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Introductory Essay: Things Fall Apart: Hard Choices in Public Interest Law

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INTRODUCTORY ESSAY

Things Fall Apart: Hard Choices in Public Interest Law

ANTHONY V. ALFIERI*

INTRODUCTION

*“[F]ind out how you can prevent the extinction of our community.”*¹

Things fell apart for Housing for All, a civic association organized by tenants and homeowners from the Jim Crow west side of Miami’s Coconut Grove neighborhood (“the West Grove”), and its coalition partners and nonprofit legal team, in the aftermath of their successful law reform campaign in the fall of 2017. This essay addresses the upshot of that legal-political campaign as a springboard to examine competing public interest law firm triage regimes of withdrawal and intervention in group and organizational representation when the client group or organization, as here, falls apart. Narrowly configured as a limited exploration of client- and community-specific triage rationing systems in public interest law practice, the essay treats the lawyer or law firm decision to withdraw from representation as ethically defensible under the American Bar Association’s *Model Rules of Professional Conduct*, and yet, at the same time, as normatively counter-intuitive in the context of extant client and community need.²

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1. HOUSING FOR ALL, <https://www.housingforallmiami.org> [<https://perma.cc/YQM4-ULJL>] (last visited Apr. 6, 2018).

2. In general, the practice of group and organizational representation implicates the formation and scope of the attorney-client relationship, the effective communication and preservation of confidential information, the

As part of a well-timed public interest law symposium convened by the *Georgetown Journal of Legal Ethics* in the spring of 2018, the essay frames the dilemmas of law school clinic and public interest law firm triage decision-making against the backdrop of the current national crisis in access to justice, underscored by President Trump's recent proposal to eliminate funding for the Legal Services Corporation.³ The articles collected in the symposium, Tom Lininger's *Exploring Strategies to Promote Access to Justice*,⁴ Fabio de Sa e Silva's *Radicalism, Mythification, and Hard Issues in the Diffusion of "Public Interest Law" Across the Americas*,⁵ Paul Tremblay's *Surrogate Lawyering: Legal Guidance, sans Lawyers*,⁶ and Susan Carle's and Scott Cummings' *A Reflection on the Ethics of Movement Lawyering*,⁷ offer both descriptive and prescriptive insight to academics, advocates, and activists working in partnership with inner-city and outer-ring neighborhood groups in Miami and in urban areas throughout the nation to advance social justice campaigns. In fact, this symposium coincides with a moment of renewed academic interest and resurgent legal activism in inner cities for advocates pursuing law reform campaigns, academics studying social justice movements, and activists organizing low-income communities, especially historically burdened communities of color.

The essay proceeds in four parts. Part I briefly traces the history of the community-based law reform campaign recently advanced by Housing for All in the West Grove and the nettlesome public interest legal ethics questions left in its wake. Part II examines the basic form and content of public interest law triage regimes and the difficult dilemmas of lawyer or law firm triage decision-making in the context of community-based advocacy. Part III considers the dominant norms

clearance and resolution of conflicts of interest, the substantive counseling of the organization as client, and declination and withdrawal procedures. See MODEL RULES OF PROF'L CONDUCT R. 1.2, 1.4, 1.6, 1.7, 1.13, 1.16 (2017) [hereinafter MODEL RULES]. In the public interest practice of housing-related group and organizational representation, withdrawal may be precipitated by one or more triggering events, including the mass eviction and relocation of affected tenants, the organizational dissolution of a tenants' union, the conclusion of a law reform campaign, and the triage impact or sustainability determination by the law firm to terminate the representation.

3. See Sharon LaFraniere & Alan Rappeport, *Popular Domestic Programs Face Ax Under First Trump Budget*, N.Y. TIMES (Feb. 17, 2017), <https://www.nytimes.com/2017/02/17/us/politics/trump-program-eliminations-white-house-budget-office.html> [https://perma.cc/DB2T-ZUW9]; Alicia Parlapiano & Gregor Aisch, *Who Wins and Loses in Trump's Proposed Budget*, N.Y. TIMES (Mar. 16, 2016), <https://www.nytimes.com/interactive/2017/03/15/us/politics/trump-budget-proposal.html> [https://perma.cc/859M-ML3N]; see also Katie Benner, *Justice Dept. Office to Make Legal Aid More Accessible Is Quietly Closed*, N.Y. TIMES (Feb. 1, 2018), <https://www.nytimes.com/2018/02/01/us/politics/office-of-access-to-justice-department-closed.html> [https://perma.cc/76VT-QXCV].

4. Tom Lininger, *Exploring Strategies to Promote Access to Justice*, 31 GEO. J. LEGAL ETHICS 357 (2018) [hereinafter Lininger, *Exploring Strategies*].

5. Fabio de Sa e Silva, *Radicalism, Mythification, and Hard Issues in the Diffusion of "Public Interest Law" Across the Americas*, 31 GEO. J. LEGAL ETHICS 421 (2018) [hereinafter Silva, *Radicalism*].

6. Paul R. Tremblay, *Surrogate Lawyering: Legal Guidance, sans Lawyers*, 31 GEO. J. LEGAL ETHICS 377 (2018) [hereinafter Tremblay, *Surrogate Lawyering*].

7. Susan Carle & Scott Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447 (2018) [hereinafter Carle & Cummings, *Movement Lawyering*].

and practices of the community lawyering movement explicated by the founders of the Community Justice Project, a path breaking Florida public interest law firm and a national leader in the field of social justice.⁸ Part IV assesses an alternative set of norms and practices of social justice lawyering deduced from the work of Lininger on access to justice, Silva on public interest law, Tremblay on surrogate lawyering, and Carle and Cummings on the ethics of movement lawyering. Turn first to an abridged history of Housing for All and its West Grove campaign.

I. HOUSING FOR ALL

“[W]e believe community advocacy to be a spiritual task.”⁹

Established locally in 2016, Housing for All declared “safe housing” to be “a basic human right,” protested the eviction and displacement of low-income tenants, and advocated for the reform of landlord-tenant laws in Miami. Borrowing its legal-political tactics from contemporary city and state-wide tenants’ rights campaigns around Florida, Housing for All assembled local residents, recruited legal advocates, and mobilized civic activists in Miami to “put pressure on city officials and developers to make change” and to “[g]et the word out about the housing crisis in the West Grove and cities across the country.”¹⁰

In November 2016, Housing for All mounted a sit-in on Grand Avenue, the main east-west commercial corridor traversing the West Grove, to protest mass evictions at the dilapidated, twenty-eight-unit South Winds Apartments on nearby Hibiscus Street.¹¹ Thaddeus Scott, a founder of Housing for All and a

8. Community Justice Project (“CJP”) lawyers have educated, trained, and mentored clinical students at the University of Miami School of Law for many years. In 2016, the Law School’s Center for Ethics and Public Service honored CJP co-founder Charles Elsesser with its annual Lawyers in Leadership award. *See* UNIVERSITY OF MIAMI SCHOOL OF LAW, <http://www.law.miami.edu/academics/center-for-ethics-and-public-service> [https://perma.cc/6ZXC-CDNP] (last visited Mar. 13, 2018). In 2017, the Law School retained CJP to provide legal services to the School’s Environmental Justice Clinic for the spring and summer semesters. Letter of Agreement on file with the author.

9. HOUSING FOR ALL, <https://www.housingforallmiami.org/get-involved/> [https://perma.cc/TVS7-KHQA] (last visited Apr. 6, 2018) [hereinafter HOUSING, get involved].

10. *Id.*

11. A press release issued by Housing for All stated:

Residents of Coconut Grove plan a 24/7 sit-in style protest to begin today at 4:30 pm on Grand Avenue in response to the unjust displacement of their community. Each week, residents of Coconut Grove receive eviction notices - not because they have failed to pay their rent - but because slumlords have failed to maintain their properties, allowing them to be condemned and deemed “uninhabitable.” Residents are given 15 days notice to find new housing - in one of the nation’s toughest housing markets.

HOUSING FOR ALL, <https://www.housingforallmiami.org/news> [https://perma.cc/5GZU-45GZ] (last visited Apr. 6, 2018) [hereinafter HOUSING, news]. *See also* Brittany Shammass, *West Grove Residents Camp in Vacant Lot to Protest Rising Rents, Deteriorating Buildings*, MIAMI NEW TIMES (Nov. 16, 2016), <http://www.miaminewtimes.com/news/west-grove-residents-camp-in-vacant-lot-to-protest-rising-rents-deteriorating-buildings-8926872> [https://perma.cc/SE38-S29R]; Ariel Zirulnick, *There’s another side of Coconut Grove getting wiped out*, THE NEW TROPIC (Sept. 12, 2016), <https://thenewtropic.com/your-view-grove-demolitions/> [https://perma.cc/LXV8-8AL2] (describing South Winds as “a building of working citizens, the elderly, and the disabled”).

native of the West Grove, justified the sit-in on human rights grounds, remarking: “Our city and county leaders cannot sit idly by while families who have lived in the Grove for generations are forced out.” Safe housing, he said, “is a basic human right.” Echoing Scott, Renescha Coats, a South Winds Apartments tenant and the mother of four children, added:

We are the forgotten . . . The City has known about what has been happening at our building and 11 other buildings, and has done nothing. We have upheld our duties as tenants, but the landlord has continually ignored the law with no consequence. Now we stand to be removed from our lifelong community. That is unfair and unjust.¹²

Since the post-war civil rights era of the 1950s and 1960s, the West Grove, a historically Bahamian and “once thriving African-American enclave,” spanning a sixty-five-block, half-square-mile, has suffered intensifying socioeconomic impoverishment.¹³ Indeed, by 2002, “more than 40 percent” of the West Grove’s “3,000 residents lived below the poverty level.”¹⁴ Of those vulnerable, “cost burdened” residents,¹⁵ many are month-to-month renters facing the looming threat of eviction and displacement,¹⁶ a market-enforced and municipally-sanctioned urban out-migration reminiscent of earlier periods of “Negro Removal” in South Florida.¹⁷ Today, as a direct consequence of the mass eviction of low-income tenants, the government under-enforcement of housing health and safety codes, and the widespread demolition of low-income housing, the landscape of the West

12. HOUSING, news, *supra* note 11.

13. HOUSING FOR ALL, <https://www.housingforallmiami.org/west-grove> [https://perma.cc/FF5Q-KCPS] (last visited Apr. 6, 2018).

14. *Id.*; see also HOUSING, get involved, *supra* note 9.

15. Sarah Moreno, *The hidden side of Miami’s housing crisis puts tenants in a tough spot*, MIAMI HERALD (Jan. 22, 2018), <http://www.miamiherald.com/news/local/article195687409.html> [https://perma.cc/SMJ5-JK8F].

16. See Jimmie Davis Jr., *Relocation of evicted West Grove residents slow: City officials have funds to rehab the apartments and relocate the displaced*, MIAMI TIMES (Dec. 7, 2016), http://www.miamitimesonline.com/news/relocation-of-evicted-west-grove-residents-slow/article_8b18c360-bc98-11e6-9a02-1fece75b849f.html [https://perma.cc/YB77-WPFP]; Jessica Lipscomb, *Miami Sues Coconut Grove Landlords for Renting Moldy, Sewage Filled Apartments*, MIAMI NEW TIMES (Aug. 22, 2016), <http://www.miaminewtimes.com/news/miami-sues-coconut-grove-landlords-for-renting-moldy-sewage-filled-apartments-8699775> [https://perma.cc/24HF-YANJ]; David Smiley, *Evictions, profits, and slum: the slow fade of Grand Avenue*, MIAMI HERALD (Dec. 2, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article118514978.html> [https://perma.cc/A8YP-ES45]; David Smiley, *Terra Group cancels contract to buy Grand Avenue properties, but remains interested*, MIAMI HERALD (Dec. 7, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/article119433968.html> [https://perma.cc/ZV8K-Z5YL].

17. See N.D.B. CONNOLLY, A WORLD MORE CONCRETE: REAL ESTATE AND THE REMAKING OF JIM CROW SOUTH FLORIDA 144 (2014); Chanelle Nyree Rose, *Neither Southern Nor Northern: Miami, Florida and the Black Freedom Struggle in America’s Tourist Paradise, 1896–1968* (Dec. 2007) (unpublished Ph.D. thesis, University of Miami) (on file with author) (“Many [Miami] blacks began calling urban renewal ‘Negro Removal’ because of the large displacement of so many people . . .”) [hereinafter Rose, *Neither Southern Nor Northern*].

Grove is marred by “almost 200 abandoned buildings and vacant lots.”¹⁸

In early 2017, to mitigate the threat of imminent eviction and to better safeguard other at-risk, low-income tenants throughout the West Grove, Housing for All marshalled a grassroots campaign petitioning the City of Miami Commission, the elected local governing body with legislative powers to pass ordinances and to adopt regulations conferred by the Charter of the City of Miami,¹⁹ to enlarge the minimum fifteen-day tenant eviction notice period codified under Florida landlord-tenant law. The campaign pointed to evidence that “[w]omen and children, and Black women in particular, are disproportionately impacted by evictions,” especially “long term impacts on mental health and a family’s financial stability,” and noted that “an eviction . . . can follow [a displaced tenant] for life, making it harder to find a place to live or get a job.” Although Housing for All conceded that the revision of a single eviction law notice provision “may not seem transformative,” it pressed ahead with the initiative to “improve conditions for Miamians” and to signal “a positive first step towards stemming the housing crisis.” On this proffered “common sense” view, Housing for All asserted that the campaign presented a legislative “opportunity for a win for tenants’ rights” and “our one shot at moving renters [sic] rights forward locally before taking on Tallahassee” in the Florida legislature.²⁰

On June 10, 2017, Housing for All prevailed in its local law reform campaign when the City of Miami Commission voted to enlarge the eviction notice period to thirty days for tenants without a written lease, “double what Florida law requires.”²¹ The Miami Herald and other civic-minded activists hailed the vote as a significant victory for tenants.²² To commemorate its legislative victory, Housing for All proclaimed: “West Coconut Grove tenants have fought back against slumlords, displacement of the Black community, and because of their hard work, tenants across Miami just had one of the biggest wins we’ve seen in over 20 years!” In related public pronouncements, Housing for All emphasized the role of grassroots leadership in spearheading the campaign, commenting that “directly impacted people from our community led the way” by building on “the decades of work by tenant leaders from Miami Workers Center, New Florida Majority, FANM, Power U, and more.”²³

18. Rose, *Neither Southern Nor Northern*, *supra* note 17.

19. 1925 Fla. Laws. ch. 10847.

20. HOUSING, news, *supra* note 11; *see generally* MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

21. Martin Vassolo, *Miami commissioners approve extended notice for tenants facing displacement*, MIAMI HERALD (June 08, 2017), <http://www.miamiherald.com/news/local/community/miami-dade/article155203724.html> [<https://perma.cc/C83K-HT7P>].

22. *Id.*; HOUSING, news, *supra* note 11.

23. HOUSING, news, *supra* note 11. The Miami Workers Center, New Florida Majority, FANM, and Power U are advocacy organizations representing low-income communities of color (*e.g.*, Black and Brown youth, Haitian women and their families) in legal-political rights campaigns within Miami and Florida. *See* MIAMI WORKERS CENTER, <http://www.miamiworkerscenter.org/index.php?page=about-us> [<https://perma.cc/9CP4->

Despite its successful law reform campaign, Housing for All struggled to sustain its tenant-centered, human rights campaign in the West Grove. By October 2017, riven by intragroup dissension as well as class- and race-based tensions,²⁴ Housing for All had fallen apart and effectively disbanded. In the wake of that collapse, local housing justice advocates and activists have labored for months to rebuild the organizational structures of low-income tenant and homeowner advocacy and to reassemble functioning coalition partnerships in the West Grove.

The collapse of Housing for All, and the ensuing break up of its coalition partnerships and departure of its nonprofit legal team, and the now ongoing process of rebuilding organizational structures and reassembling coalition blocks in the West Grove to stand in its place together raise vexing ethical and normative questions central to the practice of group and organizational representation in unrepresented and underrepresented inner-city communities. The questions pose challenges of both legal formalism, in the application of legal ethics rules, and legal-political instrumentalism, in the formulation of short-term and long-term campaign advocacy tactics and strategies.

From the formalist perspective of legal ethics regulation governing public interest lawyers and law firms, the collapse of Housing for All implicates the formation and scope of the attorney-client relationship, the effective communication and preservation of confidential information, the resolution of conflicts of interest, the counseling of the organization as client, and declination and withdrawal procedures.²⁵ Consider, for example, the appropriate scope of the attorney-client relationship in local community group-led, single-issue law reform campaigns of limited duration and scale, or the resolution of constituent and organizational conflicts of interest rooted in class- and race-based tension, or the suitability of public interest law firm withdrawal protocols in safeguarding client interests.

From the instrumentalist perspective of campaign advocacy tactics and strategy, by contrast, the collapse of Housing for All entangles public interest lawyers and their law firms in the moral dilemmas of triage decision-making²⁶ regarding case- and community-specific withdrawal and intervention. Consider, for example, the competing norms of withdrawal and intervention in group and organizational representation when confronted by persistent and unresolvable dissension, or the impracticability of coalition coordination, or the institutional unsustainability of continued legal representation. Embedded in public interest practice waged, as here, under circumstances of unequal access to justice, these formal and instrumental triage considerations animate the work of community and movement

CNUU] (last visited Apr. 6, 2018); THE NEW FLORIDA MAJORITY <https://newfloridamajority.org/wp/about/> [<https://perma.cc/Z8VU-X7DU>] (last visited Apr. 6, 2018); POWER U CENTER, <http://poweru.org/about-us/> [<https://perma.cc/V69G-TWYS>] (last visited Apr. 6, 2018).

24. Interview with Thaddeus Scott, member, Housing for All, in Miami, Fla. (Feb. 23, 2018).

25. See MODEL RULES R. 1.2, 1.4, 1.6, 1.7, 1.13, 1.16.

26. For discussion of utilitarian and egalitarian triage principles of justice in modern medicine, see GERALD R. WINSLOW, TRIAGE AND JUSTICE 60–109 (1982).

lawyering. The next Part examines the general form and substance of public interest law triage regimes, and their attendant ethical and moral dilemmas, in situations like the West Grove.

II. PUBLIC INTEREST LAW TRIAGE REGIMES

*“[W]hat comes when the law leaves a dream gutted.”*²⁷

Historically, civil legal services providers have responded to the scarcity-induced crisis in access to justice²⁸ by experimenting with various forms of rationing.²⁹ Under these shifting rationing schemes, legal services providers in the fields of community advocacy, direct service, and law reform perform a troubling “gatekeeping” function guided by *ad hoc* triage delivery norms and practices within litigation³⁰ and transactional³¹ settings. At a street level, scarcity-driven triage decision-making typically operates in a client-³² or case-centered,³³ rather than a campaign-³⁴ or community-centered,³⁵ fashion. Both client- and case-centered triage models attempt to achieve an optimal level of efficiency in the micro-allocation of services to individual clients or subclasses of clients in selected case or doctrinal contexts. Similarly, campaign- or community-centered triage models seek to attain an optimal level of efficiency in the macro-allocation of services to client groups or organizations in selected neighborhood and regional contexts. The client groups and organizations at stake may stand organized

27. JOSHUA BENNETT, *On Blueness*, in *THE SOBBING SCHOOL* 66 (2016).

28. See DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2004); Anthony V. Alfieri et al., *Service Delivery, Resource Allocation and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 *YALE L. J. ONLINE* 45 (2012); Jeanne Charn & Richard Zorza, *The Bellow-Sacks Access to Civil Legal Services Project*, CIVIL LEGAL ASSISTANCE FOR ALL AMERICANS (2005), <http://www.courts.ca.gov/partners/documents/bellow-sacks.pdf> [<https://perma.cc/CEP3-8YNQ>].

29. See Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 *HARV. L. REV.* 805 (2008); Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 *B.U. L. REV.* 337 (1978).

30. See Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1999); Richard Zorza, *The Access to Justice “Sorting Hat”: Towards a System of Triage and Intake That Maximizes Access and Outcomes*, 89 *DENV. U. L. REV.* 859 (2012).

31. See Paul R. Tremblay, *Rebellious Strains in Transactional Lawyering for Underserved Entrepreneurs and Community Groups*, 23 *CLINICAL L. REV.* 311 (2016); Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 *WASH. U. J. L. & POL’Y* 11 (2015).

32. See Troy E. Elder, *Poor Clients, Informed Consent, and the Ethics of Rejection*, 20 *GEO. J. LEGAL ETHICS* 989 (2007); Adrienne Jennings Lockie, *Encouraging Reflection on and Involving Students in the Decision to Begin Representation*, 16 *CLINICAL L. REV.* 357 (2010).

33. See Leonore F. Carpenter, *Getting Queer Priorities Straight: How Direct Legal Services Can Democratize Issue Prioritization in the LGBT Rights Movement*, 17 *U. PA. J.L. & SOC. CHANGE* 107 (2014).

34. See Jennifer Gordon, *The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 *CAL. L. REV.* 2133 (2007); Paul R. Tremblay, *Counseling Community Groups*, 17 *CLINICAL L. REV.* 389 (2010).

35. See Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 *TEX. L. REV.* 635 (2012) (book review); Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 *ASIAN PAC. AM. L.J.* 1 (2000).

or disorganized, or somewhere loosely in between, depending on historical conditions.

For legal aid bureaus, public interest law organizations, and law school clinics, lawyers frequently dominate the triage decision-making process, including the pivotal initial decision to opt in favor of organized groups to maximize positive campaign impacts and constructive community outcomes. When public interest law firms adopt triage policies and practices at intake that overtly or covertly favor the representation of organized groups, they systematically disadvantage unorganized or disorganized communities, communities more likely to be burdened by higher rates of socioeconomic impoverishment, political disenfranchisement, and legal underrepresentation. Anecdotally, despite rhetorical protests to the contrary, the adoption of group-regarding triage policies and practices appears generally to be steered by internal institutional leaders, for example by board directors and officers or legal staff decision makers, instead of external community constituents, for example client groups and partners. In this respect, group-regarding triage policies and practices tend to be non-consultative or minimally consultative.

Fully grasping lawyer or law firm triage rationing regimes under conditions of inner-city concentrated poverty requires an investigation of the ethical norms and practices of decision-making inside respected community-oriented public interest law firms like Pegasus Legal Services for Children in New Mexico³⁶ or the Community Justice Project in Miami and, by extension, established law school clinics like the Community and Economic Development Clinic at the University of Michigan³⁷ or the Environmental Justice Clinic and its companion Historic Black Church Program at the University of Miami's Center for Ethics and Public Service.³⁸ For more than a century, the West Grove and other inner-city Miami neighborhoods have suffered the disproportionate socioeconomic burdens of concentrated poverty. Those burdens include public and private sector disinvestment, nonprofit and philanthropic sector neglect, and widespread social disorganization.

36. See Tara Ford, *Pegasus Legal Services for Children: Taking Stock of a Rebellious Non-profit Practice in New Mexico*, 23 CLINICAL L. REV. 107 (2016).

37. See Alicia Alvarez et al., *Teaching and Practicing Community Development Poverty Law: Lawyers and Clients as Trusted Neighborhood Problem Solvers*, 23 CLINICAL L. REV. 577, 586–92 (2017).

38. Housed together at the Law School's Center for Ethics and Public Service, the Environmental Justice Clinic and Historic Black Church Program provide education, research, policy, and advocacy resources to inner-city communities of color in South Florida, including the West Grove. See Center for Ethics and Public Service, *Center for Ethics and Public Service 2016 Annual Report*, U. MIAMI SCH. OF LAW 1–3 (2016), <http://media.law.miami.edu/center-ethics-public-service/pdf/2016/CEPS-2016-Annual-Report.pdf> [<https://perma.cc/85V8-ZPFP>]. For documentation of these efforts, see Anthony V. Alfieri, *Community Education and Access to Justice in a Time of Scarcity: Notes from the West Grove Trolley Garage Case*, 2013 WIS. L. REV. 121; Anthony V. Alfieri, *Educating Lawyers for Community*, 2012 WIS. L. REV. 115; Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5 (2016).

The instant analysis of triage rationing is predicated on the claimed relevance of group-specific and community-wide social disorganization³⁹ to the pedagogy and process of legal-political advocacy. On this claim, the presence of inner-city social disorganization, reflected in neighborhood instability and group disarray, warrants reconsideration of standard triage approaches to group and organizational representation and stock legal-political advocacy strategies. At a minimum, reconsideration entails evaluating the ethics and norms of triage models privileging the representation of organized groups over disorganized groups. In this way, the investigation revisits and extends my own recent work on community triage intervention by law school clinics and legal services providers to incorporate broader economic and political considerations of group and organizational representation. Of necessity, the instant inquiry brackets many of the foundational concerns of group and organizational representation long expressed by moral philosophers and legal ethics scholars.⁴⁰

Lawyer-directed triage intervention, as practiced by either law school clinics or legal services and public interest organizations, describes both the decision-making procedure and the final normative judgment to provide or to withdraw legal resources such as rights education, direct service, law reform, policy research, and transactional assistance, to politically and economically subordinated individuals and groups. Elsewhere I have argued that a defensible community triage process and outcome ought to involve an ongoing collaborative interchange between clinics and providers and their prospective clients or partners to determine when and how to mobilize social justice campaigns in neighborhoods lacking not only political representation and economic capital, but also the sociocultural architecture of civic governance and democratic participation.⁴¹ The inner-city and outer-ring neighborhoods of metropolitan Miami served by legal services providers and public interest law firms, including the Environmental Justice Clinic, lack meaningful participatory forms of political and economic self-governance. In point of fact, they oftentimes lack a well-functioning organized group or civic infrastructure of any kind. In this dual sense, Florida communities of color, especially African American and African-Caribbean neighborhoods, continue to endure the racialized inequities of the Jim Crow era. The next Part considers the innovative mission of the Community Justice Project to reach out to, and collaborate with, grassroots neighborhood

39. For more on social disorganization in the inner city, see DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

40. See generally DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 306–16 (1988); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000).

41. See Anthony V. Alfieri, *Inner-City Anti-Poverty Campaigns*, 64 UCLA L. REV. 1374 (2017).

organizations through legal-political partnerships to combat economic and racial inequality in Miami.

III. THE COMMUNITY JUSTICE PROJECT

*“We are community lawyers.”*⁴²

Founded in 2006 under the auspices of Florida Legal Services “to undertake a conscious, self-reflective ‘community lawyering’ practice,”⁴³ and subsequently incorporated in 2014 as an independent Florida nonprofit corporation, the Community Justice Project, Inc. (“CJP”) embraces the mission of “community lawyers.”⁴⁴ To community lawyers, the poverty of clients and communities evidences “systemic oppression and conscious inequality,” rather than behavioral pathology, genetic predisposition, or moral defect. By instrumental definition, their function is to “use legal advocacy to build the power of communities to challenge and eradicate . . . systems of inequality.”⁴⁵

From the outset of its formation, CJP announced: “We are community lawyers. We support organizing for racial justice and human rights with innovative legal work.”⁴⁶ According to this vision of legal work, lawyers “collaborate closely with community organizers and grassroots groups in low-income communities of color” to “assist those most impacted by marginalization and oppression” in leading “their own fights for justice” and in seeking “a more democratic, more just and more equal society.”⁴⁷ An offshoot of the law and organizing movement,⁴⁸ CJP situates legal work in “grassroots organizing” and in “social movement” campaigns.⁴⁹ For CJP, lawyers stand not as “saviors or gatekeepers” but as “part” and parcel of social movements.⁵⁰ Put simply, community “lawyers are tacticians in the struggle for change.”⁵¹

42. COMMUNITY JUSTICE PROJECT, <http://communityjusticeproject.com/> [https://perma.cc/8JRJ-LQEA] (last visited Apr. 6, 2018) [hereinafter COMMUNITY JUSTICE PROJECT].

43. Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 375 n.1 (2013) [hereinafter Elsesser, *Community Lawyering*].

44. See Community Justice Project, Inc., Articles of Incorporation, Art. VI (1) (Dec. 17, 2014).

45. Joseph Phelan, *Purvi & Chuck: Community Lawyering*, ORGANIZING UPGRADE (June 1, 2010), <http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering> [https://perma.cc/4V9K-Y2JF] [hereinafter Phelan, *Community Lawyering*].

46. COMMUNITY JUSTICE PROJECT, *supra* note 42.

47. Phelan, *Community Lawyering*, *supra* note 45.

48. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995); Aaron Samsel, *Toward A Synthesis: Law as Organizing*, 18 CUNY L. REV. 375 (2015); see also Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. REV. L. & SOC. CHANGE 615 (2000–01).

49. Phelan, *Community Lawyering*, *supra* note 45.

50. *Id.*; COMMUNITY JUSTICE PROJECT, <http://communityjusticeproject.com/mission> [https://perma.cc/EAK4-3P6A] (last visited Apr. 6, 2018).

51. Phelan, *Community Lawyering*, *supra* note 45.

A. FOUNDING PRINCIPLES AND VALUES

CJP's founding principles and values arise in substantial portion out of the equal access to justice crisis in American law and society. As a starting point, CJP posits that the American legal system structurally limits equal access to justice "especially for people in poverty, minorities, and those faced with language and cultural barriers." To improve indigent access to the civil justice system, CJP recommends "training lawyers to be more aware of and skilled in addressing the needs of indigent communities" in areas of desperate need, such as housing, employment, public benefits, immigration, and community economic development. This training envisions clients as "partners—not just in name—but in leadership, control and decision-making."⁵²

On this logic, client partnerships must be "responsive to what communities determine to be their needs." To be responsive, CJP explains, "lawyers must ground their legal advocacy in community-based efforts" and "strive to work collaboratively with community-based organizations in order to shift power back to disadvantaged communities." Collaboration of this type ensures "the strength and backing of an organized and informed community" in the enforcement of legal gains won in administrative, legislative, and judicial forums.⁵³

CJP channels its collaborative efforts of legal advocacy into "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."⁵⁴ Contingent on legal-political campaign goals and relationships, advocacy support may entail grassroots organizing and leadership development strategies and, moreover, encompass "litigation, policy advocacy, research, community education, and infrastructure/institution building" tactics.⁵⁵ For both organizational and individual client partners, those strategies and tactics serve to increase participation and control, expand and transfer collective knowledge and skills, and help build large-scale, democratic organizations.⁵⁶

CJP acknowledges the difficulty of advancing the interests and objectives of organizational and individual clients simultaneously. To "obtain positive results

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* CJP enumerates a wide range of community lawyering strategies and tactics. During their decade-long work, for example, CJP lawyers 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.

Id.

for their individual clients” and, at the same time, to “further[] the goals of the client’s organization” in the framework of a social justice campaign, CJP’s lawyers “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.” The educational challenge of fostering such a collective understanding dictates what CJP calls “counter-hegemonic conversations” with clients and organizers about the politics of law, courts, and social policy.⁵⁷ Conversations on the politics of law and policy, according to CJP, create on-the-ground access for lawyers and organizers to individual and group clients, and open up opportunities for inclusive debate over affirmative and oppositional strategies and tactics.⁵⁸

Power, CJP concedes, may skew this debate. Oftentimes lawyers and organizers may wield social power, either deliberately or inadvertently, to dominate the legal-political representation of individual and group clients.⁵⁹ To prevent such domination and to promote collaborative dialogue, CJP commends the regular practice of lawyer self-scrutiny and self-reflection.⁶⁰ For CJP, the conscious practice of lawyer self-scrutiny encourages respect, responsibility, and accountability toward clients and partner organizations.⁶¹ This respectful stance, according to CJP, demands “culturally sensitive, politicized attorneys” equipped with “a deep understanding of race, class, and power” acquired through “a process of political study and growth collectively with organizers.”⁶² In this regard, CJP maintains, “a community-based practice of law is something that has to be taught.”⁶³

CJP’s institutional principles and values echo and extend the traditions of both community and movement lawyering in crafting a critical, institutional response to the equal access to justice crisis in American law. Like an increasing number of community-based law school clinics, CJP reimagines skills training and client-centered advocacy in terms of group- or community-centered collaboration and partnership. On this reimagined axis, the locus of decision-making, and its concomitant power, shifts to organized groups and their collective political and social knowledge. Invoking “counter-hegemonic conversations” as a means to facilitate that shift and substituting “political study” with “organizers” for client-lawyer dialogue in group and community contexts, however, not only elides the directives of legal ethics rules, but also risks displacing the fiduciary norms of care and loyalty at the crux of representation.

57. *Id.*

58. *Id.*

59. See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2118–19 (1991); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1918 (2007); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 740–41.

60. Phelan, *Community Lawyering*, *supra* note 45.

61. *Id.*

62. *Id.*

63. *Id.* See also Amna A. Akbar, *Law’s Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 371 (2015); Scott L. Cummings, *Teaching Movements*, 65 J. LEGAL EDUC. 374, 378 (2015).

B. COMMUNITY LAWYERING NORMS AND PRACTICES

On their face and as applied, CJP's principles and values closely align with the norms and practices of the community lawyering movement.⁶⁴ Charles Elsesser, a CJP founder well-versed in the "strains and tendencies" of poverty law and the histories of the labor and civil rights movements, discerns two "unifying" currents animating the community lawyering movement.⁶⁵ The first current stems from "a deep unease with the degree to which the representation of poor and working people has been individualized, atomized, depoliticized and divorced from any leadership by real organized constituencies with their own substantive and political goals."⁶⁶ The second current springs from "a realization that meaningful systemic change cannot result from this depoliticized and atomized approach."⁶⁷ These currents converge in "the search for a law practice that recognizes the centrality and leadership of the organized constituency in achieving meaningful change."⁶⁸

Twin principles inform Elsesser's "constituency" mapping of clinical and public interest practices. A core, foundational principle links advocacy to "organized constituent groups."⁶⁹ To Elsesser, community lawyers must not only collaborate with "organized constituent groups," but also "build organizational power."⁷⁰ A related, derivative principle ties advocacy to the development of community-based "leadership." To Elsesser, community lawyers must "consciously build . . . community leadership," sometimes from the ground up.⁷¹

From these principles, Elsesser erects the scaffolding of community lawyering around the critical practices of "organizational work, leadership development and power building."⁷² Rooted in the "common grievances" of tenants, immigrants, low-wage workers, and the disenfranchised, at CJP and frontline public interest law firms elsewhere, those "supportive" practices refocus the lawyer's role on "building large-scale, democratic organizations" through community education, grassroots organizing, and conscious leadership development in aid of social justice campaigns.⁷³ By organizing, Elsesser means "a more sustained process whereby people come to understand and articulate a campaign's goals and

64. See Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1763–64 (1994) (reviewing GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992)); Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101, 1129–56 (1990).

65. Elsesser, *supra* note 43, at 375–76.

66. *Id.* at 376.

67. *Id.*

68. *Id.*

69. *Id.* at 377.

70. *Id.*

71. *Id.*

72. *Id.* at 384.

73. *Id.* at 384–85.

empower themselves to continued action on behalf of those goals.”⁷⁴

Instead of casting lawyers in the conventional role of litigation campaign directors, this alternative role requires lawyers to partner with “groups who are sophisticated in mounting and directing campaigns and have a history of organizing.”⁷⁵ Citing the complex “dynamics of an organizing campaign,” Elsesser explains that “relatively sophisticated organizing groups are able to avoid the pitfalls of working with lawyers,” in contrast to “newer or less experienced groups” which stand “much more prone to see lawyers and lawsuits as the ‘silver bullets,’ regardless of the nature of the campaign.”⁷⁶ Under this utilitarian rationale, the more sophisticated and experienced the organizing group, the more likely “legal work” will bolster the organizing campaign.⁷⁷

Elsesser’s institutional preference for forging legal-political partnerships with sophisticated organizations already endowed with campaign “capacity” and “experience” appears in no way to preclude partnerships with organizations lacking “internal cohesion and direction.”⁷⁸ Still, he cautions that partnership alliances with grassroots organizations lacking a strong and cohesive “infrastructure” seldom result in “long-term organizational growth or systemic change.”⁷⁹ Moreover, he warns that lawyers are ill-equipped to perform the “dual role” of advocate and organizer for reasons of role-differentiation, time constraint, and leadership dissonance.⁸⁰ In situations of underdeveloped community infrastructure, he notes, the task is to cultivate “a very close relationship with the community in order to locate and relate to the indigenous community leaders/organizers.”⁸¹

For Elsesser, leadership development stands integral to “any successful power building campaign.”⁸² From this standpoint, the daily events of a legal-political campaign—“internal, external, public, or private”—give rise to “opportunities for organizational leaders to grow” and for the “collective knowledge skill base” of an organization to expand.⁸³ Elsesser suggests that leadership development and organizational growth are more likely to flourish when community-based constituencies direct and staff the campaign themselves.⁸⁴ Constituency control, he observes, also enhances lawyer and law firm political accountability to clients groups and organizations.⁸⁵

74. *Id.* at 392.

75. *Id.* at 386.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 386–87.

81. *Id.* at 387.

82. *Id.* at 395.

83. *Id.* at 395, 400.

84. *Id.* at 400–01.

85. *Id.* at 401.

To increase lawyer and law firm accountability for the hard choices of legal-political triage decision-making, Elsesser puts forward five generalizable factors for public interest law firms to consider in making an institutional self-assessment of the potential costs and benefits of a community- or constituent group-targeted campaign.⁸⁶ The factors gauge both community impact and law firm sustainability. The first and second factors measure “the degree to which the campaign would result in tangible benefits” for low-income families and their communities and, moreover, build the “power” of relevant community organizations.⁸⁷ The third and fourth factors calculate the “degree” to which the campaign would be “likely to change the terms of the debate in favor of the needs of low income minority communities” and also “help[] build the next generation of community lawyers.”⁸⁸ The fifth factor estimates the “degree” to which the campaign would work to “sustain[]” an engaged law firm itself as an “organization,” for example in buttressing its mission, external funding, partnership network, and staffing.⁸⁹

In the fall of 2017, the disintegration of Housing for All confronted West Grove activists and advocates with a hard triage choice—either withdraw their group and organizational support and reallocate their legal-political resources for greater impact and wider partnership elsewhere or intervene locally to help mediate intragroup tension and rebuild group and organizational capacity. Applied here, Elsesser’s five-factor campaign constituency test tips toward law firm institutional sustainability as the determining factor in triage decision-making of this kind. To illustrate this tilt, consider the limited assumption that intervention in the form of intragroup mediation and capacity building would likely produce tangible housing benefits for low-income families in the West Grove and other inner-city Miami communities and, likewise, would likely augment the organizing power of Housing for All. Similarly, consider the limited assumption that intragroup mediation and capacity building would likely change the terms of the Miami housing crisis debate in favor of the unmet needs of low-income minority communities like the West Grove and, furthermore, would likely help educate and train the next generation of community lawyers volunteering as law student clinical interns in one or more public interest law firms.

Taken together, these four legal-political impact factors seem to tilt toward lawyer or law firm intervention through intragroup mediation and capacity building with Housing for All despite its deteriorating organizational condition. Yet, Elsesser’s fifth factor, specifically the degree to which withdrawal would be more likely to sustain an overburdened public interest law firm in

86. *Id.* at 403 (admitting that “the legitimacy of this criteria and the legitimacy of the determination” stand open for debate).

87. *Id.*

88. *Id.*

89. *Id.*

preserving its institutional capacity to serve current and future clients or partners through comprehensive legal-political campaign initiatives, seems to militate against intervention. Upon close inspection, intervening to mediate intragroup conflict and resolve class or racial tension, and additionally, to rebuild insubstantial organizing capacity, in an effort to avert or reverse the institutional collapse of Housing for All would likely produce scant organizational benefits for any public interest law firm constantly strained by insufficient staff resources.

To that extent, Elsesser's organizational self-interest or institutional sustainability factor seems likely to offset the combined weight of the other four factors in situations of this sort, that is in situations of group or neighborhood social disorganization, especially where the capacity (*e.g.*, funding and staffing) of the public interest law firm already may be stretched thin. Paradoxically, the countervailing weight of organizational self-interest or institutional sustainability in Elsesser's five-factor campaign constituency test will likely reproduce lawyer and law firm dominance in triage decision-making for clients and community partners, a result anathema to community lawyers. Equally distressing, Elsesser's five-factor campaign constituency test seems to militate against meaningful compliance with the lawyer and law firm fiduciary norms of care and loyalty, norms integral to group- and community-centered representation.

In fairness, this truncated account of Elsesser's situational triage approach to targeting community- or group-based legal-political campaigns omits thorough scrutiny of the mandatory and permissible quality of legal ethics rules governing the formation, scope, and conduct of the attorney-client relationship in the context of group and organizational representation, the avoidance and resolution of concurrent client or law firm-specific conflicts of interest within group and organizational representation, and the procedure for lawyer or law firm withdrawal from group and organizational representation. Insofar as such legal ethics rules ratify the objective reasonableness of his group- or neighborhood-engrafted cost-benefit analysis and validate the procedural fairness of an organizational interest-mandated withdrawal, Elsesser's situational triage approach may withstand normative skepticism even if it results in the abandonment or neglect of unrepresented groups and neighborhoods plagued by social disorganization. For the moment, that requisite analysis is beyond the scope of this inquiry. Instead, the next Part explores several methodological, normative, and structural alternatives to Elsesser's situational triage approach to the ongoing civil access to justice crisis in Miami, across the nation, and abroad. These alternative frameworks emerge from the work of Lininger on access to justice, Silva on public interest law, Tremblay on surrogate lawyering, and Carle and Cummings on movement lawyering.

IV. ALTERNATIVE TRIAGE REGIMES AND ACCESS TO JUSTICE PATHWAYS

*“[O]ur frailties hardly license a persistent disregard for the very people whom we serve.”*⁹⁰

This part reviews methodological, normative, and structural alternatives to Elsesser’s situational triage approach to community lawyering in circumstances of inner-city poverty and social disorganization. Sympathetic to CJP’s institutional vision and to Elsesser’s triage regime, the alternatives seek to reshape community and movement lawyering models to more fully accommodate the client-centered commitments of legal ethics rules and their corresponding common law fiduciary norms of care and loyalty. The first section sketches two structural alternatives drawn from the work of Lininger on access to justice and Tremblay on surrogate lawyering. The second section outlines a cluster of alternative methodologies and access-to-justice pathways garnered from Silva’s recent comparative research on public interest law in Latin America. The third section charts a range of normative alternatives and moral boundary disputes over lawyer roles and relationships gleaned from the work of Carle and Cummings on movement lawyering.

A. STRUCTURAL ALTERNATIVES

Both Lininger and Tremblay put forward structural alternatives to triage decision-making and delivery systems in an attempt to rectify the “shortfall” in legal services for low-income Americans.⁹¹ In fact, Lininger points out that nationwide “over eighty percent of legal needs go unmet.”⁹² Acknowledging the continual “shortage of funding for legal aid lawyers at the national level,” Lininger explores the viability of a battery of state-level reform experiments devised to improve access to justice for low-income clients.⁹³ Principally, he calls for a state legislative, bar-sponsored Marshall Plan to recruit and to subsidize a corps of recent law school graduates through two-year fellowship grants financed by court filing fees, unclaimed party judgments, and bar prosecution fines.⁹⁴ Moreover, Lininger urges state bar associations to liberalize current rules for accepting pro bono hours in lieu of mandatory continuing legal education credits.⁹⁵ Additionally, he encourages bar associations to reform admission and examination rules to incentivize law student pro bono credit hours and public interest law apprenticeships.⁹⁶ If linked to CJP’s institutional principles and values, such apprenticeships may

90. See Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C. R.-C.L. L. REV. 315, 323 (1996).

91. Lininger, *Exploring Strategies*, *supra* note 4, at 357–58.

92. *Id.*

93. *Id.*

94. *Id.* at 360–66.

95. *Id.* at 366–70.

96. *Id.* at 370–75.

furnish a vehicle to instill an alternative ethos of client-centered advocacy reimagined in terms of group- or community-centered collaboration and partnership either in alliance with or independent of third party political organizers.

More broadly, Tremblay investigates access-to-justice experiments in surrogate lawyering.⁹⁷ These innovative experiments envision the deployment of lawyers by public interest law firms to train and to advise community-based organization staff members to tackle the legal problems of their constituents. Building on the earlier work of Deborah Rhode,⁹⁸ Tremblay assesses the ethical implications of the surrogate lawyering project, particularly potential unauthorized practice of law and impermissible lawyer assistance objections, contending that “neither the constituent/clients nor the legal profession would be likely to suffer any appreciable harm by permitting surrogate lawyering ventures to operate.”⁹⁹

To Tremblay, the surrogate lawyering model “represents a mission-driven strategy of a public interest legal services organization to provide guidance to its intended client community through social service agency staff members.” Predicated on the logic of expanding the delivery of legal resources “through the use of existing social service providers who encounter individuals and families in need on a regular basis,” the model offers the street-level delivery of “useful legal information” by “savvy and experienced nonlawyers” through multiple interdisciplinary channels. Alert to the ethics issues posed by the “intermediary” role contemplated for community-based organization staffers, Tremblay canvasses the professional ramifications for the attorney-client relationship and fiduciary responsibility, including the risk of the unauthorized practice of law and the enforcement of competence and quality control standards.¹⁰⁰

By design, Tremblay’s surrogacy model signals an “ethical triage judgment” regarding the strategic distribution of scarce public interest legal services provider resources. For Tremblay, a carefully crafted surrogacy model implies neither an “attorney-client relationship between the law firm and the recipients of the legal guidance” nor a fiduciary duty-based agency relationship. Furthermore, he maintains, when supplemented by protective safe-harbor provisions, such a model runs afoul of neither unauthorized practice of law prohibitions nor professional competence standards. In this regard, a robust surrogacy model enlarged and adequately braced by Tremblay may “achieve important access-to-justice goals at limited risk of societal harm, or harm to the profession.”¹⁰¹

Neither CJP nor Elsesser assesses the risk of societal harm or the risk of harm to the profession posed by their institutional vision of community and movement

97. Tremblay, *Surrogate Lawyering*, *supra* note 6, at 377.

98. See Deborah L. Rhode, *The Delivery of Legal Services by Non-Lawyers*, 4 GEO. J. LEGAL ETHICS 209, 216–21 (1990).

99. Tremblay, *Surrogate Lawyering*, *supra* note 6, at 377.

100. *Id.* at 380.

101. *Id.* at 420.

lawyering. The first risk is bound up in the foreseeable societal harm produced by public interest law firm triage policies and practices that favor the representation of organized groups and, thus, systematically disadvantage highly vulnerable unorganized or disorganized communities. Discounting this distributive justice risk results in the neglect of communities unfairly burdened by concentrated poverty, neighborhood disadvantage, residential instability, and severe deprivation. The second risk is fastened to the anticipatable harm to the profession triggered by public interest law firm triage policies and practices that favor the representation of organized groups and, therefore, threaten to devalue legal ethics rules governing conflicts of interest and withdrawal safeguards, and, in the same way, degrade the fiduciary norms of care for and loyalty to community. Minimizing this professionalism risk encourages more than rule expediency or skepticism, indeed it fosters a corrosive kind of rule nihilism that privileges lawyer and law firm self-regarding institutional norms.

B. METHODOLOGICAL ALTERNATIVES

In contrast to Lininger and Tremblay, Silva turns to the study of alternative socio-legal methods of constructing public interest law in the United States and Latin America. Based on comparative field research of lawyers in action, Silva tracks the global diffusion of public interest law to demonstrate that established advocacy tools and ideas “can be subject to critical and disruptive reformulations.”¹⁰² By studying the access and policy dimensions of the diffusion process across Latin America, Africa, Asia, and Eastern Europe, Silva demonstrates that public interest law practice may converge toward and reproduce the labels and forms common to advocacy models in the United States, for example in law school clinics, conventional litigation strategies, and nonprofit organizational structures.¹⁰³ At the same time, Silva shows that public interest law practice may also diverge toward a wide variation of organizational forms and practice meanings, for example in rights education, impact litigation, and political activism. Silva shows that such divergence, and its alternative advocacy methods and strategies, may displace or replace conventional public interest work and, hence, “create space for more radical forms of law practice.”¹⁰⁴ Conversely, he adds, displacement and replacement may de-radicalize highly politicized and socially embedded “pre-existing cultures of law practice.”¹⁰⁵ The contested process of globalization and diffusion depicted in Silva’s research findings, a process featuring the coexistence and clash of hegemonic and counterhegemonic legal projects, presents public interest lawyers with both opportunities and challenges relevant

102. Silva, *Radicalism*, *supra* note 5, at 443.

103. *Id.* at 444–45.

104. *Id.* at 437.

105. *Id.* at 443.

to the exercise of professional power and the requirement of ethical and moral accountability.¹⁰⁶

Extended to CJP's institutional vision and Elsesser's triage regime, Silva's research suggests that community and movement lawyering models may simultaneously converge toward and reproduce common advocacy practices, illustrated for example by Housing for All's law reform campaign, and yet also diverge toward alternative organizational forms and practices, sometimes displacing and creating space for more integrated legal-political practices. The intragroup tensions encumbering Housing for All presented opportunities for critical and disruptive reformulations of the legal ethics rules and common law fiduciary norms governing group and organizational representation. Such reformulations harbor the potential to displace or replace conventional forms of client-lawyer roles and relationships, communication and consultation, conflicts of interest, and withdrawal protocols, thereby creating space for more politicized forms of law practice. Disregarding the daily opportunities for practice reformulation in community and movement lawyering overlooks the contested process of negotiating professional power in advocacy and discharging the obligation of ethical and moral accountability in public interest law.

C. NORMATIVE ALTERNATIVES

Carle and Cummings confront lawyer power and accountability in the progressive political space of movement lawyering.¹⁰⁷ They define movement lawyering in terms of "the use of integrated advocacy strategies, inside and outside of formal lawmaking spaces, by lawyers who are accountable to mobilized social movement groups, to build the power of those groups to produce or oppose social change goals that they define."¹⁰⁸ Together they focus on the ethical dilemmas engendered by the tension between ideological commitment to the pursuit of movement ends and professional loyalty to advance specific client interests.¹⁰⁹ In cataloguing and appraising the ethical dilemmas of movement lawyering, they note that standard legal ethics principles furnish little or no guidance in ascertaining "how to choose clients from within a social movement constituency with competing interests" or how to reconcile "lawyers' duties in relation to the development of legal principles and promotion of interests that may be realized only far in the future."¹¹⁰

To fill such ethical gaps, Carle and Cummings sift the concepts of intra-movement dissent and temporality. Their concept of intra-movement dissent describes "the inherent conflicts over goals and strategies that define social movement

106. *Id.* at 444–45.

107. Carle & Cummings, *Movement Lawyering*, *supra* note 7, at 447.

108. *Id.* at 452 (footnote omitted).

109. *Id.* at 450–51.

110. *Id.* at 450.

struggle, which require that lawyers have a principled mechanism for making representational choices in the first instance and resolving internal disputes.”¹¹¹ This concept is keenly illustrated by the representational choices emerging out of the organizational collapse of Housing for All. Their concept of temporality, by comparison, captures the fact “that movements work toward social impact over the long-term, which requires that lawyers have a process for planning and a commitment to implementation over time, even in the face of short-term disagreement or setback.”¹¹² This concept too is acutely illustrated by the short-term organizational duration of Housing for All and its short-lived albeit successful law reform campaign, and, equally noteworthy, by the representational choices and tensions arising out of the long-term, place-based legal needs of West Grove low-income constituents and the competing long-term, issue-based needs of city- and state-wide low-income tenants.

In winnowing accounts of intra-movement dissent and temporality from the literature of movement lawyering, Carle and Cummings note the dual tendency to “emphasize lawyer accountability to mobilized social movement clients that have the resources and political power to advance campaigns” and, further, to express “less concern about lawyers dominating vulnerable clients because social movement groups are organized and sophisticated—able to assert power in collaborations with lawyers.”¹¹³ Significantly, this theoretical and practical tendency to embrace a collectively-rooted notion of accountability marks Elsesser’s defense of community lawyering and his controverted claims of ultimate decision-making authority and ethical legitimacy. Carle and Cummings point out that this constituent-anchored defense presumes not only “relationships with extant social movement organizations that have ultimate decision-making authority and legitimate claims to represent the interests of movement constituencies,”¹¹⁴ but also “mobilized clients that have the power and authority to hold lawyers to account.”¹¹⁵ Under conditions of inner-city social disorganization, however, that assumption rings counterfactual. As applied to numerous inner-city environments, its misleading operation deprives community and movement lawyers of strong accountability mechanisms and demands contested representational choices in a context of intra-movement dissent, sometimes involving the short-term and long-term temporal dimension of framing strategies and prioritizing goals at stake in the West Grove for Housing for All.

Carle’s and Cummings’ analysis of client selection and client-constituency conflicts of interest in movement representation raises accountability challenges for law school clinics and public interest law firms when faced with an

111. *Id.* at 451.

112. *Id.*

113. *Id.* at 457 (emphasis omitted).

114. *Id.* at 458–59.

115. *Id.* at 460.

unorganized or a disorganized socio-legal situation of weak or non-existent community or movement infrastructure. In this commonplace inner-city situation, ethical judgment entails client organizational construction, representational choice, and campaign selection, all hazardous exercises of lawyer discretion.¹¹⁶ Absent the clear guidance of default ethics or common law agency rules, both community and movement lawyers must turn to a more open, transparent, and inclusive triage decision-making process or risk the double marginalization of individuals, groups, and organizations in communities like the West Grove. Both legal ethics rules and common law agency principles contain foundational norms sufficient to generate rough guidelines channeling the discretion of community and movement lawyers in situations of group and organizational disorganization, that is in the recent situation of Housing for All. To their credit, Carle and Cummings demonstrate progress in advancing that important and long neglected channeling project. In cultivating that project, they may find fertile ground in the modest notion of loyalty to people and to place.

CONCLUSION

*“Surely some revelation is at hand”*¹¹⁷

Things fell apart for Housing for All, and for its coalition partners and non-profit legal team, in the aftermath of their winning law reform campaign in the fall of 2017. Things will fall apart again. When they do, the competing public interest law firm triage regimes of withdrawal and intervention in group and organizational representation will once more produce minimally defensible, yet normatively counterintuitive, results. In this way, the dilemmas of law school clinics and public interest law firm triage decision-making, crystallized here by the writings of Elsesser, Lininger, Silva, Tremblay, and Carle and Cummings, will continue to undermine academic and advocacy efforts to collaborate with inner-city neighborhoods to advance social justice campaigns. The renewed academic interest exhibited, and the resurgent legal activism described, in this symposium suggest that community-based law reform campaigns have much to learn from a process of collective reflection, self-scrutiny, and internal critique, a process that surely should include inner-city communities increasingly at risk of extinction, communities very much like Miami’s West Grove.

116. *Id.* at 459–464.

117. William Butler Yeats, *The Second Coming*, in MICHAEL ROBARTES AND THE DANCER 10 (1921).