COURAGE TO DISSENT

Atlanta and the Long History of the Civil Rights Movement

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CHAPTER 7

A Volatile Alliance

The Marriage of Lawyers and Demonstrators, 1961–1964

> If we are expected to pay the bills, we must be in on the planning and launching, otherwise the bills will have to be paid by those who plan and launch. (1961)
>
> Roy Wilkins
>
> Local lawyers have not always acted in the best interests of their clients. We really need about 300 Len Holts. (1962)
>
> Julian Bond

In 1962, Len Holt, a young African-African attorney, wrote to SNCC executive secretary James Forman and proposed a new approach to civil rights lawyering.[1] Holt used military imagery to describe how lawyers could aid the civil rights movement. He imagined roving legal "MASH units" being dispatched to "outpost[s]" where SNCC was engaged in battle.[2] Volunteer "legal corpsmen" would provide "first aid" to SNCC workers just as medical support units aided combat soldiers during the "prosecution of military campaigns." At SNCC's 1962 conference in Atlanta, Holt outlined in great detail the types of assistance that lawyers stood ready to provide. Lawyers would defend civil rights workers after arrest, represent them at trial, and file affirmative constitutional challenges against segregation.[3]

However, the value of Holt's offer of help turned more on the deference he showed to SNCC's methods than the type of legal assistance he offered. Holt considered SNCC the "key catalyst of the integration movement in the South." He believed SNCC's success sprang from two sources: its tactical commitment to direct action and its strategic commitment to a democratic movement, one premised on lay, rather than expert, leadership. Because Holt valued these organizational features of SNCC, he assumed that lawyers would support, rather than attempt to sideline or supplant, SNCC. Legal advocacy would be secondary to, though symbiotic with, SNCC's political activism in the far reaches of

the South. Soon, SNCC's leadership wholeheartedly embraced Holt and his style of civil rights lawyering.

Through their association with Len Holt, SNCC and COAHR's conception of civil rights lawyers and the role of legal advocacy in the movement evolved. The students had instigated direct action as an alternative to slow and ineffectual constitutional litigation, and many believed that the continued momentum of the sit-in movement required students' independence from the NAACP and lawyers associated with the NAACP LDF and beholden to its piecemeal, "test case" strategy. Indeed, some critics of the students' tactics counted on civil rights lawyers—and the NAACP—to blunt the impact of the nascent sit-in movement. These naysayers hoped that, in the end, the more moderate legal strategies of civil rights lawyers would prevail over direct action. "There is a conviction among students of race relations that he who controls the legal arm inevitably controls the civil rights movement," noted the *New York Times*.[4]

Neither the students nor their critics had Len Holt in mind when, at the dawn of the sit-in movement, they imagined "the civil rights lawyer" and the threat that he posed to the student wing of the civil rights movement. Holt embodied a kind of civil rights lawyer with whom the nascent student movement could successfully collaborate. Unaffiliated with the NAACP and LDF, Holt worked with more politically militant and less legally orthodox organizations, including the Congress of Racial Equality (CORE) and the National Lawyers Guild (NLG). Holt's style proved synergistic with SNCC and compatible with direct action. His practice proved that lawyers did not necessarily dominate or moderate social movements. It also prefigured the beginning of the student movement's shift from a civil rights agenda to a broader one focused on community mobilization and empowerment, and on economic rights and culture, in addition to civil and political rights. Holt's counsel to social movements in Atlanta and elsewhere constituted a crucial intervention.

Even as SNCC and COAHR students collaborated with Holt and moved toward a broader agenda, the students continued to rely on the NAACP and the lawyers of the NAACP LDF. In a stunning about-face, the student organizations that had lodged searing critiques of these groups in the run-up to the sit-ins spurned neither organization. Out of necessity, SNCC and COAHR tamped down their criticism of these groups. As their direct action campaign evolved, activists found that they could not easily dispense with these organizations.

The law and the courts mattered in multitudinous ways, it turned out, and these organizations had important roles to play in traditional legal venues. Direct activists needed lawyers to defend them after arrest and at trial on trespass charges. The LDF proved a major source of legal representation for SNCC, and the national NAACP was a bountiful source of bail funds. In Atlanta, SNCC

and COAHR also relied on NAACP-affiliated lawyers A. T. Walden and Donald Hollowell for legal defense and advice.

But the students continued to bristle under the influence of the two more conventional civil rights organizations. Both the NAACP and LDF objected to the students' new-found ally, Len Holt. The collaboration of SNCC and COAHR with Holt, and later, with the Guild, showcased the persistent tensions in the movement.

Here, the volatile alliance between civil rights lawyers and student demonstrators in the early- and mid-1960s comes into view. Students marched in the streets, but supplemented demonstrations with litigation. The youth groups worked to infuse civil rights lawyering with a democratic, community-centered ethos. In a topical rather than strictly chronological fashion, this chapter discusses the interplay of civil rights litigation and direct action in campaigns to desegregate municipal facilities and health care. In these campaigns SNCC and COAHR collaborated with Len Holt, LDF, and local lawyers. Each campaign demonstrates how a mix of legal, political, social, and economic factors converged, sometimes successfully and sometimes less so, to advance the overarching objective now shared by students, legal liberals, and most pragmatists—ending American apartheid. This chapter shows that all of these actors made strides toward black freedom. But it emphasizes Holt's impact on the Atlanta student movement, and thus the largely forgotten history of progressive lawyers who worked outside of the NAACP and LDF during the height of the postwar civil rights movement. Holt's movement lawyering, like A. T. Walden's pragmatic lawyering, broadens understanding of who civil rights lawyers were and how they related to their clients, to social movements, to adversaries, and to the nation-state.

THE INDISPENSABILITY OF CIVIL RIGHTS LAWYERS

Civil rights activists reveled in being arrested. The sight of police officers cuffing demonstrators for engaging in peaceful protests against segregation splendidly exposed the evil of Jim Crow. The number of arrests that an activist chalked up became a mark of distinction. Invariably, the most heroic figures in the direct action movement, from Martin Luther King, Jr., to John Lewis, could boast of numerous arrests for their activism. Lewis described his first arrest as "exhilarating." A "large, blue-shirted Nashville police officer" arrested Lewis on charges of disorderly conduct during a February 1960 sit-in in which whites

struck out violently against peaceful demonstrators. The arrest and walk to the paddy wagon amid the cheers of a gathering crowd left Lewis feeling "high," "giddy with joy," and "elated." "That paddy wagon—crowded, cramped, dirty, with wire windows and doors—seemed like a chariot" carrying Lewis "across a threshold" to the "purity and certainty of the nonviolent path." In a 1964 interview, James Farmer, national director of CORE, which had been a pioneer in the use of direct action tactics in a campaign to desegregate interstate transportation many years before, explained: "Most people want at some time to have the jail experience—it's become such an important part of the movement." "It's a mystical thing," another CORE official said.[5]

From the inception of the sit-in movement, many of its leaders insisted that demonstrators remain in jail rather than accept bail after arrest. Suffering in jail represented the height of the activists' commitment to Gandhian principles of nonviolent direct action. Rev. James Lawson, one of the most prominent sit-in leaders, had spent three years in India studying Gandhi's teachings. Before and after the Greensboro sit-ins, Lawson held workshops in which he instructed college students in the tenets of nonviolence. The necessity of enduring the ordeal of jail in the cause of civil rights featured prominently in Lawson's lessons. Gandhi had been imprisoned for his beliefs during his struggle against British colonialism, Lawson explained, and the Indian leader had written that a *satyagrahi* who disobeyed an unjust law was compelled to accept "the sanction for its breach," including jail.[6]

Lawson insisted that antisegregation demonstrators follow Gandhi's example. Demonstrators had to pay the price for their principles by enduring confinement. By suffering the consequences of disobeying the laws of segregation, sit-in participants would demonstrate the force of their beliefs to the world. Dr. King preached that the "creative tension" established by the movement through mass arrests and jail-ins would force change. Whites who had ignored or defeated claims for justice made in courts would be driven to respond to the crisis precipitated by the movement in the streets; sympathetic whites would move from being observers to participants. Ultimately, King believed, segregationists would be morally coerced into repudiating Jim Crow.[7]

Even so, no consensus existed within the movement about the use of the jail-no-bail tactic. Activists practiced it infrequently. In Tallahassee, Florida, on March 18, 1960, a group of eight students chose sixty-day jail sentences over bail. At that time, Len Holt, then a CORE field secretary and counselor to the Tallahassee protesters, announced his hope that the group's decision would "set a pattern for other antisegregation demonstrators" to fill the jails. "The impact can only be felt by people suffering unjustifiably, and we are encouraging those

who can undergo the hardships to offer themselves as sacrificial lambs," Holt intoned.[8]

Months later, James Lawson chided activists for continuing to accept bail. "We lost the finest hour of this movement when so many hundreds of us left the jails across the South," he said during an October 1960 address in Atlanta. Lawson's advice went unheeded for some time. In fact, Dr. King himself did not always refuse bail. When he and COAHR activists were arrested during the fall campaign in 1960, they at first refused bail, but ended the protest after negotiations with city officials. With charges dropped, the students left jail. Soon thereafter, Dr. King waged a legal and political battle for reprieve from a judge's sentence of four months' hard labor at a Georgia prison in the fall of 1960.[9]

In February 1961 SNCC implemented the jail-no-bail tactic for the first time. Nine students in Rock Hill, South Carolina, received sentences of thirty days' hard labor at the York County Prison Farm after they refused to pay fines upon conviction for trespassing. After the Rock Hill action, SNCC initiated a concerted push to include jail-no-bail as an integral component of all future civil disobedience campaigns. The committee encouraged sit-in participants throughout the South to follow the Rock Hill example by going to jail rather than making bail. After its February 5 meeting, SNCC declared that it "stand[s] behind the belief in 'jail versus bail.'" Edward B. King, secretary of SNCC, even vowed to reject volunteers for the upcoming Freedom Rides who were "unwilling to go to jail and stay there" because, he said, they "damage the morale" of the movement.[10]

Nevertheless, SNCC employed the jail-no-bail tactic sporadically, in Atlanta and many other places. In early 1961 SNCC and COAHR practiced jail-no-bail in Atlanta. But as before, the students disengaged and left jail at the insistence of A. T. Walden. The pattern of protest followed by negotiation and disengagement continued over the course of the students' efforts in Atlanta.[11]

On the national level, the NAACP and LDF strenuously objected to jail-no-bail. It threatened LDF's ability to wage a legal battle against segregation, the groups claimed. In a 1960 address at Fisk University before an audience of four thousand, including sit-in leaders, Thurgood Marshall decried the jail-in tactic in his charming, colloquial manner. "Once you've been arrested, you've made your point. If someone offers to get you out, man, get out!" Marshall also warned the students that their misguided street fight against Jim Crow might "get somebody killed." Students should leave the attack on segregation to lawyers, who could handle the slings and arrows from segregationists. A position paper on jail-no-bail, issued in February of 1961 by Gloster B. Current, the NAACP's director of branches, explained the association's position. Current instructed branch officials that "it is in the best interest of the NAACP" to discourage the practice. He called jail-no-bail

"ill-conceived" and "ill-advised." "[I]t is the firm belief of the NAACP," Current wrote, that students should "plead not guilty to the charges and accept bail." Otherwise, they "forfeited their constitutional right[s]" and threw away litigation opportunities. This the organization could not countenance. The carefully planned legal attack on Jim Crow must not be endangered. Hence, all NAACP affiliates should insist that arrested demonstrators "follow the advice of counsel" and accept bail. Only then could they preserve the option of filing test cases about the constitutional issues underlying the sit-ins.[12]

The jail-in tactic also came in for criticism from commentators in the national press. Observers regarded the new tactic as another indication that the civil rights movement had embraced radicalism. Claude Sitton at the *New York Times* noted that the tactic of deliberately going to jail had "aroused criticism in some circles heretofore sympathetic to the Negroes' efforts." Critics thought jail-no-bail was too disruptive of the social order. Burt Schorr of the *Wall Street Journal* wrote that "militant young Negroes" who had "swept into the vanguard of the drive for desegregation" preferred jail-no-bail and other divisive tactics to litigation. Movement leaders who hoped that jail-ins would precipitate a social and political crisis did not shy away from trumpeting this hope to reporters such as Schorr. Slater King, a black real estate magnate who broke ranks with the national NAACP and became a leader of the Albany, Georgia, direct action movement, captured one dimension of the threat posed by the jail-in tactic. Protesters filled the Albany jails in 1962, and King lauded the effect in a 1963 interview. King explained that the tactic's utility began with its unifying impact on disparate elements of the African-American community:

> This jailing was a wonderful thing. Before it happened, I guess we professionals were inclined to go along with the whites. We wanted to keep the masses pacified. We didn't come into contact with day-to-day segregation. The white people we meet are usually interested in selling to us, and we don't use the busing or feel any economic pressure. It was easy to forget the lives most Negroes have to live.

To white and black moderates alike, the specter of mass civil disobedience, arrest, and confinement of such a cross-section of African Americans portended social cataclysm.[13]

External opposition did not alone explain SNCC and COAHR's infrequent jail-ins. Three additional factors militated against the tactic. First, the practice proved difficult to implement for logistical reasons. Jail-ins depended on a steady flow of volunteers. But only a small fraction of the population could be counted on to engage in civil disobedience (much less remain in jail after arrest). The movement would soon collapse if its small corps of volunteers

continually refused bail. Second, the cadre of collegians who spearheaded the sit-ins found the prospect of extended time in jail unappealing. The brutal conditions in southern jails quickly became notorious, scaring off all but the sturdiest protesters. While backing the jail-no-bail philosophy, SNCC thus left the decision whether to practice it up to each individual. And third, SNCC's commitment to jail-no-bail wavered in tandem with its outrage over police officers' lawlessness. Abuses ranged from the arrest of protesters on "trumped-up" charges to beatings, gassings, "incommunicado" detention, and the torture of prisoners by officers or surrogates. Such misconduct and brutality bred disrespect for the law and extinguished many activists' commitment to suffering in jail for principle.[14]

The affection of SNCC and COAHR for provocative protests coupled with their inconsistent practice of "jail-no-bail" created a quandary. The students would regularly need legal representation and funds for bail. Volunteers initially looked to SNCC itself for legal aid. But the organization operated on a shoestring budget and sorely lacked the resources to meet the enormous need. Jane Stembridge, a SNCC secretary, responded with the same form answer to the thousands of pleas for counsel and bail funds that streamed into SNCC from students across the South. Unlike the NAACP, SNCC did not collect dues from members; therefore, the organization could not contribute to the legal defense of even the neediest of students. Stembridge's scripted response did not end there. She referred protesters to the NAACP and LDF, which, she said, were "prepared to handle such cases."[15]

In an ironic twist, SNCC, which had begun as a rival of the mainline civil rights organizations, sought assistance from the same organizations. The committee's sworn "enemies" would now help execute its reputedly insurgent strategy. The seeds of the student movement's evolution thus took root.

Invited to play the roles of financier and hired gun, the national NAACP and LDF, at first reluctantly, and then shrewdly, accepted SNCC's invitation. By providing legal defense and supplying bail funds during the early months of the sit-in movement, the stalwart organizations rescued protesters and saved the fledgling student movement from collapse. In August 1960, Thurgood Marshall noted in a letter to Marion Barry, SNCC's chairman at the time, that LDF represented thousands of students arrested for protesting in eight southern states.[16]

A wise calculation motivated the NAACP and LDF's decision to assist the students: their strategic interests demanded a coalition (of sorts) with the youth activists. SNCC posed a mortal threat to the NAACP, Roy Wilkins believed. In 1961, Roy Wilkins called SNCC nothing less than an "effort... to destroy the name and activities" of the NAACP. SNCC had set out to deny the nation's oldest civil rights organization its rightful role as leader of the black struggle for

equality by burying it in a "'coordinating' movement." Wilkins cited numerous examples of SNCC's nefarious doings. In Atlanta, he claimed, "NAACP young people have been shut out as an organizational entity." As Wilkins saw it, SNCC hoped to gain dominion and control of the civil rights struggle through three ploys. The group hoped to build itself up by convincing the public that the "NAACP is asleep," by "lur[ing] its young people," and by "soliciting members and money" from it. An NAACP-SNCC alliance could undercut the danger that SNCC posed to the NACCP.[17]

By providing legal representation and financial aid to students who had been deeply critical of their legalism and conservatism, the NAACP and LDF would gain their rival's gratitude and would influence the wayward direct action movement from within. At the same time, the organizations would please donors who clamored, in a torrent of phone calls and telegrams, for the NAACP to help the sit-ins. The public would see that the NAACP remained "on the job" and still out in front, leading black America to the Promised Land. In short, the NAACP and LDF could remain relevant and deflect criticism through a partnership with the students.[18]

But SNCC's dependence on the NAACP and LDF only heightened the divisions between the movement's direct action and legal wings. The reason for the tension was clear. In return for their largesse, the traditional civil rights organizations expected to gain influence, if not outright control, of SNCC's agenda. A 1961 exchange between Roy Wilkins and Edward King illustrated the dynamic. By this time SNCC had launched voting rights campaigns in Georgia and Mississippi. In the process, numerous volunteers had been arrested. When protesters involved in the initiative contacted the NAACP and LDF for assistance, these organizations cried foul. The NAACP "has never agreed to rush in at the call of any organization whose staff or members or cooperators get themselves arrested and jailed carrying out a program devised and launched without consultation with the NAACP," Wilkins protested. The association would only invest in campaigns consistent with the NAACP's own agenda. "If we are expected to pay the bills," Wilkins continued, "we must be in on the planning and launching, otherwise the bills will have to be paid by those who plan and launch." Wilkins accused SNCC of duplicity: the students planned to extract funds from the NAACP and then trap it into supporting any and every item on their agenda. Wilkins expressed his displeasure in no uncertain terms:

> We have received persistent reports... that your Committee has a more or less formal intention of "involving the NAACP whether they like it or not in situations where they cannot escape unless they come along." We don't intend to be

> embarrassed... and especially in a voter-registration campaign that, so far, seems to have put more workers in jail than it has voters on the books.

Ed King wrote back to Wilkins in apologetic tones. He affirmed SNCC's desire to "work together" and "maintain good relationships" with the NAACP and LDF.[19]

Despite such assurances, conflict endured. Correspondence between the organizations during the heyday of their collaboration documents continuing differences. The students wanted to launch new initiations that required NAACP and LDF support, while the mainstream organizations preferred to limit involvement with SNCC. Jack Greenberg repeated LDF's cautionary refrain in a 1962 letter to SNCC. "I do not think," he wrote, "we can give any specific commitment to represent you and your associates in all cases that may arise in the future. We must retain the flexibility to appraise each case and situation as it arises to determine how it fits in with our program."[20]

The NAACP and LDF refused to fully support the students' agenda, but vetoed SNCC's collaboration with others on numerous occasions. One flashpoint of the continuing strain between SNCC and LDF concerned SNCC's collaboration with the NLG. To many mainstream liberals, the Guild was poison, tainted by association with Communists. The NLG had been "born in revolt." It formed in 1937 to implement the New Deal and oppose the American Bar Association, the all-white, mostly corporate lawyers' group that staunchly opposed much of President Franklin Roosevelt's legislative program. In the preamble to its constitution, the NLG promised "to function as an effective social force in the service of the people to the end that human rights shall be regarded as more sacred than property interests." The group thrived during the 1930s and early 1940s, during its collaboration with New Dealers, legal academics, and civil rights lawyers, including Charles Hamilton Houston and Thurgood Marshall.[21]

But the McCarthy era dawned, and the Guild fell from its lofty perch. Federal Bureau of Investigation director J. Edgar Hoover and the U.S. attorney general targeted it as a "subversive organization." A 1950 report of the House Committee on Un-American Activities called the Guild the "foremost legal bulwark of the Communist Party, its front organizations, and controlled unions." The government's witch hunt succeeded. Fearing for their livelihoods and social standing, thousands of NLG members left the organization. Membership fell from a high of four thousand to a low of five hundred during the mid-1950s.[22]

The Guild "snapped back" to life during the 1960s as a consequence of its partnership with the civil rights movement and with Len Holt. Holt introduced the NLG to the movement. Before joining the staff of the Guild, Holt had been a

CORE field secretary and had collaborated with SNCC; he had counseled students engaged in sit-ins and freedom rides designed to desegregate interstate transportation. Holt brought this wealth of experience to the Guild. At the Guild's 1962 convention, the young attorney made a passionate appeal. He urged Guild members to go to the South and give aid to the civil rights movement; the Guild could be SNCC's legal "MASH unit." Ernest Goodman, former president of the Guild, recalled that Holt provided the "shot in the arm which really changed the whole complexion of the convention and of the Guild itself." Most African-American lawyers, fearful of the taint of black *and* Red, refused to associate with the NLG. Holt bucked the trend and "showed us that we had to play a role," Goodman explained. He convinced the predominantly white, largely Jewish Guild that "This is *our* struggle." "People wanted us, and the South was the place where we could do something useful," Goodman recalled.[23]

The Guild readily accepted the redemptive opportunity that Holt had laid at its feet. The same year, the organization formed the Committee to Assist Southern Lawyers, later the Committee for Legal Assistance to the South (CLAS). Made up of volunteer attorneys and law students, CLAS represented civil rights activists in the trenches of the Deep South. With its service to the movement, the Guild again set itself apart from the ABA. The Guild's assistance to the civil rights movement revitalized the NLG and shored up SNCC at a time of dire need.[24]

The leadership of SNCC greeted the formation of CLAS with glee. Field secretary Dion Diamond penned a letter to Ernest Goodman soon after CLAS formed that suggested the scope of the legal problem that activists confronted. "With the exception of the metropolises, Negro attorneys do not exist.... In the smaller communities, the majority of the attorneys who are at hand refuse to accept cases involving civil rights," Diamond wrote. He concluded, "My thanks to the Guild for establishing this committee. With the addition of it, I am certain that the evils of segregation will be eradicated much faster." Julian Bond wrote to Goodman as well, sounding a similar note. Even in Atlanta, Bond noted, the few attorneys available to represent activists often were "ill prepared." Moreover, Bond wrote, "local lawyers have not always acted in the best interests of their clients." "We really need about 300 Len Holts," Bond lamented, but "lacking this, we greatly appreciate you and your assistance."[25]

The national NAACP and LDF vehemently opposed SNCC's association with the Guild, despite the SNCC's great need and the NAACP's own spotty relationships with SNCC. The NAACP and LDF's institutional history and interests motivated their opposition to the Guild. The NAACP had itself been subjected to Red-baiting. Beginning in the 1930s, segregationists routinely called its campaign against Jim Crow a "Communist plot." The charge no doubt

emanated, in part, from highly publicized Communist Party appeals to African Americans. The Party proved attractive to some blacks, and Communists occupied the ranks of a few NAACP chapters. In additional, the NAACP had ties to some popular front organizations, such as the International Labor Defense, with which it competed for representation of the Scottsboro Boys and other black criminal defendants. Moreover, the Guild's membership included prominent LDF lawyers. Given these associations, the NAACP felt vulnerable when the government's hunt for Communists began.[26]

The NAACP responded to the threat by taking an uncompromising stand against the Party, its affiliates, and suspected members, including those within its own ranks. In 1950 the NAACP adopted an anti-Communist resolution to "clean out" the organization; the resolution called for the expulsion of Communists and Party–dominated branches. And LDF refused to represent the Guild when the lawyers faced the attorney general's blacklist. The NAACP's anti-Communist fervor only increased after *Brown*. Segregationists such as Georgia's attorney general, Eugene Cook, embarked on a crusade to destroy the NAACP (and undermine compliance with *Brown)* by alleging that the organization was a Communist front. Cook even claimed that the NAACP's executive secretary, Roy Wilkins, was a Communist. Wilkins and the entire machinery of the NAACP and LDF repudiated the charge. At the NAACP's 1956 convention, Thurgood Marshall made it clear that "there is no place in this organization for communists or those who follow the communist line." Indeed, Marshall went so far as to collaborate with J. Edgar Hoover in his effort to root Communists out of the NAACP. The NAACP and LDF would not risk losing their mainstream liberal constituency's support for their antiracist agenda.[27]

The organizations maintained their institutional hostility to Communists, real or imagined, throughout the 1960s. McCarthyism had receded, but the Cold War lived on. Jack Greenberg, who in 1961 succeeded Thurgood Marshall as LDF's director-counsel, strove mightily to preserve the organization's credibility by distancing it from tainted groups and individuals. The Guild headed the list of suspect organizations. As Greenberg saw it, the Guild existed far outside of the civil rights mainstream. He "worried about giving anyone any slim reason to attribute anything we did to advancing the party line." Greenberg also justified LDF's distance from the Guild in practical terms. The LDF feared that contributions would dry up if it worked with the Guild, given its Red past. Nor did it make sense for LDF to associate professionally with the Guild. The LDF lawyers outdistanced Guild lawyers in expertise and experience in civil rights litigation by a large margin, Greenberg believed. LDF's corps of skilled litigators could learn little from the Guild's band of lawyers, which included upstarts like Len Holt.[28]

Given the presumed risks of associating with the NLG, balanced against the enormous benefits of representation by LDF, Greenberg repeatedly forced client communities to choose between LDF and the Guild. Two examples vividly demonstrate the impact of Greenberg's approach. In 1963, Greenberg issued an ultimatum to African Americans engaged in a tumultuous battle for civil rights in the small mill town of Danville, Virginia. Segregationists had determined to crush the movement through police violence, dragnet arrests, economic reprisals, and "judicial terror." Overwhelmed with the task of seeking the release of hundreds of protesters, Len Holt, the Danville movement's lawyer, sought support from the national NAACP and LDF. It never came. Jack Greenberg and Samuel Tucker, one of LDF's local counsel, promised to help the movement—on one condition. The LDF would underwrite the defense of protesters, but only if they worked with NAACP-approved lawyers. "NAACP money can only go with NAACP lawyers, and Holt is not an NAACP lawyer," Tucker explained. Holt's clients rejected LDF's money, asserting that the Danville movement "was not the property" of LDF. The LDF later helped the residents of Danville, but only after Holt had left the case.[29]

One year later, during Freedom Summer in Mississippi, Greenberg took a similar position. Freedom Summer, SNCC's most ambitious voting rights and community mobilization campaign to date, generated hundreds of arrests in Mississippi and a tremendous need for legal aid in that state. The LDF, in league with Department of Justice officials, unleashed its "sharpest attack" yet on SNCC as a consequence of its decision to work with the Guild during the summer campaign. The LDF and U.S. Department of Justice lawyers "threw a real fit," according to James Forman. Jack Greenberg threatened to "pull out of Mississippi" and never again represent any SNCC activist if the Guild continued to advise and represent SNCC. Answering Greenberg's ultimatum, SNCC's executive committee reaffirmed its commitment to "freedom of association."[30]

Both practical considerations and principle motivated SNCC's audacious response to LDF. The leadership of SNCC could not afford to spurn the Guild's offer of help. The Guild sponsored a broad array of activist lawyers and law students, all willing to provide representation to SNCC. "We were not about to refuse the help of the Lawyers Guild," Forman later explained. "We would take help from anyone, always insisting that no one who gave us help had the right to dictate our policies. There could be no strings attached." Strategic and stylistic differences also influenced SNCC's rebuff of LDF. In SNCC's view, Guild lawyers were "aggressive" litigators with "courage and willingness to openly fight the legal system of the United States." By contrast, SNCC viewed the LDF as tending toward a cautious and "defensive" legal posture. The LDF deployed its resources to steer civil rights lawyers away from direct action and toward a

narrow band of legal challenges—school desegregation cases. The vision of black freedom that SNCC held was much broader than that, and the students could not bring themselves to toe LDF's official line. After tallying its misgivings about LDF, SNCC embraced the Guild. The "fights of the thirties and the forties were not really our fight," Forman explained, "although some tried to impose them on us."[31]

Faced with SNCC's defiance, Greenberg relented. For all of the NAACP and LDF's fretting about SNCC's missteps, its headline-grabbing campaigns advanced the interests of the national NAACP and LDF in a crucially important way. SNCC's (and SCLC's) exploits provided excellent fund-raising opportunities. After dramatic confrontations between segregationists and integrationists, the coffers of the national NAACP and LDF filled. Hence, like estranged family members unable to get along but deeply in need of each other, the quarrelsome relationship between and among the NAACP, LDF, and SNCC persisted. The leadership of SNCC continued to accept aid from the national NAACP and LDF.[32]

Yet SNCC also collaborated with Guild lawyers on a wide range of projects. The Guild carried out initiatives designed to secure passage of and implement the 1964 Civil Rights Act and the 1965 Voting Rights Act, protect the rights of black criminal defendants and political dissidents, and assist demonstrators who faced arrest for engaging in direct action and other protest actions. Guild lawyers also filed affirmative litigation, some of it conceived by, and much of it involving, Len Holt. At the same time, Holt's intensifying collaboration with SNCC and COAHR helped to set in motion a new stage in Atlanta's civil rights movement.[33]

"MOVEMENT LAWYERS" AND OMNIBUS CIVIL RIGHTS LITIGATION

When Len Holt took the podium at SNCC's April 1962 conference, he delivered a hopeful message to the crowd of 250 assembled at the AU Center. In his address, titled "Legal Rights and Responsibilities," Holt outlined a program for a fruitful collaboration between civil rights lawyers and practitioners of civil disobedience. Law and direct action, when practiced in tandem, held radical potential, he said: together, they could transform society. A different type of civil rights lawyer—a "movement lawyer"—could harness the energy of the direct action movement and facilitate the transformation. Driven by the imperatives of grassroots activists, movement lawyers would deploy their professional

skills to protect street fighters for racial justice from violence and legal peril. Secondarily, the attorneys would make omnibus legal claims against segregation. The dynamic political environment created by direct action would increase the likelihood that court cases would find success.[34]

In short, Holt advocated a bottom-up approach to lawyering, one in which activists would lead and lawyers would follow. Political activists would define the objectives of civil rights campaigns, and lawyers would solve problems arising out of the strategy as circumstances dictated. Holt encouraged SNCC to form working relationships with any and all attorneys committed to movement lawyering, including the newly formed CLAS of the National Lawyers Guild. In the coming years, Holt reiterated this prescription for sociolegal change at every turn.[35]

Holt's approach to civil rights lawyering emanated from three sources: early adoration of the NAACP and its campaign against segregation, followed by utter disillusionment with the organization; deep connections to clients and community-based organizations across the South; and the repressive sociopolitical context in which he practiced law. A Chicago native, Holt had matriculated at Howard University School of Law in 1952 after an "unpleasant" but "typical experience" with a Las Vegas sheriff's deputy. The officer beat Holt, then a cabdriver, with a club, leaving him to wince in pain from his injuries for more than a week. As a young man on the South Side of Chicago, Holt had often endured the humiliation of "being treated like a black boy by white cops." The Las Vegas brutalization, his harshest encounter yet with police, proved transformative. The officer's savagery politicized Holt. Nothing would ever completely shield black men from racist police officers, but Holt determined to "put [him]self in a position to inconvenience the oppressor." He would fight police harassment with a law license.[36]

Holt attended Howard University's law school during the period 1952 through 1956, a golden age for the institution. At that time, Thurgood Marshall and several other Howard graduates played commanding roles on the national stage as they created the field of civil rights law. Marshall and his staff customarily gathered at Howard to moot arguments prior to each of LDF's appearances in the U.S. Supreme Court. Howard law students who attended these moot arguments could hear the thrust and parry of discussions between LDF staff and the nation's legal luminaries. Second- and third-year students conducted research for LDF lawyers, while first-years found themselves fetching sandwiches and coffee for them. All of the students gained role models, invaluable to African Americans who lived in a segregated society and who hoped to achieve success in a virtually all-white profession. The students could imagine themselves walking in the footsteps of giants. And some did. The successes of Thurgood Marshall, the legendary Howard graduate, attracted Len Holt to the law school. Holt,

a "political animal" long before he ever opened a law school casebook, figured that he could go to Howard and learn to "deal with the problems of black people rather than trying to make a million dollars." He was thrilled to be among the students who fetched lunch and researched issues for LDF attorneys, and his admiration for Thurgood Marshall knew no bounds. He conscientiously planned to "join the NAACP team" after he finished law school.[37]

Holt graduated from Howard in 1956 and established a law practice in Norfolk, Virginia. Before long, his hopes to associate with the NAACP were dashed. The world of NAACP lawyers was, he had learned, a "closed society." Much like the initiation process for the black fraternities and sororities, one had to be chosen for membership. Talent and a desire to serve the community were not enough to earn the privilege of collaborating with the lawyers who, by then, had famously won the victory in *Brown v. Board of Education*. A lawyer also had to adhere to the NAACP and LDF's policies and vision of civil rights. This requirement proved difficult for Holt, an independent-minded only child who once had been sent to a school for "incorrigible boys" because of his tendency to speak his mind and act accordingly.[38]

Holt's tensions with LDF had grown out of the school desegregation campaign. The young lawyer disagreed with how the Virginia NAACP and LDF handled aspects of the Prince Edward County, Virginia, litigation and said so. The county responded to a 1959 court order to desegregate its schools with defiance; Prince Edward closed its public schools altogether rather than integrate them. The closure lasted for a remarkable five years. During that time, white students, alone, received publicly supported tuition grants to attend private schools. Holt witnessed the devastating impact of the school closure on local blacks as he crisscrossed the state to represent clients. On drives through Prince Edward County, Holt saw "boys and girls 8 and 9 years old"—the children of black agricultural workers not long removed from sharecropping and slavery—"standing around, doing nothing." Meanwhile, some local NAACP members—people with sufficient financial means—sent their children out of state to receive a proper education. Holt did not blame LDF for the school closure itself, a product of virulent white resistance to the black struggle for freedom. But he concluded that neither the LDF nor the NAACP had taken adequate steps to ensure that all children whom the county denied schooling received compensatory education. The school desegregation litigation imposed extravagant costs on black communities, and NAACP officials had not fulfilled their responsibilities to local blacks to ameliorate those disadvantages. Moreover, Holt questioned whether LDF should focus so narrowly on the school litigation at all given the varied and tremendous material needs of African Americans. When Holt voiced these concerns to Virginia NAACP officials, they were not

well received. Holt could collaborate with the NAACP and LDF, he was told, but only on their terms: the organizations demanded full-throttled support of their school desegregation strategy. Holt refused to silence or censor himself. He thus found himself estranged from the NAACP and LDF.[39]

Disillusioned, Holt refocused his energies on building his private practice: he would practice civil rights law in his own way. In his burgeoning practice, Holt represented blacks in Norfolk and other towns in a variety of criminal and civil actions, matters large and small. He soon gained a reputation as a trouble-maker among local whites. Segregationists in cities like Norfolk and in the small Virginia towns where he practiced law reviled him as "that smart nigger bastard who tries to make a fool of white folks." Holt treasured this reputation. He also embraced the nickname that his clients affectionately bestowed upon him—the "Snake Doctor." Both labels captured Holt's role-playing as a rabble-rousing, activist lawyer and champion of racial justice.[40]

The template for Holt's lawyering style and its substance did not derive from his one-time idol, Thurgood Marshall. Holt's mentors included the small band of black lawyers in Danville, Virginia, especially his law partner, E. A. Dawley. Dawley's bravery and passionate commitment to clients in the face of a virulently racist opposition greatly impressed his young colleague. Holt also felt profoundly grateful to Dawley for his unstinting support of a "roving, loud-mouth, theatrical" partner who "would slither into towns wearing patched jeans," "puffing Clint Eastwood–style cigars," and challenge white supremacist norms in unprecedented ways. Later, Holt came to admire William Kunstler and Arthur Kinoy, brash New York lawyers, white and Jewish, who represented civil rights activists during the 1960s, in collaboration with the ACLU and the Guild.[41]

Holt hoped to change the student movement's relationship to civil rights lawyers—developed in interaction with NAACP and LDF lawyers—from one of antagonism to one of cooperation. His vision of a "movement lawyer" sprang from that desire. He lodged a searing critique of the NAACP and LDF. The LDF hewed too closely to a conventional, top-down form of lawyering, and it sought to impose its worldview on everyone else, as Holt's 1963 Danville experience showed. Similarly, the NAACP struck Holt as too "conservative" and "middle-class." The orientation of both organizations contrasted sharply with the more confrontational and antihierarchical student wing of the direct action movement. "[I]f the protest movement was anything," Holt wrote, "it wasn't conservative or middle class."[42]

Holt touted movement lawyering as a "creative" and "dramatic" style of lawyering—one that matched SNCC's political dynamism and philosophy. Holt, who had been present at SNCC's founding, considered the organization's direct action techniques the boldest and most effective means of pursuing racial

justice and embraced its commitment to community-driven activism. Consistent with SNCC's philosophy and goals, Holt urged lawyers to play a support role in the movement. Belying the student movement's initial assumptions, Holt saw no contradiction between lawyering and the objectives of the direct action movement. Lawyers were not destined to dominate their clients. Civil rights litigation and political action could be synergistic if lawyers immersed themselves in local communities and learned their strategic objectives. Arthur Kinoy explained the distinction between the conventional civil rights lawyer and the movement lawyer that Holt advocated this way:

> The primary role of people's lawyers in the civil rights movement had shifted from the days before *Brown v. Board of Education*. Lawyers were no longer the central agents fighting to achieve the goals of freedom and equality through their own special arena, the courts of law. Their role now was vastly different. Their primary task was to find ways of helping the Black people themselves resist the efforts of the power structure to derail their own forward movement to enforce the constitutional promises of freedom and equality.[43]

Holt's outlook endeared him to SNCC and local activists. James Forman at SNCC boasted that Holt "offer[ed] more inspiration" to young activists than virtually anyone else. Holt talked to demonstrators about "human and constitutional rights" and endorsed their vision of a youth-led movement. The students "trusted" Holt, a "brilliant" and "aggressive" lawyer, to assist them on their own terms. His approach contrasted with that of the NAACP and even that of the SCLC, both of which tried to steer SNCC in various directions. Forman, arrested with other SNCC protesters during demonstrations in Monroe, North Carolina, in 1961, described a hearing before a "kangaroo court" in which Holt and Kunstler represented him.

> Holt did a magnificent job in court. He took every possible opportunity to make the case political, speaking eloquently about race relations in this country and the need for the type of action in which we were engaged. He gave his summation, a brilliant one, but this was a kangaroo court and his words were like pearls being thrown to swine.[44]

Holt also represented Forman after his arrest in Danville, Virginia, and collaborated with SNCC on numerous other occasions before and after the 1962 conference. Each time, Holt's "knowledge and dedication" to the cause and his respect for SNCC's core beliefs captivated Forman and other SNCC loyalists. Mary King, a SNCC communications office worker, compared Holt to

"abolitionists of the underground railroad" when she recalled how the "clever" Holt facilitated her escape from white law enforcement officers in the "war-like" Danville of that time. When vindictive authorities threatened to indict her on unfounded incitement to riot charges under a nineteenth-century statute passed after slave uprisings, Holt sent her across the Dan River to a North Carolina convent run by nuns friendly to the movement.[45]

Future SNCC chairman Stokely Carmichael remembered Holt's defiance of Jim Crow customs in a Mississippi courtroom. The white supremacist judge showed his contempt for the black lawyer by turning his back when Holt spoke. The prosecutor threw documents at his feet rather than hand them over. Holt responded in kind. "Bro Len silently bent down, picked up the papers, calmly made his presentation," and then "deliberately walks across that Mississippi court room, moves around to face the prosecutor, and throws those papers" in his face." Holt refused to play the racist's game. Carmichael and other protesters were euphoric. They found Holt's irreverence in the courtroom, uncommon even in other radical lawyers, inspirational.[46]

Holt's ideas "were far ahead of the conservative legal profession," Forman concluded, and "they earned him the enmity of many lawyers." Holt, said Carmichael, was "certainly one of the great unsung heroes" of the civil rights movement.[47]

Holt endorsed SNCC's philosophy, but he also made a signal professional contribution to the civil rights movement—the "omnibus integration" suit. Holt and Florida attorney Ernest Jackson conceived the omnibus suit strategy. Holt's firm then executed the idea in numerous locales. The omnibus action differed from the traditional civil rights suit in scope. The omnibus suit "infected" the law "with a sense of urgency" by simultaneously attacking every facet of Jim Crow in a local community. "In one complaint, in one suit, it seeks to do the same job of righting wrongs that formerly took a series of suits," Holt explained.

> Instead of just seeking to integrate a library [for example] it attacks racial discrimination in the cemetery, swimming pool, public hospital, dog pound, parks, auditoriums, buses, public housing and you-name-it . . . and it does all this attacking simultaneously, at one time.[48]

The omnibus suit named as a defendant any public official who managed or otherwise participated in an institution practicing segregation. The litigation might name twenty, fifty, or one hundred public officials as defendants—including local judges who presided over segregated courtrooms. Len Holt filed his first omnibus suit in Danville, Virginia. "The Danville Omnibus Integration Suit asked for the integration of practically everything," Holt recalled: the

Negroes to Negro hospitals and whites to white hospitals." In addition, white hospitals seldom granted practice privileges to black physicians. Consequently, African Americans, especially those living in poor neighborhoods, remained underserved. The threat by HEW to cut off federal funds eventually nudged hospitals in Atlanta to desegregate. But access to quality health care remained a problem. White authorities and the white public were acutely vexed by the prospect of blacks mingling with whites in the corridors and wards of hospitals and medical facilities where black doctors as well as white ones practiced medicine.[86]

WHO ARE THE CIVIL RIGHTS LAWYERS?

The marriage of litigation and direct action strategies produced a vibrant, if fragile, relationship between the civil rights movement, the law, and the civil rights bar during the period 1961–1964. Despite the students' initial misgivings, the law and the courts had provided important sources of energy for SNCC and COAHR's protests. COAHR's filing of *Brown v. Atlanta*, the omnibus municipal desegregation lawsuit, amid continuing protests, synergized civil rights litigation and direct action, just as Len Holt had imagined. The suit actualized movement lawyering, showing that legal and political approaches to pursuing equality were not incompatible. But the omnibus technique and movement lawyering did not, in and of themselves, account for *Brown*'s success. The Supreme Court's piecemeal steps toward dismantling segregation in public facilities, 1961's *Burton v. Wilmington Housing Authority* in particular, facilitated the students' legal victory. The federal court's order striking down segregation in municipal facilities did not, of course, self-implement. Protests made the court victory real. The activists of SNCC and COAHR repeatedly attempted to desegregate the facilities subject to the court order. Desegregation occurred as a consequence of ongoing protests that created political and economic pressure for change.

The students achieved greater success litigating opportunistically than the lawyers' lawyers, A. T. Walden, Donald Hollowell, and Jack Greenberg, achieved litigating conventionally. These attorneys' strategies revolved around the courtroom. Walden, in particular, considered direct action irrelevant or even counterproductive to civil rights litigation. Indeed, Walden, an avowed foe of street protests, initially relied on litigation to deter COAHR from direct action. The suits that Walden and Hollowell filed to challenge segregation in the State Capitol, courthouse, and City Hall eating facilities ended without court-ordered victories for the plaintiffs. *Bell v. Northern Dental*, the hospital desegregation case filed by Hollowell and Greenberg, an opponent of Holt's movement-

centered lawyering, had a similarly disappointing trajectory. That litigation, slow to unfold, eventually resulted in a court victory. But it took years to desegregate just one hospital, despite the court order. Outside of the courtroom, LDF and local counsel had brought little political pressure to bear on whites resistant to desegregation. The absence of such pressure from below for desegregation likely mattered most in institutions—like hospitals—where whites found mingling with blacks most distasteful. The pressure for change did not have to take the form of direct action; but the political environment had to become more favorable to racial change to spur desegregation. Congress provided that political lever when it passed the Civil Rights Act; but in a sign of the strength of white resistance to hospital desegregation, Atlanta moved slowly to desegregate even after the Act passed.

The two portraits of civil rights lawyering presented here illuminate the debate over the relationship between civil rights litigation and social change. The LDF's hospital litigation—successful in court but inefficacious until Congress enacted landmark civil rights litigation—substantiates skeptics' claim that civil rights litigation is an unreliable tool of social change.[87]

But my narrative calls into question the idea that court-based social change strategies led civil rights activists astray, whether by diverting intellectual energy, resources, or inspiring a "myth of rights." The history I have told here recovers a form of professional practice that challenges the sharp distinction that those who put forth this argument make between lawyering and politics. Len Holt—a lawyer who openly clashed with the NAACP and LDF and worked in local communities, independently of the civil rights mainstream—is invisible in analyses of law and social change that begin and end with the Supreme Court and national institutions. His work challenges the idea that civil rights litigation undermined political activism. Holt and other movement lawyers had a sophisticated understanding of the utilities and disutilities of law and the courts. Profoundly skeptical of the courts and the judges who presided over them, Holt nevertheless leveraged them to his and his clients' advantage. His court-based strategies were not zero-sum games.[88]

This principle can be generalized. A host of factors determined whether or to what extent law and litigation, whether undertaken by Holt or NAACP-affiliated lawyers, aided or demobilized the struggle for racial justice. These included the style of lawyering that attorneys employed; the degree of unity that existed between lawyers and their client communities; the economic and political incentives for or against desegregation in a given case; and whether the target of protest was a public or a private entity. The changing relationships between lawyers and activists during the historical era explored here show that only a dynamic theory of law and social change can explain whether and on what terms social

movements interact fruitfully with lawyers. One verity stands out, however: at best, law, lawyers, and social movements interacted dynamically and with sensitivity to the changing political environment during the civil rights era.

Ultimately, this historical record suggests the advantages and limitations of each of the two approaches to lawyering explored here. Movement lawyering offered a singular benefit: it diversified the tactical arsenal of civil rights advocates. Rather than relying on the courts alone to attain justice, lawyers added the political tool of direct action as a weapon of change.

Beyond that, this approach added another tremendous asset. Movement lawyering held the potential to catalyze social movements. That is, Len Holt's style of lawyering fortified participatory democracy. The bottom-up approach assumed that the attorney should primarily be concerned with politically mobilizing his clients and the citizenry at large. It created opportunities for citizens to express discontent, develop plans to challenge offending authorities, and implement change strategies. Thus, Len Holt exhorted citizens themselves to protest in the streets, and even in the courts, as lay lawyers. He pushed his clients to claim their political voices and confront abusive authorities. His practice rested on the view that the active participation of individual citizens in decision-making, even on a small scale, could reap political dividends; in current parlance, "empowered participation" could yield sociopolitical advantage.[89]

The catalytic potential of movement lawyering did not turn on whether the litigator won or lost his case in court. Indeed, a loss might better facilitate a movement lawyer's goals than a court victory. Moreover, the future dividends from movement lawyering could extend far beyond the original context in which it was deployed. Those who participated in a sit-in linked to a lawsuit might become more highly energized voters, might gravitate toward community organizing or volunteering, or might even run for office long after their initial foray into activism had ended. Leading theorists of law and social change, in their focus on the importance of court victories and implementation to the success of change movements, have missed these important indicators of political empowerment and mobilization.[90]

The characteristics that made bottom-up lawyering an exciting counterpoint to LDF and an attractive tool for facilitating participatory democracy suggest the limitations of the approach. Initiatives such as omnibus litigation and pro se lawyering deemphasized the very technical expertise, based in law and social science, that public interest lawyers had conceived as hugely important tools of advocacy since the Progressive Era innovations of Louis Brandeis. Holt and his cocounsel used the courtroom as political theater as much as forums in which to assert legal claims. This mode of practice, while potentially profitable for political mobilization, posed risks. To the extent that judges

perceived omnibus suits or lay lawyering as professionally inadequate, the advocate put his credibility at risk and compromised his clients' interests.[91]

Moreover, bottom-up lawyering was subject to the same criticism that beset all forms of community mobilization activity in the civil rights movement. Holt often styled his approach an alternative to short-term, charisma-driven campaigns such as Dr. King's famous demonstrations in Birmingham in 1963. Yet, the success of Holt's initiatives turned, in part, on Holt's personal magnetism and on his ability to inspire local people. He worked with many different organizations and numerous individuals; he roamed all over the South helping local communities and, consequently, often stayed in one locale on a short-term basis only. Thus, the criticism that Holt and others leveled at King applied more broadly. All activism involving charismatic personas raised a common question: how could social movements involving such imposing personalities, stretched thin as they sought to meet the needs of their constituencies, maintain momentum, grow, and evolve over time?

The advantages of LDF's style of lawyering are evident in comparison to Holt's bottom-up approach. The value of LDF lay in its routinized, meticulous, expertise-driven approach to professional practice, defined by constitutional litigation. None of these traits guaranteed remedial efficacy, as we have seen. Nevertheless, LDF's reputation for professional excellence provided great value to clients. African Americans, long denied access to legal representation and membership in the bar, could look to this small band of attorneys for assistance of a certain type. Communities' ability to rely on these lawyers reinforced democracy, though in a manner different from movement lawyering. Conventional lawyers held forth in court as representatives of the people, making claims on their behalf, in a form and using procedures recognizable to the bench. The reputations of LDF lawyers preceded them, and this reputational good was no small thing for civil rights lawyers. The people themselves could join in as witnesses in the litigators' process, but played no active role commensurate to the one contemplated in bottom-up lawyering. Many black citizens surely found the idea of a representative speaking for them in the corridors of power—a technocrat who could parse legal rules and speak that mysterious legalese—a godsend. Satisfied with such skilled representation, many clients might concern themselves little with the personal agency that movement lawyers so prized.

In the next phase of the battle to desegregate Atlanta, activists who were movers and shakers in the community turned their attention to desegregating private businesses. Whites' sense of entitlement to discriminate in the private context far surpassed their fierce commitment to control the public sector. It would take no less than the Civil Rights Act to dislodge Jim Crow's firm hold on the private sphere.

Finding The Strength To Love And Dream

by Robin D.G. Kelley

June 17, 2002

This essay was made up of excerpts from Robin Kelley's new book, *Freedom Dreams: The Black Radical Imagination*, Beacon Press, 2002, ISBN 0-8070-0976-8.
Gilles d'Aymery introduces this essay in Invent The Future.

I am at a crossroads. I spent more than half my life writing about people who tried to change the world, largely because I, too, wanted to change the world. The history of social movements attracted me because of what it might teach us about our present condition and about how we might shape the future. When I first embarked on that work, nearly 20 years ago, the political landscape looked much clearer: We needed a revolutionary socialist movement committed to antiracism and antisexism. Buoyed by youthful naiveté, I thought it was very obvious then.

Over time, the subjects of my books, as well as my own political experience, taught me that things are not what they seem, and that the desires, hopes, and intentions of the people who fought for change cannot be easily categorized, contained, or explained. Unfortunately, too often our standards for evaluating social movements pivot around whether or not they "succeeded" in realizing their visions rather than on the merits or power of the visions themselves. By such a measure, virtually every radical movement failed because the basic power relations it sought to change remain pretty much intact. And yet it is precisely those alternative visions and dreams that inspire new generations to continue to struggle for change.

How do we produce a vision that enables us to see beyond our immediate ordeals? How do we transcend bitterness and cynicism, and embrace love, hope, and an all-encompassing dream of freedom, especially in these rough times?

Rough times, indeed. I witnessed the World Trade Center go down from my bedroom window. Bombs have rained down on the people of Afghanistan and unknown numbers of innocent people have died, from either weapons of mass destruction or starvation. Violence will only generate more violence; the carnage has just begun. Now more than ever, we need the strength to love and to dream. Instead of knee-jerk flag-waving and submission to any act of repression in the name of "national interests," the nation ought to consider Martin Luther King Jr.'s vision and take a cue from the movement that proved to be the source of his most fertile ideas.

The civil-rights movement demanded freedom for all and believed that it had to win through love and moral suasion. Those committed to the philosophy of nonviolence saw their suffering as redemptive. The very heart of the movement, the extraordinary Southern black folks who stood nobly in the face of police dogs and water cannons and white mobs and worked as hard as they could to love their enemy were poised to become the soul of a soulless nation, according to Dr. King.

Imagine if that soul were to win out, if the movement's vision of freedom were completely to envelop the nation's political culture. Democracy in the United States has not always embraced everyone, and we have a long history to prove it, from slavery and "Indian wars" to the 2000 presidential election. Indeed, the marginal and excluded have done the most to make democracy work in America. And some of the radical movements have done awful things in the name of liberation, often under the premise that the ends justify the means. Communists, black nationalists, third-world-liberation movements -- all left us stimulating and even visionary sketches of what the future could be, but they have also been complicit in acts of violence and oppression, through either their actions or their silence. No one's hands are completely clean.

And yet to drone on about how oppressed we are or to merely chronicle the crimes of radical movements doesn't seem very useful. I'd like to begin an effort to recover ideas by looking at the visions fashioned mainly by those marginalized black activists who proposed a different way out of our constrictions. I'm not suggesting that we wholly embrace their ideas or strategies as the foundation for new movements; on the contrary, my main point is that we must tap the well of our own collective imaginations, that we do what earlier generations have done: Dream.

My mother has a tendency to dream out loud. I think it has something to do with her regular morning meditation. In the quiet darkness of her bedroom, her third eye opens onto a new world, a beautiful, light-filled place as peaceful as her state of mind. When I was growing up, she never had to utter a word to describe her inner peace; like morning sunlight, it radiated out to everyone in her presence. Her other two eyes never let her forget where we lived. The cops, drug dealers, social workers, the rusty

tap water, the roaches and rodents, the urine-scented hallways, and the piles of garbage were constant reminders that our world began and ended in a battered Harlem/Washington Heights tenement apartment on 157th and Amsterdam.

Yet she would not allow us to live as victims. Instead, we were a family of caretakers who inherited this earth. We were expected to help any living creature in need, even if that meant giving up our last piece of bread. Strange, needy people always passed through our house, occasionally staying for long stretches of time. We were expected to stand apart from the crowd and befriend the misfits, to embrace the kids who stuttered, smelled bad, or had holes in their clothes. My mother taught us that the Marvelous was free -- in the patterns of a stray bird feather, in a Hudson River sunset, in the view from our fire escape, in the stories she told us, in the way she sang Gershwin's "Summertime," in a curbside rainbow created by the alchemy of motor oil and water from an open hydrant.

She simply wanted us to live through our third eyes, to see life as possibility. She wanted us to imagine a world where gender and sexual relations could be reconstructed. She wanted us to see the poetic and prophetic in the richness of our daily lives. She wanted us to visualize a more expansive, fluid, "cosmospolitan" definition of blackness, to teach us that we are not merely inheritors of a culture but its makers.

So with her eyes wide open, my mother dreamed and dreamed some more, describing what life could be for us. She wasn't talking about a postmortem world, some kind of heaven or afterlife; and she was not speaking of reincarnation (which she believes in, by the way). She dreamed of land, a spacious house, fresh air, organic food, and endless meadows without boundaries, free of evil and violence, free of toxins and environmental hazards, free of poverty, racism, and sexism ... just free.

She never talked about how we might create such a world, nor had she connected her vision to any political ideology. But she convinced my siblings and me that change is possible. The idea that we could possibly go somewhere that exists only in our imaginations -- that is, *nowhere* -- is the classic definition of *utopia*. Call me utopian, but I inherited my mother's belief that the map to a new world is in the imagination, in what we see in our third eyes rather than in the desolation that surrounds us.

Now that I look back with hindsight, my writing and the kind of politics to which I've been drawn have had more to do with imagining a different future than with being pissed off about the present. Not that I haven't been angry, frustrated, and critical of the misery created by race, gender, and class oppression -- past and present. That goes without saying. But the *dream of a new world,* my mother's dream, was the catalyst

for my own political engagement.

I came to black nationalism filled with idealistic dreams of a communal society free of all oppressions, a world where we owned the land and shared the wealth, and white folks were out of sight and out of mind. It was what I imagined precolonial Africa to be. Sure, I was naive, still in my teens, but my imaginary portrait, derived from the writings of Cheikh Anta Diop, Chancellor Williams, Julius Nyerere, Kwame Nkrumah, Kwame Ture, and others, gave me a sense of hope and possibility about what a *post*colonial Africa could look like.

Very quickly, I learned that the old past wasn't as glorious, peaceful, or communal as I had thought -- though I still believe that it was many times better than what we found when we got to the Americas. The stories from the former colonies -- whether Mobutu Sese Seko's Zaire, Idi Amin's Uganda, or Forbes Burnham's Guyana -- dashed most of my expectations about what it would take to achieve real freedom.

In college, like all the other neophyte revolutionaries influenced by events in southern Africa, El Salvador and Nicaragua, Cuba and Grenada, I studied third-world liberation movements and post-emancipation societies in the hope of discovering different visions of freedom born out of the circumstances of struggle. I looked in vain for glimmers of a new society, in the "liberated zones" of Portugal's African colonies during the wars of independence, in Maurice Bishop's "New Jewel" movement in Grenada, in Guyana's tragically short-lived 19th-century communal villages, in the brief moment when striking workers of Congo-Brazzaville momentarily seized state power and were poised to establish Africa's first workers' state. Granted, all those movements crashed against the rocks, wrecked by various internal and external forces, but they left behind at least some kind of vision, however fragmented or incomplete, of what they wanted the world to look like.

Like most of my comrades active in the early days of the Reagan era, I turned to Marxism for the same reasons I looked to the third world. The misery of the proletariat (lumpen and otherwise) proved less interesting and less urgent than the promise of revolution. I was attracted to "small-c" communism because, in theory, it sought to harness technology to solve human needs, give us less work and more leisure, and free us all to create, invent, explore, love, relax, and enjoy life without want of the basic necessities of life.

I fell in love with the young Marx of *The German Ideology* and *The Communist Manifesto,* the visionary Marx who predicted the abolition of all exploitative institutions. I followed young Marx, via the late English historian Edward P. Thompson, to those romantic renegade socialists, like William Morris, who wanted to

break with all vestiges of capitalist production and rationalization. Morris was less concerned with socialist efficiency than with transforming social relations and constructing new, free, democratic communities built on, as Thompson put it, "the ethic of cooperation, the energies of love."

There are very few contemporary political spaces where the energies of love and imagination are understood and respected as powerful social forces.

The socialists, utopian and scientific, had little to say about that, so my search for an even more elaborate, complete dream of freedom forced me to take a more imaginative turn. Thanks to many wonderful chance encounters, I discovered Surrealism, not so much in the writings and doings of André Breton or Louis Aragon or other leaders of the Surrealist movement that emerged in Paris after World War I, but under my nose, so to speak, buried in the rich, black soil of Afro-diasporic culture.

In it I found a most miraculous weapon with no birth date, no expiration date, no trademark. I traced the Marvelous from the ancient practices of maroon societies and shamanism back to the future, to the metropoles of Europe, to the blues people of North America, to the colonized and semicolonized world that produced the likes of Aimé and Suzanne Césaire and Wifredo Lam. The Surrealists not only taught me that any serious motion toward freedom must begin in the mind, but they also have given us some of the most imaginative, expansive, and playful dreams of a new world I have ever known. Contrary to popular belief, Surrealism is not an aesthetic doctrine but an international revolutionary movement concerned with the emancipation of thought. Members of the Surrealist Group in Madrid, for example, see their work as an intervention in life rather than as literature, a protracted battle against all forms of oppression that aims to replace "suspicion, fear, and anger with curiosity, adventure, and desire." The Surrealists are talking about total transformation of society, not just granting aggrieved populations greater political and economic power. They are speaking of new social relationships, new ways of living and interacting, new attitudes toward work and leisure and community.

In that respect, they share much with radical feminists, whose revolutionary vision has extended into every aspect of social life. Radical feminists have taught us that there is nothing natural or inevitable about gender roles, male dominance, the overrepresentation of men in positions of power, or the tendency of men to use violence as a means to resolve conflict. Radical feminists of color, in particular, have revealed how race, gender, and class work together to subordinate most of society and complicate easy notions of universal sisterhood or biological arguments that establish men as the universal enemy.

Like all the other movements that caught my attention, radical feminism, as well as the ideas emerging out of the lesbian and gay movements, proved attractive not simply for their critiques but also for their freedom dreams.

Black intellectuals associated with each of those movements not only imagined a different future, but, in many instances, their emancipatory vision proved more radical and inclusive than what their compatriots proposed. Those renegade black intellectuals/activists/artists challenged and reshaped communism, Surrealism, and radical feminism, and in so doing produced brilliant theoretical insights that might have pushed the movements in new directions. In most cases, however, the critical visions of black radicals were held at bay, if not completely marginalized.

My purpose is to reopen a very old conversation about what kind of world we want to struggle for. I am not addressing those traditional leftists who have traded in their dreams for orthodoxy and sectarianism. Most of those folks are hopeless, I'm sad to say. And they will be the first to dismiss me as utopian, idealistic, and romantic. Instead, I'm speaking to anyone bold enough still to dream, especially young people who are growing up in what the critic Henry Giroux perceptively calls "the culture of cynicism" -- young people whose dreams have been utterly co-opted by the marketplace.

In a world where so many youth believe that "getting paid" and living ostentatiously was the goal of the black-freedom movement, there is little space to even *discuss* building a radical democratic public culture. Too many young people really believe that is the best we can do. Young faces, however, have been popping up en masse at the antiglobalization demonstrations beginning in Seattle in 1999, and the success of the college antisweatshop campaign No Sweat owes much of its success to a growing number of radicalized students. The Black Radical Congress, launched in 1997, has attracted hundreds of activists under age 25, as did the campaign to free Mumia Abu-Jamal. So there is hope.

The question remains: What are today's young activists dreaming about? We know what they are fighting against, but what are they fighting for? Those are crucial questions, for the most powerful, visionary dreams of a new society don't come from little think tanks of smart people or out of the atomized, individualistic world of consumer capitalism, where raging against the status quo is simply the hip thing to do. Revolutionary dreams erupt out of political engagement; collective social movements are incubators of new knowledge.

While that may seem obvious, I am increasingly surrounded by well-meaning students who want to be activists but exhibit anxiety about doing intellectual work. They often

differentiate between the two, positioning activism and intellectual work as inherently incompatible. They speak of the "real" world as some concrete wilderness overrun with violence and despair, and the university as if it were some sanitized sanctuary distant from actual people's lives and struggles.

At the other extreme, I have had students argue that the problems facing "real people" today can be solved by merely bridging the gap between our superior knowledge and people outside the ivy walls who simply do not have access to that knowledge. Unwitting advocates of a kind of "talented tenth" ideology of racial uplift, their stated goal is to "reach the people" with more "accessible" knowledge, to carry back to the 'hood the information that folks need to liberate themselves. While it is heartening to see young people excited about learning and cognizant of the political implications of knowledge, it worries me when they believe that simply "droppin' science" on the people will generate new, liberatory social movements.

I am convinced that the opposite is true: Social movements generate new knowledge, new theories, new questions. The most radical ideas often grow out of a concrete intellectual engagement with the problems of aggrieved populations confronting systems of oppression. The great works by W.E.B. Du Bois, Franz Boas, Oliver Cox, and many others were invariably shaped by social movements as well as social crises such as the proliferation of lynching and the rise of fascism. Similarly, gender analysis was brought to us by the feminist movement, not simply by the individual genius of the Grimké sisters or Anna Julia Cooper, Simone de Beauvoir, or Audre Lorde.

Progressive social movements do not simply produce statistics and narratives of oppression; rather, the best ones do what great poetry always does: transport us to another place, compel us to relive horrors, and, more important, enable us to imagine a new society. We must remember that the conditions and the very existence of social movements enable participants to imagine something different, to realize that things need not always be this way. It is *that* imagination, that effort to see the future in the present, that I call "poetry" or "poetic knowledge."

Recovering the poetry of social movements, however, particularly the poetry that dreams of a new world, is not such an easy task. For obvious reasons, what we are against tends to take precedence over what we are for, which is always a more complicated and ambiguous matter. It is a testament to the legacies of oppression that opposition is so frequently contained, or that efforts to find "free spaces" for articulating or even realizing our dreams are so rare and marginalized.

Another problem, of course, is that such dreaming is often suppressed and policed not only by our enemies but also by leaders of social movements themselves. The utopian

visions of male nationalists or so-called socialists often depend on the suppression of women, of youth, of gays and lesbians, of people of color. Desire can be crushed by so-called revolutionary ideology. I don't know how many times self-proclaimed leftists talk of universalizing "working-class culture," focusing only on what they think is uplifting and politically correct but never paying attention to, say, the ecstatic.

I remember attending a conference in Vermont about the future of socialism, where a bunch of us got into a fight with an older generation of white leftists who proposed replacing retrograde "pop" music with the revolutionary "working class" music of Phil Ochs, Woody Guthrie, pre-electric Bob Dylan, and songs from the Spanish Civil War. And there I was, comically screaming at the top of my lungs, "No way! After the revolution, we STILL want Bootsy! That's right, we want Bootsy! We need the funk!"

Sometimes I think the conditions of daily life, of everyday oppressions, of survival, not to mention the temporary pleasures accessible to most of us, render much of our imagination inert. We are constantly putting out fires, responding to emergencies, finding temporary refuge, all of which make it difficult to see anything other than the present.

Despite having spent a decade and a half writing about radical social movements, I am only just beginning to see what has animated, motivated, and knitted together those gatherings of aggrieved folks. I have come to realize that once we strip radical social movements down to their bare essence and understand the collective desires of people in motion, freedom and love lie at the very heart of the matter. Indeed, I would go so far as to say that freedom and love constitute the foundation for spirituality, another elusive and intangible force with which few scholars of social movements have come to terms. That insight was always there in the movements I've studied, but I was unable to see it, acknowledge it, or bring it to the surface. I hope to offer here a beginning.

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Buy the book: *Freedom Dreams: The Black Radical Imagination*, by Robin D.G. Kelley, Beacon Press, 2002, ISBN 0-8070-0976-8.

What is Surrealism? - by André Breton (Lecture given in Brussels on 1st June 1934 at a public meeting organised by the Belgian Surrealists.)

Search Google on Surrealism

Search Google on Robin D.G. Kelley

Robin D.G. Kelley is, according to Cornel West, "the preeminent historian of black popular culture writing today." A Professor of History and Africana Studies at New York University, New York, NY, Kelley has written numerous books and is renown for his work, *Hammer and Hoe: Alabama Communists During the Great Depression* (University of North Carolina Press, 1990). His major interests are U.S. and African American history, African diaspora, urban studies, working class radicalism, cultural history and music (Kelley is an accomplished pianist). With an eclectic mind and wide-ranging intellect Robin Kelley is one of the most brilliant contemporary thinkers in America. This article first appeared in the June 7, 2002 issue of The Chronicle Review, the weekly publication of The Chronicle of Higher Education. It is published here with the gracious written permission of the author.

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This Week's Internal Links

The Oracle - by Alma Hromic (Book Excerpt)

Letters to the Editor

Published June 17, 2002

Swans
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From Arthur Kinoy, Rights on Trial: The Odyssey of a People's Lawyer

good. And sometimes, as that day in Washington twenty-five years later was to prove, a corporate lawyer like Bill Gossett may, if only for a moment, be on your side.

Back in New York, I was ready for my first day of work at my second job. The office of the UE was then, as it is now, on Fifty-first Street between Fifth and Madison Avenues. My first impression of the building was total disbelief. *This* was the headquarters of the third largest union of industrial workers in the Congress of Industrial Organizations? It was an elegant, five-story building with a mid-nineteenth century aristocratic flavor, and it was once the Vanderbilt mansion. When I later asked a UE organizer about the building, the half-cynical, half-honest response, which I was to hear from so many members of the labor movement in so many different situations in the future, was, "Nothing's too good for the working class." Slightly overawed by the mirrored foyer and the marble steps sweeping up to the second floor, much grander than the Wall Street law office I had just left, I made my way up to the fifth floor office of David Scribner to report for work.

It was quite an introduction to the active practice of law. I, like so many of us who had grown up in the student radical movement of the thirties, had of course heard a great deal about David Scribner. He had a reputation for being one of the most brilliant lawyers in the labor movement. As I walked into his office that morning, I wondered how in the world I—four months out of law school and barely admitted to the bar—could be of any help here. The question was answered rapidly. After the briefest possible conventional greeting, Scribner leaned over the desk, picked up an envelope, and handed it to me. "Here are the train tickets," he said. I stared at him. "Train tickets? What train tickets? What for?" He shot back, "Oh, didn't Sy reach you last night to tell you? You've got reservations here for the sleeper for tonight. You're going out to Cleveland. There's a hearing before a hearing officer of the National Labor Relations Board, and you're going to handle it tomorrow."

I was thunderstruck. I felt as though I was stammering when I said, "What do you mean, handle a hearing? I've never been in a courtroom before. I don't know what to do. I can't possibly do it."

He looked at me across his desk for a moment, then smiled and said, "Look, I've got a theory about learning, about education, about how you learn to be a lawyer." As he paused, I sighed to myself, expecting to hear another of those philosophical renditions about legal education one gets so used to at law school. He continued, "Yes, I've got a real theory about learning how to be a lawyer. Go do it."

Actually what was happening was pretty much due to the force of circumstances. The UE was intensely involved in the first major round of national and local strikes that had broken out in the electrical industry after the end of World War II, demanding wage increases and improvements in working conditions. As a result, hundreds of legal proceedings of the most varied nature arising from the efforts of the companies to break the strikes, were taking place all over the country, and Scribner and Linfield desperately needed another body, another lawyer, to help cover the exploding situation. Neither of them had any time to take me by the hand and patiently teach me the practice of labor law. The pressures of the situation, combined with Dave Scribner's deep instinctive confidence in people's ability to learn from experience set up what developed into, for me, an extraordinary training school. Within a year I had been thrown into every conceivable form of legal struggle: administrative proceedings like the one I was heading to on my first day of work, courtroom battles from criminal courts to appellate arguments, arbitrations, grievance negotiations. And although I generally worked alone as a lawyer I was never alone in the most fundamental sense of the word. The teaching was constant and steady—from the union organizers from the people in the shops, from Dave Scribner, Sy Linfield and the national union staff. It was during this learning experience that the seeds were sown of that approach to law teaching which, years later, I would experiment with in the first legal clinics in the country at Rutgers Law School. These clinics would challenge head-on the centuries-old separation between theory and practice in legal education—the very issue that Professor Cheatham and I had discussed so intensely just before I graduated from Columbia.

In this sense Dave Scribner was one of the finest teachers of law

I have ever met. That first day in his office, after telling me simply, "do it," he gave me a transcript of an NLRB hearing he had handled a few weeks before and told me to skim through it on the train and pick up the flavor of what a hearing was like. Then he gave me the most important guidance of all. "Listen closely," he said, "to the people in the shop. They will fill you in and tell you what they need out of the hearing."

I stewed most of the night on the train to Cleveland, reading and rereading the transcript. More than anything else, I dreaded the prospect of sitting alone, the only lawyer in the courtroom during the company's presentation of evidence, and not being able to identify in time the theoretical grounds for objecting to testimony going into the record that I sensed was harmful to the union's case. At Columbia I had been very impressed by Professor Jerome Michael's course on the esoteric philosophical underpinnings of the law of evidence. What panicked me now was the realization that I would not have hours and hours patiently to uncover the philosophical roots of each sentence of testimony, so as to determine the basis for a legal objection, but would have to decide the grounds for objection on the spot.

Suddenly I hit upon a bold plan. I would pull six or seven of Dave Scribner's most convincing objections out of the transcript, write down their key words on a little piece of paper, hold it tight in my hand, and then, as evidence was introduced that my gut told me was damaging, look down at the slip and pick out the objection which best fit the bill. This was not exactly an intellectually sound solution for the underlying theoretical problems in the law of evidence, but it proved to be a wonderful security blanket. I have often thought how startled Professor Michael would have been had he known how one of his top students planned to face his first test on the law of evidence in the real world. At least I was able to sleep a little as the train headed for Cleveland.

When I was met at the station by the UE field representative, I received the happy news that the hearing had been put off until the next morning. Twenty-four more hours to figure out what to do. In those hours I began to learn a critical lesson for a people's lawyer. The most important preparation is not the careful analysis of the argument of the opposition, as necessary as that is. What is decisive in preparation is knowing your own people and, out of your relationship with them, coming to understand their thinking, their analysis of the problems facing them, and their perception of the solution, of what must be done.

That morning in Cleveland, as I sat in the local union headquarters with the UE staff representative and three or four of the local union officers, of necessity I was in a situation in which I had to listen, to ask questions, and to hear what they were saying. I had no alternative. I had not the foggiest idea what to do. Long after that first experience, I realized that in a sense this was the best thing that could have happened to me. Through no ability of my own, but because of the circumstances, I avoided the pitfalls that so many young lawyers fall into in similar situations. They feel that the problems involved are legal and, because they know the law, they have the answers to the problems and know what to do. Consequently, they do not listen to the people involved. And time after time, by focusing so strongly on the legal issues, they miss the actual problems and fail to develop the approaches really required.

This was not my problem. I had no conception at all of what the questions in the next day's hearing were going to be. I had only one possible approach. As I sat with the UE field organizer, the shop stewards, and the local union officers from the plant, I had to listen to them tell me what the problems really were, and what they needed from me.

The hearing was to be on an unfair labor practice charge, which had been filed by the union local against the company after the conclusion, a few months before, of a national strike. They explained to me what the strike had been all about and what the problems now were. The national phase of the struggle had ended when the national strike was settled with a contract. Now it was a question of negotiating a local supplement to the national agreement. But the union was in a complicated bargaining relationship with the local management. The plant managers refused to negotiate honestly on certain key local issues, including working conditions that were important to the workers in the plant. Things were going badly in the negotiations, and the union bargainers

needed some leverage with the local management. This was why the union had decided to press the unfair labor charges against the company which were the basis of the next day's hearing.

After listening to all this, I finally put to them the central question, "Tell me, what do you want? What do you really need? What are you trying to get out of tomorrow's proceeding?" This opened the flood gates. They were really not interested at all in whether they ultimately won an order from the NLRB that the company had been guilty of unfair practices. They needed two things. First, they needed time. They needed time to organize better their own union base in the plant in order to strengthen their bargaining position and to prepare, if necessary, for local stoppages. Second, to help this organizing process, they needed to take some initiative in the bargaining, to show both their own members and the other workers in the plant that they did not always have to sit back and take it from the company. There was a serious morale problem in the plant, because the union had not won much in the national agreement. Under these conditions, it was hard to organize a continued struggle around the local supplement. The NLRB charges were part of an effort both to gain time and to retake the initiative.

As the local union people explained the situation to me, I realized something which over the years was to become an essential ingredient in the building of a meaningful relationship between me as a people's lawyer and the people in struggle. The union members were being very patient with me. Maybe I was a lawyer, and maybe I knew a lot about the law, but I certainly did not know very much about them, or about the plant, or about their real problems. And they were patient in teaching me about these matters because of two things: they really needed my help, and I was really listening. That day in Cleveland I sensed, as I was to sense at so many other moments throughout the years, that to the degree that I honestly listened and did not arrogantly wave around an intellectual skill I was supposed to have as an instant solution to all problems, the people involved were more than willing to take the initiative in explaining problems and searching out answers along with me.

What finally emerged was a clear answer to what they really

wanted from me the next day in the hearing. Deep down, they wanted me to put up a good fight. They planned to pack the hearing room with workers from the plant. They particularly wanted me to take on the company vice president who was handling the bargaining negotiations. I was to call him as a witness, grill him, cross-examine him, and make clear to everyone in the room that just because he wore the mantle of the company he could not ride roughshod over everyone else. This was an important opportunity to challenge the company and the aura of absolute authority with which this vice president paraded around the plant, and it would give the workers an opportunity to see one of their own representatives, the union lawyer, taking the offensive against the company's representative.

We worked together all that day and late into the evening as the local union people supplied me with stories, episodes, material of all sorts to use in confronting the company's refusal to bargain in good faith. Knowing what was really needed, I concentrated on this factual preparation to expose the vice president's arrogance and refusal to bargain fairly with the local union representatives. While I intended to present the legal arguments as effectively as possible, I now understood the crucial objective to be the impact upon the workers themselves of the physical challenge to the company representative.

In the course of this very first experience as a UE lawyer, I began to learn what is often so difficult for many young lawyers just out of school to come to grips with, the fact that the test of success for a people's lawyer is not always the technical winning or losing of the formal proceeding. Again and again, the real test was the impact of the legal activities on the morale and understanding of the people involved in the struggle. To the degree that the legal work helped to develop a sense of strength, an ability to fight back, it was successful. This could even be achieved without reaching the objective of formal victory. Winning was often critically important, but over and over again the essential question would be the same as on that day in Cleveland: not whether the union was going to win or lose the NLRB proceeding, but whether the hearing was going to affect the strength of the workers in the plant. Did the legal struggle help to strengthen the

union? Or did it, as I would sometimes learn over the years, weaken the union? These were the central questions by which success could be tested, for in the long run, the struggles of the union with the company would be decided not by the labor board but by the strength of the union itself. Victory or defeat that day in Cleveland would be measured not by the ultimate ruling of the NLRB but by the immediate impact of the legal proceeding upon the organization of workers at the plant.

Yet another lesson for the functioning of a people's lawyer was driven home to me during that experience in Cleveland. After the hearing was over, something totally unexpected happened. By then I was worn out. The confrontation with management had seemed to go very well. I had sensed an excitement in the packed room when I took my courage in my hands and lit into the company representative, questioning him extensively about his refusal to bargain fairly with the local union. But I had summoned up every ounce of energy to carry off this first full-scale hearing, and I was ready to collapse. As I started to leave, the union field representative said, "OK, let's go to the meeting." I gasped, "What meeting? The hearing's over." He replied, "You don't understand. We're going to the local meeting. We always have a meeting of the local after an important hearing so that we can report back to the people."

Tired as I was, I now had to get up before three or four hundred people jammed into the local hall. After being introduced as the union lawyer and receiving a round of applause that felt very good after the long day's work, I was asked to tell what had happened at the hearing. This meant that I had to explain the developments in terms that everyone could understand, and answer the many questions which were then put to me. This was my first experience with the intense efforts of the leadership of the UE to build a union that was democratically controlled by the rank-and-file membership. As an essential first step toward that democratic control, the membership had to be made fully aware of every development that affected their lives. And this insistence upon rank-and-file knowledge was now being applied to the activities of the union lawyers. No elitism, no professionalism, could stand as a barrier between the lawyers of the union and the

people they represented. As the labor struggles intensified in the years to come, this insistence by the union's leaders upon a responsibility to report to the rank and file had a fundamental impact on my developing understanding of the role and function of a people's lawyer. It marked the beginning of my realization that no matter how experienced, clever, and resourceful that lawyer may be, the most important element is still the informed support and active participation of the people involved. Without this, a legal victory has very little meaning indeed.

THEWORLDNEWS II

PURVI & CHUCK: Community Lawyering

Written by Super User
Tuesday, 01 June 2010 07:20

Joseph Phelan of Organizing Upgrade sat down with Purvi Shah and Chuck Elsesser of the Community Justice Project based at Florida Legal Services in Miami in early April to discuss the role of lawyers in grassroots organizing, social movements, and building another world.

What is the relationship between lawyering and social justice?

Historically, while not always clearly articulated, different legal models have developed as to how to use the law to create social justice. The *civil legal-aid model*, believes that the major problem with the legal system is a lack of lawyers. It argued that if there were just enough lawyers to represent every single poor person, the courts would be able to administer a just result. The *test-case* or *impact litigation model*, believes that systemic social change can result from carefully targeted class action litigation. The *social-rescue model* believes that poverty is the result of failure of social and other support services, including, legal services.

The first two of these models believe in the underlying justness of the legal system – if you can simply have a lawyer to enforce the law, or have the right case argued to the right judge justice will result. The third model assumes that poor people are poor largely because of their own failings. They are simply "broken people" who need comprehensive services to be "fixed." Not one of these models takes into account the long standing systems of class and racial discrimination and oppression, which have resulted in systemic powerlessness of whole communities. Many of the classic conflicts between organizers and traditional legal services lawyers can be attributed to this disconnect between their differing theories of social change. Traditionally, lawyers and organizers have vastly differently analyses on why our world is the way it is.

We believe that the poverty of our clients is simply a symptom of the larger disease of systemic oppression and conscious inequality. We use legal advocacy to build the power of communities to challenge and eradicate these systems of inequality. In this model, rather than saviors or gatekeepers, lawyers are tacticians in the struggle for change. We call it community lawyering.

Can you break down your model a little more?

Similar to the different schools of thought in organizing (community vs. union, Alinksy vs. ideological), community lawyering has many different strains. What sets community lawyers apart from each other boils down to their answers to the following three questions: Who do you work with? What do you do for them? And how do you work together? Similar to organizing, the answers to these questions vary depending on the political orientation of the lawyer and the theory of social change they ascribe to.

Our particular brand of community lawyering believes in supporting community organizations and other organized groups of people (i.e. worker/tenant associations, community coalitions, and unions) that shift power through collective action and strategic campaigns. Like many organizers, we believe sustainable change comes through building large-scale, democratic organizations focused on building the power and conscious leadership of poor and working people. By using legal advocacy to support organizing, community education, and leadership development, community lawyering allows lawyers to have a much larger impact that any one lawsuit.

That brings us to the “what.” This is the area of our work that is least regimented. Pretty much anything is fair game. Depending on the campaign goals and our relationship with a particular organizer/organization, we will support a campaign with a variety of tactics including litigation, policy advocacy, research, community education, and infrastructure/institution building. In the past we have: conducted know-your-rights trainings; presented at public forums to advance campaign demands; worked with members to develop their public-speaking and writing skills; litigated individual cases on behalf of workers and residents; litigated actions on behalf of classes of workers, tenant associations or the base-building organizations itself; drafted policies or legislation; researched and provided technical assistance to develop a campaign strategy; and provided transactional and corporate advice to new and existing organizations.Our goalis to increases our clients’ participation and control over complicated and time-consuming legal processes that can otherwise be alienating. But perhaps more important than what we do, is what we aim not to do. We aim to transfer knowledge and skills to organizers and clients so that we are not relied on all the time. Through every case, we hope to be expanding the collective knowledge base within the organization.

For us, the “how” comes down to accountability. We believe that our clients (whether organizational or individual) are partners—not just in name—but in leadership, control and decision-making. The lawyer-client relationship is rife with power dynamics that do not evaporate simply because the long-term goals of the lawyer are aligned with that of the organizer or client. Therefore, we also believe that community lawyers must be engaged in a regular practice of self-scrutiny and self-reflection. If lawyers want to practice law in respectful, responsible and accountable manner, we believe you have to be constantly evaluating your work to determine if it perpetuates racism, sexism, homophobia, classism and elitism. To that end, we believe that community lawyers should be engaged in a process of political study and growth collectively with organizers. Poor communities of color face multiple and intersecting injustices and good lawyering requires a deep understanding of race, class, and power.

How are you as lawyers able to encourage collective power building?

The legal system in the Unites States is very individualistic. It tends to atomize disputes, which works against an organizing model. The legal system is designed to address disputes between a single plaintiff and a single defendant. Because of this, many ethical and procedural rules make it incredibly difficult to use litigation to achieve collective goals. For example, when you settle a lawsuit, attorney-client privilege only applies if you don’t involve a third-party in the discussion–which means organizers cannot be in the room when you discuss settlement with you client. The obvious solution would be to try to represent a group rather than individuals. But sometimes the rigorous procedural rules of litigation force disputes to remain individualized, because for whatever reasons we don’t have standing to represent the worker association nor tenant union as a whole. These rules and many others are serious obstacles to utilizing a collective approach to grievances.

Lawyers that are battling these obstacles have to constantly be thinking of mechanisms to both obtain positive results for their individual clients while furthering the goals of the client’s organization. We struggle with this challenge constantly and work with clients to reinforce their understanding of both their dispute as a collective grievance and the legal strategy as simply a tool in a collective response. Hopefully, the clients themselves will want to share their learning experiences and their increased understanding of the problem by continuing to participate in the organizational campaign. But poor clients and their families are burdened with enormous pressures so it doesn’t always work that way. However, we are constantly working in an educational way to foster that collective understanding of the problem.

Another common experience is that clients will be offered a settlement agreement that, while of marginal benefit to the collective, offers substantial benefit for the individual. We’ve seen this tactic used time and time again to split off individuals from the collective. Many lawyers handle these situations by simply communicating the offer to the client without any conversation about its benefits/detriments to the collective goals. Though we agree that ethical rules require lawyers to allow the client to make all settlement decisions, the rules do not prohibit honest and frank discussions between lawyers and clients about the individual and collective benefits of any possible settlement. We are not shy about reminding clients about the collective goals they had at the beginning of the case and that the individual settlement being offered to them doesn’t reflect their original goals. In this way, lawyers can work refocus clients back towards their initial collective vision.

What are some lessons you have from being lawyers and engaging in that level of consciousness raising, encouraging people to engage in collective action or understanding? What are the limitations that law puts on you in engaging in this type of work?

One of our major observations is that most people, regardless of their personal history, expect the legal system to deliver justice. Our educational system, T.V., pop culture, all reinforce the idea that ultimately if we have the opportunity to tell our story to a judge, justice would result. Initially, it is also important to remember that very, very few poor people ever get the opportunity to tell their story to a judge (at least on the civil side.) The number of poor people actually represented in civil disputes, such as landlord-tenant matters, is infinitesimal. However, so many people believe that if they could just get that “champion” lawyer, they would be able to obtain justice and fairness.

But the reality is that most of the harms experienced by poor and working people in this country simply are not illegal. Even if represented by the best lawyer, any poor person who goes into court will be outgunned by overwhelming resources. In addition, they face the systemic biases of both the substantive law and the judicial decision makers whether judge or jury. As such, the law quite literally is designed to protect private property and capital investment and not to render justice.

None of this is to say that we do not believe in challenging and pushing the law to change—reform struggles in the law can be incredibly important in highlighting contradictions and challenging the dominant narrative. We often engage in counter-hegemonic conversations with our organizer counterparts and our clients in order to set reasonable expectations around what type of justice is possible to obtain from the legal system. We consistently have to remind people that the law is a tactical tool, not a solution. We often times have shift perspectives from seeing winning the lawsuit as victory to seeing the lawsuit as simply an opportunity in a larger strategy.

In addition, we constantly remind the client and the group that the court is just another political venue. The truth is, sometimes we have to remind ourselves as well. Experience has taught us that when you pack the courtroom with thirty people, you transform that venue back into a political one where success is influenced by collective power. Judges like any other political entity respond to this. As people associate the political struggle with the legal victory it demystifies the whole process of the lawyer winning a case. You get something that is a response to the collective struggle and presence.

This model sounds like it is directly in line with this model of organizing that is paired with political education and leadership development of grassroots communities. What is the response to this coming from other lawyers? Is it growing in popularity?

This style of lawyering has been around. It has been present in different movements and different struggles but it remains fairly uncommon due to the challenges and obstacles to institutionalizing this approach. The first of these challenges is that, amongst lawyers (and the public), there is lack of understanding of what organizing is. A lot of lawyers out there simply don't understand what organizing is. It is this lack of a common language that often perpetuates the divide and disconnect between organizers and service providers. Part of it is that people are speaking different languages and can't see how to connect the dots. However, historically (and rightfully so), there has been considerable distrust of "community" lawyers. All organizers can recount examples of where lawyering in support of communities or in the name of communities has been done wrong and has created a lot more harm than good. Lawyers can take up a lot of space. Power can gravitate to lawyers. If both lawyers and organizers are not hyper-vigilant about managing and passing along that power, lawyers can be destructive for community organizations or organizers.

An additional challenge is that, unfortunately, young lawyers are not being taught community lawyering in law schools. If you are a progressive or left lawyer, there are not many places to get training to figure out how to lawyer in support of community organizing. There is a dearth of mentors and elders to train the next generation of community lawyers. Many progressives who decide to attend law school end up being frustrated and choose to never practice law. Like anything else, a community-based practice of law is something that has to be taught. Our project is working to bridge this gap by teaching in clinical programs at local law schools and running a summer institute for law students to train the next generation. Also, though there are a number of lawyers across the country engaged in the practice of community lawyering, the theory on community lawyering is, at best, embryonic. Those of us engaged in the practice have simply not been able to effectively distill and document our experiences in a cohesive and clear theory.

Finally, for those lawyers who believe in this type of work, most are housed in institutions that tie their hands because of limitations from funding sources. The vast majority of lawyers that represent low-income people are housed in legal-services/legal-aid organizations many of which are funded by the Legal Services Corporation Grants from the federal government. These LSC grants put specific limitations on the type of legal work grantees can engage in, the most notable being that LSC-funded lawyers cannot bring class actions and cannot engage in lobbying. These limitations, as they were designed to do, have had a stifling effect on community-based legal work. As a result, part of our work at CJP has been to build new partnerships and identify clear opportunities for community lawyering to occur within existing legal-services institutions. We firmly believe that the individual legal representation that traditional legal-services organizations engage in is still really important work. However, there are no funding restrictions that prevent that same work from being done in partnership with sophisticated community organizations. If just a small part of that resource could be redirected to lawyering support of organized communities that could have a huge impact.

When you go back and look at the history of the various models we have talked about they were all models that were led by people who had a belief they would work to affect social change. They were based on all sorts of ideas about how social change comes about at different points in our history. While one could argue their efficacy in the past, there is general agreement that they are no longer effective. Indeed the past decade has seen a dramatic retrenchment in the ability to bring social change cases into court. Simply getting past procedural challenges has

become an almost impossible barrier. And substantive challenges then confront an increasingly hostile judiciary and legislature. Lawyers who do this type of work are looking for more alternatives, and looking again at some of the ideas that were considered secondary when the appellate courts were more supportive, where the federal courts were much more open, where you used to be able to go into court and obtain a hearing and have an impact. That is not the case now. Models that take this change into account and internalize it and say that lawyers can still effect change become more attractive. This is a clear opportunity for community lawyering.

Can you tell us about some of your most effective collaborationswith community organizationsor community organizers?

We have worked on a number of different collaborations with local groups. But when you are in a defensive mode success is relative. But certainly we would say our collaboration with the Miami Workers Center around the Scott Homes Campaign was successful. [Scott Homes was a public housing project in Miami that was demolished using federal funds through the HOPE VI program]. Miami Workers Center and Low-Income Families Fighting Together waged an 8 year campaign to defend former residents' rights, and build back the projects. We worked with LIFFT and MWC throughout that campaign both as litigators and as advisors. We used the courts to: create a forum, a space, to push out a different perspective on HOPE VI; to bolster the political power of the residents; to slow down the project to some extent; and to provide organizers with knowledge of opportunities to insert themselves in the development process. We see it as a successful collaboration even though the projects have yet to be built back.

One of the enormous benefits of working with organizers is that they focus on a set of clear and specific demands. Those clear and specific demands in the Scott campaign were one-for-one replacement and the right to return. These demands dramatized and underlined what was wrong with HUD's existing program and highlighted the need to fix it. That, over time, is what allows for a change in the political climate. It is not individualized responses in different places it is a clear and cohesive response that makes change. That is an organizing approach and not a lawyer approach.

One of the other reasons that this was, and continues to be, a successful collaboration is because we [CJP and MWC] have been able to shift the debate in the policy world. The demands that came out of this campaign (and others like it) have infiltrated the U.S. Department of HUD. We recently attended a conference where the Secretary of HUD highlighted the right to return and one-for-one replacement as the crown jewel of a new HUD program. Whether HUD will truly honor and enforce these demands is up in the air (and probably unlikely), however, it is undeniable that the Scott fight and other similar fights like it across the country significantly shifted the debate and dialogue at the federal level. Rather than arguing about whether public housing residents should have the right to return when their homes are demolished, the conversation with HUD now is about *how* to truly ensure that public housing residents have the right to return.

That ability to shift the debate, and shift the conversation around policy really is the opportunity for lawyers and organizers. Whether we win our concrete campaign demands or not, the collaboration between lawyers and organizers creates real opportunities. Lawyers can pull organizers into spaces we have access to where these discussions are happening. Over time, these on-the-ground fights shift the general understanding of what true wealth and strength is in low-income communities, and change common sense to be that there is plenty worth preserving in low-income communities.

One of the challenges with campaigns like Scott and others we have been involved (such as Power U's Crosswinds campaign) is that victory is the absence of destruction. Even if we get one–for-one replacement, Scott will still never be back, that community will never be back and what we end up with is the least worst of the alternatives. Many organizing struggles in recent history have been strictly oppositional struggles focused on stopping the destruction of a community by unrestrained development and capital. One of the real challenges for organizers and lawyers and everybody that are fighting these campaigns is figuring out how to shift from these defensive battles where all we are trying to do is get the least worse result to battles that look at the creation of positive alternatives. This is something we all have a great deal to learn about.

What role can lawyers play in putting forward an alternative progressive vision?

Community organizers looking to build progressive social movements need to have a fairly sophisticated understanding of how the government works. This role is one that lawyers can play since lawyers, unfortunately, are the priests and priestesses of power. Our daily work involves engaging within systems of power. We can thus contribute to social movements a different perspective and analysis from within "the system."

Ultimately, it all depends on the relationship between the organizers and the lawyers. As relationships grow and as trust develops lawyers can be very important to have in the room as you are doing campaign planning and campaign development. We can see opportunities; we speak in the language of power. We can identify forums for the political dialogue. There is a real shared dialogue that can happen in a fruitful way. There are certain things that only lawyers can do. But there is also a whole bunch of thing that lawyers can do in support of communities that communities can do for themselves as well. The way we see our role if we know how to do something we try to pass that on, to allow

people to be in more control of information. As individuals deal with different situations they have an expanded vision of how to tackle what is going on in front of them.

In addition, when folks come up with alternative solutions, lawyers can figure out how to craft and implement solutions in a manner that truly changes people's lives. Is there something unlawful or illegal that's happening? Is there some way to advocate that the system function differently? Are there rights that are being trampled on? That is the main role lawyers can play. One thing we can do is break down the legal rule in a way that helps groups to facilitate their own power. We can say in particular project that there needs to be a hearing because the law says there needs to be a hearing, and we can help draft the language to the hearing. This has little substantive relevance but it does create a forum for political power and interface with whoever the government power is. We can interpret the rules in a way that allows the expression of the power and the will of the community to better impact the government.

While lawyers certainly are not central to change, lawyers have skills that throughout history have been useful for progressive and revolutionary movements for change. Gandhi and Mandela were both lawyers. And while being a lawyer is not what made each of these individuals most helpful or insightful, their legal training and legal skills were no doubt assets to the movements for a free India and a free South Africa.

Are there any legal openings or shifts in policy that ground organizing groups are not taking advantage of?

We could propose a couple from our experience. Our analysis is that most community organizations have been in a very defensive mode, they have been using all of their resources just to give up as little as possible. That leads to a certain type of organizing which is oppositional. There is a particular type of lawyering that goes a long with that, which blocks projects that tries to maintain the status quo. That has grown out of the objective reality of the past decade.

We think that the political conditions and the political moment have changed. The economic recession has stemmed the tide of the gentrification and the gobbling up of land, temporarily easing the pressures that were leading to the outright destruction of our communities. In addition, many organizers have played out the limits of that oppositional approach. We have seen the extent of which how much power that position can build. The trick now is to figure out how to take the next step that can affirmatively build power and institutions. We don't have a lot of examples because our clients have been so deeply involved in the defensive strategy. But people, at very low-levels, have been trying to build affirmative institutions and governing institutions. People are trying to figure out how to build successes that don't just maintain the status quo but that quantifiably improve the material conditions. That is a shift in the mode of organizing and lawyering.

We think this is the time for organizers and lawyers to develop solutions. To think deeply about how to design policies and programs that would work differently, to engage the hard practice of figuring what does work. Coming up with solutions is hard work. It requires all of us to engage in levels of conversation that we are not used to. We are used to protesting. We are used to bite-sized slogans and critique. But if we breakthrough our habits and beginning coming up with true alternatives, there are opportunities right now to implement these ideas. There are opportunities to amass more power and a larger base through providing services and tangibly changing the landscape of communities.

How to get in the game, when you have been shut out of it for so long, is the difficult thing. Therefore, we think it is still critical for organizers to engage in some bread and butter organizing. We still need political power to move ideas and capitalize on the opportunities out there right now. But overall, there is an increasing sense that opposition to gentrifying projects, destructive projects, destruction of communities is not enough in and of itself to build a significant movement. There has to be more than that to excite people, to build the kind of power that people need. Lawyers and organizers need to work together to inspire people to take action from their heart and souls.

The Community Justice Project was founded in 2008 to provide legal support to grassroots organizations in Miami's low-income communities. Rooted in the law and organizing movement, CJP's lawyering style has many names—community lawyering, political lawyering, movement lawyering—but fundamentally we believe that lawyers are most effective when they assist those most impacted by marginalization and oppression lead their own fights for justice.

*For the last eight years, **Purvi Shah** has worked for economic and racial justice at various organizing, legal, and policy organizations across the country. Purvi joined the staff at Florida Legal Services in 2006 to provide litigation and policy support to community organizations fighting gentrification in Miami's urban neighborhoods. In 2008, she co-founded the Community Justice Project, to develop and advance the theory and practice of community lawyering. Over the last four years, Purvi has litigated numerous cases on behalf of community organizations in the areas of affordable housing, racial justice, community development and tenant's rights. Purvi is also a law professor at the University of Miami, School of Law, where she co-directs the Community Lawyering Clinic. She serves as corporate attorney to the Miami Workers Center Board of Directors and a resource ally to the Right to the City Alliance. Purvi received her dual degree in Social Policy and Political Science from Northwestern University in 2002 and a law degree from the University of California, Berkeley School of Law (Boalt Hall) in 2006.*

Charles Elsesser *has almost 40 years of experience in lawyering for the poor. Early in his practice in the he represented poor people in California as a part of California Rural Legal Assistance, doing double duty as a Clinical Instructor of Law at University of Southern California Law Center in Los Angeles. Following this early training he served as the Director of Litigation at Legal Aid Foundation of Los Angeles, was awarded the Award of Merit by the Legal Assistance Association of California, served as Senior Consultant to the California State Senate Rules Committee, and the Director of the Housing Department of the City of Santa Monica, Ca. In 1992 he relocated to Miami, Florida. Initially he was employed as an attorney at Legal Services of Greater Miami, Inc. and, since 1997, he has worked at Florida Legal Services, Inc. where he has been involved in civil rights and housing litigation and advocacy, and where he co-founded the Community Justice Project along with Purvi Shah and Jose Rodriguez.*

http://www.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering