own self-interest above that of the collective, be targeted by government repression, or even be assassinated, as were Martin Luther King and Malcolm X”).

175. See, e.g., ASSATA SHAKUR, ASSATA: AN AUTOBIOGRAPHY 222, 226 (2001) (explaining that her departure from the Black Panther Party (BPP) stemmed from the BPP’s failure to enact a “systematic program for political education” that democratized knowledge among members, and that the BPP leadership neither listened to “[c]onstructive criticism” nor engaged in “self-criticism”); see also, e.g., Chris Booker, *Lumpenization: A Critical Error of The Black Panther Party*, in THE BLACK PANTHER PARTY RECONSIDERED 337 (Charles E. Jones ed., 1998) (describing the contradiction between the rhetorical support for and the practice of gender equality within the BPP); Third World Women’s All., *Women in the Struggle*, in RADICAL FEMINISM: A DOCUMENTARY READER 460, 460 (Barbara A. Crow ed., 2000) (tracing the origins of the Third World Women’s Alliance to the failure of the Student Nonviolent Coordinating Committee to meaningfully involve women beyond “secretarial and/or supportive roles”).

organizers or invite reactionary backlash by the state.¹⁷⁶ Thus, in reflecting dialectically, lawyers might identify opportunities to demystify the structural nature causing the immediate harm sought to be remedied by the localized, symptomatic campaign. This might simply entail reframing symptomatic demands along structural lines, incorporating additional demands that relate to the underlying structure, or partnering with similarly-situated localized organizing campaigns to forge a broader movement against the system producing the harm. In order to avoid reproducing a hierarchy where lawyers become the sole tactical dialectician, however, lawyers must disseminate dialectical thinking skills among the grassroots organizers. In so doing, the symptomatic-structural and localized-movement assessments over demands and scale will occur collaboratively, rather than unilaterally.

Thus, the second approach lawyers assume is the *democratization of skills and knowledge* within the group. The goal is to create a horizontal group where each member contributes their talents, ideas, and leadership equally.¹⁷⁷ At the outset, because skills and knowledge are unequally distributed, education should be prioritized. This education must go both ways. That is, lawyers must simultaneously “[l]earn and [t]each.”¹⁷⁸ Lawyers must learn preexisting strategies of “lay lawyering”¹⁷⁹ and understand the intricacies of an unjust system through the eyes of grassroots organizers. In turn, lawyers teach their skills and knowledge, including raising movement consciousness. Moreover, lawyers should disseminate legal knowledge insofar as it explicates existing rights under the law and enables the group to make strategic decisions involving legal advocacy. By knowing the law, the group might decide to structure a campaign expressly drawing from the notion of legal rights. Because rights discourse inherently cabins the vision of freedom¹⁸⁰ and tends to reify unequal power

176. See MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004) (arguing that *Brown* energized a conservative opposition); Lawrence, *supra* note 159, at 387 (arguing that successful collective action compels “the plunderers [to] respond with new law. The new laws will inflict new forms of violence and compose new narratives to make the new violence seem just”); Gerald N. Rosenberg, *Courting Disaster: Looking for Change in All the Wrong Places*, 54 *DRAKE L. REV.* 795, 796–97 (2006) (discussing the political backlash sparked by *Brown* in the form of Southern white mobilization in defense of segregation).

177. See Hing, *supra* note 7, at 283 (“The commitment to community education stems from the belief that power, influence, and democratic participation flows from having as much information as possible to make important decisions.”).

178. White, *supra* note 136.

179. López, *supra* note 122, at 2.

180. See Richard L. Abel, *Lawyers and the Power to Change*, 7 *L. & POL’Y* 5, 8–9 (1985) (“[T]he inherently individualistic quality of bourgeois legal rights tends to undermine collectivities rather than build them.”); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic*

relations,¹⁸¹ however, the group must think dialectically in making a cost-benefit determination of pursuing such a narrowly defined campaign, such that legal recourse does not in itself become the end.¹⁸² Ultimately, legal knowledge will allow the group to fully weigh a legal strategy alongside other tactical options. While the familiar concerns exist with pursuing litigation as the sole means for change, when understood as just one instrument in the toolkit, litigation can enhance the goal of movement building.¹⁸³

Naturally then, the third approach is reframing *lawyering as one tool in a multipronged strategy* to structural change.¹⁸⁴ If the group decides to litigate, the role litigation is to play in relation to the symptomatic campaign and the overall strategy of movement building must be deliberated and clearly established. Litigation solely to address a symptom should be used sparingly as it is extremely costly,¹⁸⁵ produces dependency on lawyers,¹⁸⁶ and discourages grassroots collective

Empowerment, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 684 (1987–88) (“[The] narrow treatment of cases as distinct unrelated disputes, without reference to larger class continuities, sacrifices a valuable opportunity to unmask domination and promote counter hegemony by organizing around legal controversy.”); Piomelli, *supra* note 127, at 491, 492 (arguing that legal frameworks inherently “de-politicize” disputes because lawyers determine “a dispute’s scope, substantive and procedural norms, rules of relevance, cast of characters, and available remedies”).

181. See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); Akbar, *supra* note 10; Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).
182. Critical Race scholars have argued that the law simultaneously subordinates but also embodies ideals upon which subordinated groups might seize for liberation. See, e.g., Matsuda, *supra* note 162, at 341 (describing the non-white tradition of reading the U.S. Constitution as a text of liberation); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 433 (1987) (arguing for a radical reconceiving of rights, instead of discarding “a symbol too deeply enmeshed in the psyche of the oppressed to lose without trauma and much resistance”).
183. For example, during the 1960s and 70s, Jerry Cohen, the general counsel for the United Farm Workers, used litigation to “overturn injunctions that outlawed picketing, challeng[ed] “backdoor contracts” by the rival Teamsters Union, . . . and defend[ed] the legality of secondary boycotts.” Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 50 (2011). In so doing, Cohen enabled the movement to engage in disruptive tactics. *Id.* at 50–51; see also Cummings, *supra* note 108 (manuscript at 59–60) (discussing how movement lawyers defended anti-sweatshop protesters in a civil suit for defamation brought by Forever 21).
184. See Akbar, *supra* note 10, at 365 (“Organizers rely on law and legal process not for justice, but as sites for democratic contestation and movement building in a larger battle to shift the balance of power. Law is transformed from its common image in the liberal imagination—as the cure-all for the ails of inequality—into just one tool among many for challenging a social order . . .”).
185. Michael McCann & Helena Silverstein, *Rethinking Law’s “Allurements”: A Relational Analysis of Social Movement Lawyers in the United States*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 261, 263 (Austin Sarat & Stuart Scheingold eds., 1998).
186. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 438–39 (1995) (arguing that litigation undermined organizing efforts by reinforcing reliance on lawyers).

action that might otherwise achieve similar individualized victories.¹⁸⁷ In contrast to smaller claims, major impact litigation might serve as a bridge between the localized campaign and a broader social movement. Viewed this way, because major litigation tends to receive increased publicity relative to localized grassroots organizing, it might connect the group with other similarly situated communities beyond their immediate network, thus becoming a rallying cry that leads to greater participation across geographical space. Lawyers, however, should not approach major litigation as the exclusive movement strategy, and instead encourage complementary pressure tactics and structural demands that operate outside the law. Far from rejecting the greater access and privilege afforded to them by their profession, rebellious social movement lawyers should seek to contribute their legal training synergistically with the tactics and skills of the organizing group.¹⁸⁸

Fourth, lawyers must be *flexible* with their strategies by adapting to constantly changing conditions.¹⁸⁹ Every move invites a countermove. Often, the stagnant and predictable strategy proves to be fatal.¹⁹⁰ If it makes no sense to continue a chosen tactic, the group should abandon it. Changing strategies deepens the creative and analytical capacity of grassroots organizers, while exerting new pressures against the system. Constant group reflection is key for assessing the current efficacy and continued potential of chosen strategies.

Finally, lawyers must *defer to group democracy*.¹⁹¹ A lawyer is merely one member of a collaborative organizing group. Though lawyers should actively

187. See Thomas M. Hilbink, *Filling the Void: The Lawyers Constitutional Defense Committee and the 1964 Freedom Summer* 13–15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2416592 [<https://perma.cc/QEG4-PYQK>] (unpublished manuscript) (noting that President John F. Kennedy's emphasis on law-abiding and "peaceful solutions" to desegregation led to the creation of the President's Committee, under which litigation functionally acted "as a restraining influence on the [Civil Rights] movement."); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053–54 (1970) (criticizing legal strategies and instead urging lawyers to "strengthen existing organizations of poor people").

188. The movement lawyering tradition supports the proposition that lawyering is merely one tool deployed toward structural change. See Cummings, *supra* note 108 (manuscript at 14) ("When litigation is used, it is directed toward advancing specific organizing goals . . ."). However, rebellious social movement lawyering contemplates that lawyers can and should do much more than legal work: They are organizers in their own right, and should participate in nonlegal collective action alongside other lay organizers.

189. See OLSON, *supra* note 113, at 9 (calling for movement lawyers to practice "flexible lawyering," which melds legal and political strategies—the latter of which is dependent on the collective action of movement constituents).

190. Herein lies another dilemma with major litigation. Barring a rare exception, the institutional defendant will possess superior resources and access to the court. The predictability of civil procedure and courtroom etiquette constrains the creativity, spontaneity, and disruption needed to secure advantage against the institutional target.

191. See *supra* Part IV.A for a discussion on how my concept of deference departs from movement lawyering literature.

contribute their insights, they must ultimately respect democratic decisions, even if it goes against their wisdom. The value of democracy is paramount both in breaking the lawyer's propensity for authority and in developing the leadership of others. Localized, symptomatic campaigns are training grounds for organizers. To the extent that strategies result in missteps, lawyers must understand the greater value in organizers developing ownership, mutual trust, and ability to learn through collectively reflecting on their ineffective strategies and subsequently developing alternatives. As mentioned in Subpart A, organizers who experience and believe in grassroots democracy at a localized level will inject that principle at the movement level, thereby enhancing the longevity and vibrancy of the social movement on the whole.

V. RECONCEIVING ADVOCACY AGAINST TRAFFIC COURT DEBT IN CALIFORNIA: A REBELLIOUS SOCIAL MOVEMENT LAWYERING APPROACH

Part V reimagines traffic court debt advocacy by applying the principles and processes of rebellious social movement lawyering. As the following counterfactual will show, the modes of advocacy that Zhen and I deployed remain relevant and available, but reframed as tools in a larger, collective arsenal comprised of both professional and lay lawyering strategies. Subpart A describes possible strategies deployed in building a grassroots organizing group and localized campaign responsive to one symptom of traffic court debt. Subpart B describes potential strategies deployed in pursuit of social movement building toward ending the system of traffic court debt. As Subpart B emphasizes, the boundary between localized, symptomatic activities and broader movement building is fluid, as strategies and demands are updated in response to constantly changing context.

A. Building a Grassroots Organizing Group

Understanding a social movement infused with grassroots democracy to be a necessary predicate for reforming the system of traffic court debt, rebellious social movement lawyers will prioritize the development of the grassroots organizing group above all other tasks. Rebellious social movement lawyers will engage in direct legal services insofar as doing so introduces them to a wide base of potential organizers among their clients. Every courtroom outing should double as an opportunity to converse with the hundreds of unrepresented defendants awaiting arraignment or trial about their situation and to invite them to share their stories at community meetings open to the public.

In building a grassroots organizing group, two types of meetings will be necessary. First, regular public meetings serve as a mechanism to establish community roots and to raise systemic consciousness within the community at large.¹⁹² Lawyers will facilitate community meetings dialogically. Knowledge will be gained from individual participants sharing their stories, listening to others, and reflecting on the shared harms caused by the common underlying system of traffic court debt. In developing a systemic analysis, lawyers might carefully tie together the common threads of individual stories with an explanation of structural causation. For example, the common courtroom experience of judges disclosing neither the rights of defendants nor the true cost of a ticket is symptomatic of a system generating revenue on the backs of traffic court defendants. Moreover, as facilitators promoting a democratic culture, lawyers should be mindful of different personalities, encouraging those who speak less to voice their opinion and expressly validate them, while refocusing inappropriate comments to the central discussion at hand. In the end, though, in order to promote the voices of community members, active moderation of discussion at these public meetings must be approached sparingly.

Second, regular internal organizing meetings allow the most interested and committed clients and public meeting participants to train as grassroots organizers and leaders. A combination of practical organizing and critical thinking skills will be developed through skills-based trainings, group discussions of social movement tailored readings, and participation in localized collective action. As members of these internal meetings grow in skills, confidence, and numbers, the authority of lawyers will diminish as power becomes equalized. Thereafter, meetings will constitute the basis of the grassroots organizing group, in which goals and strategies will be decided based on a collective symptomatic-structural, localized-movement assessment.¹⁹³

In building a localized campaign, the goals will shift along a spectrum of smaller-scale, immediately achievable demands that develop confidence and

192. Zhen and I approached facilitation and knowledge building in a dialogical way. *See supra* Part II.D.

193. Though I hosted separate planning meetings among the most committed attendees of our larger community meetings at Ascot Library to train them to independently lead those community meetings, *see supra* Part II.D, I falsely substituted the larger community meetings for regular, internal organizing meetings as the basis of a grassroots organizing group. This was problematic because of the transience of attendees from meeting to meeting, which prevented the committed attendees from continually developing their analytical mindset and organizing skillset. In other words, though the most committed attendees learned how to facilitate community meetings, they did not learn how to think strategically and dialectically about building an organizing campaign. I should have regularized the internal organizing meetings and expanded their content from merely teaching facilitation skills to discussing movement-oriented readings and how to organize collective action-based campaigns.

longer-term, structural demands that are aspirational. On the one hand, specific campaign demands should be reflexive reactions to the material realities of community members. Reflexive demands should neither be limited to procedural defects nor bound by the narrow confines of a cognizable legal claim.¹⁹⁴ For example, a demand to abolish DUI checkpoints is a nonlegal demand that fluidly responds to a persistent threat to freedom regularly experienced by community members.¹⁹⁵ Similarly, demands should be framed in a race-conscious way, accurately capturing the experience from “the bottom.”¹⁹⁶ In so doing, new community members might relate to and join a campaign about their lived reality.

Responsiveness to immediate needs is merely one consideration in demand formulation. On the other hand, lawyers should encourage demands that are not limited to immediate needs or harms, but also express positive visions of transformative and structural change. Because DUI checkpoints are merely one facet of a larger traffic court system, their abolition does not end the litany of injustices caused by traffic court debt. Moreover, structural demands increase the possibility of coalescing a social movement with other organizing groups identifying with some aspect of the campaign.

Because decisions over strategy will be made and executed collaboratively, professional strategies might be creatively reconceived such that grassroots organizers can implement these professional strategies themselves.¹⁹⁷ Consider a localized campaign that reimagines direct representation. The traffic court system’s smooth functioning is predicated on the rapid mechanization of arraignments among defendants ignorant of their right to trial. In my observation, unrepresented traffic court defendants’ arraignments lasted an average of less than a

194. Piomelli cautions lawyers against co-opting and “significant[ly] transform[ing]” how community members experience and frame a material harm by framing it as a legal dispute. Piomelli, *supra* note 127, at 497.

195. It is important to note that just as a localized organizing campaign can center on the abolition of DUI checkpoints, it might instead center on ending license suspensions as a debt collection mechanism. The fact that professionals initiated this demand in reality, *see supra* Part II.B, is insignificant as to its merits as a demand embraced by a grassroots organizing group. The decision to embrace one or multiple demands that respond to immediate needs must be made democratically among all members of the group, including lawyers. Thus, lawyers can propose a demand based on their unique experiences in traffic court as professionals, which might become an organizing focal point if the group democratically approves.

196. Matsuda, *supra* note 162, at 324; *see also supra* note 101 and accompanying text.

197. Zhen and I failed to involve grassroots organizers in implementing professional strategies. Our community meetings at Ascot Library assumed a separate sphere from our ongoing direct representation, policy writing, and impact litigation. Though some organizers were peripherally involved through media appearances to support the publication of our policy report and filing of litigation, *see, e.g., supra* note 104, they were functionally excluded from writing the report or synchronizing an organizing strategy to the filing of *Alvarado v. Superior Court*, No. BC628849 (Cal. Super. Ct. filed Aug. 2, 2016).

minute. If each defendant were represented, first at arraignment and then at trial, the resulting slowdown would quite literally “crash the system.”¹⁹⁸ Should a systemic crash occur, the disruption in itself might compel policymakers to act, or, at the minimum, incite public scrutiny and call for structural change. While a legion of defense attorneys could accomplish this task, an alternative strategy undertaken by a grassroots organizing group is to empower unrepresented defendants to assert their own rights *pro se*. Organizers and lawyers together would mobilize in and around traffic courts in the county to raise awareness of the right to trial among the thousands of defendants lining up for arraignment. If a substantial number of *pro se* defendants collectively asserted their right to a trial, courtroom efficiency would be disrupted, causing the system to crash.

Moreover, grassroots organizers might directly participate in authoring policy reports. Lawyers should welcome this idea, as it upsets the hierarchy reinforced by a separation between professional and unprofessional tasks. Doing so might change the tenor of the reports. For example, instead of professionals framing traffic court debt as an issue of poverty, a grassroots-driven policy report might, from the outset, frame it as an issue of race and poverty.¹⁹⁹ By publishing a report more representative of how community members experience the issue, the reach would expand beyond mainstream media outlets to, in the terms of Chuck D, the “Black CNN,”²⁰⁰ thereby drawing support among members of the community.

Driven by the principles of democracy and movement building, lawyers should rarely use professional strategies that take the center stage in a campaign. One such rarity might occur if the group decides that the benefits of filing a complaint to remedy an immediate harm outweigh the costs of material resources and minimal grassroots participation. Given that section 40508 of the California Vehicle Code²⁰¹ already provides a statutory hook to require courts to conduct a

198. Michelle Alexander, Opinion, *Go to Trial: Crash the Justice System*, N.Y. TIMES (Mar. 10, 2012), http://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html?_r=0 [https://perma.cc/JEG9-868P].

199. Whereas the first report published by the Back on the Road California (the BOTR coalition) failed to mention the race of declarants featured as anecdotes, the second report, which builds off empirical data on the disproportionate impact of debt collection mechanism on minorities, gives the declarants' race. Compare BENDER ET AL., *supra* note 15, at 8, 10, 11, 15, 16, 17, 18, 19, 20, with BINGHAM ET AL., *supra* note 11, at 4, 6, 20, 27, 30.

200. CARLTON RIDENHOUR & YUSUF JAH, FIGHT THE POWER: RAP, RACE, AND REALITY 256 (1998). Carlton Ridenhour, professionally known as Chuck D, the emcee of rap group Public Enemy, characterized rap as the Black CNN because unlike the characterizations of Blacks as criminals by mainstream news outlets, rap is written by artists of color whose content reflects experiences at the bottom. *Id.*

201. Subsections (a) and (b) of section 40508 of the California Vehicle Code contain the language of *willful* violation of appearance and *willful* failure to pay, respectively, which advocates have

willfulness determination hearing before notifying the DMV for a license suspension, the benefits of injunctive relief might outweigh the costs of minimal legal research and filing.²⁰² Beyond providing a tangible material benefit to a narrow class of defendants, such a victory might also allow organizers to move beyond the symptom of license suspensions and build a movement that directly focuses on the statewide system of traffic court debt.

Regardless of other strategies deployed in a localized campaign, the central strategy undertaken by the grassroots organizing group will be collective action. Through collective action, community members develop a real understanding of camaraderie, confidence in their own power, and conviction in organizing for change. Moreover, during moments of spontaneity or excitement, many often discover previously suppressed skills and capabilities, such as public speaking, leading chants, and acts of civil disobedience. The form of action will constantly shift, responding to contextual developments that occur in real-time. Tactics should escalate in disruptiveness when the target continues its noncompliance.

Where tactics are minimally disruptive, lawyers should actively participate as organizers. This includes the day-to-day collective outreach activities of canvassing neighborhoods and conversing with defendants around the courthouse pursuant to a “crash the system” strategy. Where tactics are deliberately disruptive, lawyers might best function as legal observers. In the capacity of a professional, lawyers should further provide direct representation as necessary when organizers are arrested.²⁰³

The foregoing discussion on goals and strategies is focused on the role of lawyers in developing grassroots democracy through localized campaigns. Given the statewide nature of traffic court debt, a localized campaign will be insufficient to compel legislative reform of the system. Yet, as emphasized in Part IV, lawyers must not substitute the top-down construction of structural demands for the process of building successful localized, symptomatic campaigns, which impart the values of democracy and collective action. The key is to supplement the campaign with concrete education, through a movement-oriented curriculum, which raises the group’s consciousness both (1) from localized advocacy to social

interpreted as the statutory basis for a mandatory willfulness determination hearing. CAL. VEH. CODE § 40508 (West 2014).

202. In addition to alleging constitutional violations, *Alvarado v. Superior Court*, No. BC628849, was filed alleging precisely this statutory violation. See Complaint for Declaratory and Injunctive Relief, *supra* note 83, at 11.

203. Grinthal calls this form of social justice lawyering the “legal M*A*S*H” model, where lawyers provide legal “first aid” on behalf of arrested movement leaders in order “to keep [them] up and organizing [in the future].” Grinthal, *supra* note 183, at 48; see also Cummings, *supra* note 108 (manuscript at 54–55).

movement building, and (2) from limited, small-scale reforms to durable, structural change.

B. Advancing the Struggle from Local to Movement

Just as strategies and campaign demands are fluid, the leap from localized to movement-level advocacy need not occur in one formalized moment. Because group members are gradually developing movement consciousness, organizers might begin to reframe demands structurally. Because traffic court debt is a statewide system of harm, simply refocusing the demands of a localized campaign to address structural dimensions will be insufficient to produce change. Mass mobilization beyond the level of Los Angeles County is necessary.

Where no independent social movement exists, coalition building with organizations of similar politics, methodologies, and demographic makeup is crucial to increase the scale of advocacy necessary to compel the state to take notice. As such, organizers might reconceive their day-to-day outreach expansively, viewing community members not just as isolated individuals, but as connected to broader networks including other organizing groups. Where a community member has existing ties to another organizing group, organizers might contemplate outreach in terms of recruiting that other group to a movement against traffic court debt. Even if other organizations are structured hierarchically, veteran organizers from the localized, symptomatic campaign will insist that the coalition be grounded in democracy and meaningful participation among the community constituents who comprise the other organizations.²⁰⁴ Unlike a coalition of professionals convening together for litigation, a movement-oriented coalition is formed with the express purpose of generating structural change through mass mobilization.

While the grassroots organizing group possesses greater control in timing their transition to movement-level advocacy where no independent movement exists, the prominence of BLM as a vibrant social movement complicates the movement building role of lawyers in new ways. As a movement, BLM is both a

204. In reality, whether members of the grassroots organizing group recruit undemocratic organizations to a movement coalition is situational. For example, as the scale of a democratically-rooted coalition increases, where interests converge with undemocratic organizations, it is conceivable to include such organizations into the coalition, such that a majority vote within a coalition would still reflect the decisions of those who are directly affected. However, because I argue that structural social change derives from sustainable movements predicated on grassroots leadership and democracy, where the democratic texture of the coalition is threatened, the grassroots organizing group should reject potential partners even where temporary battles could be won.

symbolic rallying cry²⁰⁵ and a physical entity comprised of a coalition of movement organizations.²⁰⁶ This duality poses a unique opportunity for a localized campaign to, from the outset, embody structural dimensions and thereby increase the potential of mass mobilization against traffic court debt beyond immediate geographic locality.

Against a colorblind ideology that has driven American jurisprudence since the 1970s,²⁰⁷ BLM has opened a space in mainstream discourse where race has once again become salient. Because of BLM's symbolic power as an overarching beacon against racial injustice, a localized campaign framed in race-conscious terms might be inseparable in the public eye from the larger movement. Instead of distancing themselves from BLM, organizers should be prepared to articulate these connections on both a personal and conceptual level. On a personal level, Black and Brown organizers should freely express their feelings of being simultaneously subjected to multiple forms of racialized violence. Conceptually, symptomatic issues might need to be framed as structural to show how multiple systems interact to produce racial inequality. Thus, a demand to end DUI checkpoints might be contextualized as one feature of a larger system of traffic court debt, which, like other systems identified by BLM, disproportionately enacts its violence on Black and Brown communities. Simply put, challenging traffic court debt simultaneously with police violence is imperative because in spite of both systems, "Black lives matter." By expressly drawing connections to BLM, the demand to end traffic court debt might very well ignite support and mobilization among movement participants.

205. The rallying cry is best captured by the Twitter hashtag "#BlackLivesMatter." See Elizabeth Day, *#BlackLivesMatter: The Birth of a New Civil Rights Movement*, GUARDIAN (July 19, 2015, 5:00 AM), <https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement> [<https://perma.cc/X2AL-79S4>].

206. Included in this coalition are "26 formal chapters of the Black Lives Matter network, black-led organizations that have taken up #BlackLivesMatter as an organizing principle, and an even broader set of racial justice organizations and allied groups supporting the movement." See Akbar, *supra* note 10, at 357. In general, movement organizations have acted with varying degrees of autonomy and differ in demands, strategies, and politics. See *id.*; 11 *Major Misconceptions About the Black Lives Matter Movement*, BLACK LIVES MATTER, <http://blacklivesmatter.com/11-major-misconceptions-about-the-black-lives-matter-movement> [<https://perma.cc/RK6V-ZMLZ>].

207. See *supra* note 110 and accompanying text; see also CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, at xxviii (Kimberlé Crenshaw et al. eds., 1995) ("The appeal to color-blindness can thus be said to serve as part of an ideological strategy by which the current Court obscures its active role in sustaining hierarchies of racial power."); Lawrence, *supra* note 159, at 397 ("The law—legislation, judicial interpretation, executive enforcement, and the legal discourse surrounding these enactments—plays a significant role in telling the 'Big Lie' of post-racialism that shapes much of today's political and cultural discourse.").

As a physical entity, BLM is constituted by the Movement for Black Lives (M4BL), a coalition comprised of over fifty Black-led organizations.²⁰⁸ Because collective action has largely been decentralized,²⁰⁹ the coalition's primary work instead has been the construction of a platform of movement demands, known as the "Vision 4 Black Lives."²¹⁰ The grassroots organizing group might propose the incorporation of a demand to end traffic court debt, which would enhance the current platform demand to end money bail.²¹¹ The group, however, should approach incorporation into M4BL's platform as yet another means for outreach, and not in itself a strategy to effect change. That is, due to the decentralized nature of BLM actions, neither incorporation of a demand nor participation as a member organization within the M4BL alone will generate the mass mobilization needed to compel an end to traffic court debt.²¹² Of course, participating as a M4BL partner might increase opportunities for collaboration with other M4BL organizations with similar politics, methodologies, and demographics.

Unlike the spontaneous BLM actions, which, thus far, have erupted nationwide in reaction to police violence, a successful challenge against traffic court debt will require a much more coordinated, mass mobilization effort in California.²¹³ While invoking BLM's symbolic power might expedite the transition to structural demands and increase the possibilities of movement building with other BLM supporters or M4BL organizations, the task of movement building will still largely remain in the hands of the grassroots organizing group. Ultimately, the role of rebellious social movement lawyers remains vital, first in

208. Vann R. Newkirk II, *The Permanence of Black Lives Matter*, ATLANTIC (Aug. 3, 2016), <http://www.theatlantic.com/politics/archive/2016/08/movement-black-lives-platform/494309> [https://perma.cc/8PEW-Z8PZ].

209. See, e.g., Peter Eisler & Alana Wise, *Black Lives Matter: A Movement That Defies Definition*, REUTERS (July 15, 2016, 10:34 AM), <http://www.reuters.com/article/us-usa-police-blacklivesmatter-idUSKCN0ZP04A> [https://perma.cc/8EAN-3A6T] (attributing the public's confusion about BLM to its "decentralized structure"); Harris, *supra* note 174 (describing BLM's deliberate design to eschew centralization and to embrace "bottom-up insurgency led by ordinary people").

210. The six core substantive areas of the platform include: "criminal justice, reparations, investment and divestment, economic justice, community control, and political power." Newkirk, *supra* note 208.

211. *End the War on Black People*, MOVEMENT BLACK LIVES, <https://policy.m4bl.org/end-war-on-black-people> [https://perma.cc/K9PP-FHFD]. Traffic court debt and bail are two mechanisms used by justice systems to criminalize poverty.

212. Because many organizations constituting the Movement for Black Lives (M4BL) are not grassroots organizing groups, some have even criticized the M4BL's platform as leading the movement "out of the streets and back into the system through the non-profit industrial complex." Juan Cruz Ferre & Julia Wallace, *Bring BLM Back to the Streets: A Critique of the M4BL Platform*, LEFT VOICE (Dec. 30, 2016), <http://www.leftvoice.org/Bring-BLM-Back-to-the-Streets-A-Critique-of-the-M4BL-Platform> [https://perma.cc/2XU6-KG3M].

213. Coordinated actions can still be as disruptive, when necessary to exert pressure, as the spontaneous riots associated with BLM.

building a capable grassroots democratic organization, and second, in advancing the struggle from the local to a movement.

CONCLUSION

This Comment contributes a new theory—rebellious social movement lawyering—as both a theoretical intervention in rebellious lawyering, movement lawyering, and Critical Race scholarship, and as a methodology to guide public interest legal practitioners. Through explicating the structural nature of traffic court debt in South Los Angeles, I argue that traditional forms of lawyering alone are inadequate to create sustainable social change. Instead, I propose a theory grounded in the twin principles of grassroots democracy and social movement building. By reconceiving my advocacy with Zhen through a counterfactual, I hope to flesh out the dynamism and relevance of my theory in practice. In so doing, my hope is that practitioners across other areas of public interest law will recalibrate their own advocacy as rebellious social movement lawyers working collaboratively to challenge the underlying structures producing material harms for their clients.

Finally, because rebellious social movement lawyering is a product of reflecting on my year of advocacy, and as such, did not guide my day-to-day activities during that time, I leave to future practitioners to expand the contours of rebellious social movement lawyering through accounts of consciously assuming this methodology in their practice. As we enter an era of increased movement activity, further theorization of rebellious social movement lawyering will become increasingly important so as to embrace these new possibilities for structural change.