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Note

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A SCAFFOLDING APPROACH TO ENVIRONMENTAL JUSTICE

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Abstract

This essay examines ways in which environmental justice attorneys can draw from community-based lawyering approaches to amplify community voices with respect to the environmental protection. In particular, the authors use the struggle around access to water in Detroit to highlight ways in which community-based lawyering approaches can or could tackle environmental injustices. This struggle provides a case study for ^{*472} identifying potential points of interaction, intersection, collaboration, and amplification. To do this, the authors will draw from the scaffolding approach of community-based lawyering, which uses litigation to provide (1) visible rallying and polarizing points for movements, (2) opportunity for storytelling and engagement in the political process, and (3) structure and deadlines for galvanizing nascent campaigns post litigation. The paper will use common types of environmental justice disputes to act as illustrations of how the scaffolding approach can be tailored to the particular types of laws and regulations involved with those disputes. The authors' hope is that this paper will provide attorneys wanting to work on environmental justice insight into how a multitude of community-based lawyering modalities can be creatively combined to help communities gain the power necessary to propel the movement forward.

INTRODUCTION

Environmental injustices arise from a potent mix of historical patterns of institutional racism,¹ inadequate attention to environmental protection,² and community disempowerment.³ There are widespread examples, from the water contamination crisis in Flint, Michigan, where high levels of lead in drinking water affected numerous low-income and minority residents.⁴ They also include the confined animal feeding operation issue in a number of states, including North Carolina, which led to water

contamination issues predominately affecting low-income and minority communities.⁵ And they include general problems arising from land toxics contamination and subsistence farming.⁶ These are all areas in which environmental law has failed to adequately protect minority and low-income communities. As *473 scholars have observed, environmental law, as written, can “fail[] to consider distributional consequences” results in disproportionate effects,⁷ “exacerbate existing disparities,”⁸ concentrate environmental harms through “not in my backyard” legal efforts,⁹ and “serve the wealthy better than the poor.”¹⁰

One of the consistent factors in all these examples is community disempowerment. That is, these communities suffering from environmental harms lack the resources and ability to effectively advocate against unjust private and government actions. This is where the scaffolding approach, used generally in community lawyering, comes in. Part I of this article describes the scaffolding approach in community-based organizing, Part II of this paper uses the Detroit Water Shutoff Crisis to illustrate this approach in action, and Part III of this paper draws from lessons from the crisis.

I. THE SCAFFOLDING APPROACH IN COMMUNITY-BASED ORGANIZING

The concept of scaffolding is drawn from educational theory, where it is defined as

a variety of instructional techniques used to move students progressively toward stronger understanding and, ultimately, greater independence in the learning process. The term itself offers the relevant descriptive metaphor: teachers provide successive levels of temporary support that help students reach higher levels of comprehension and skill acquisition that they would not be able to achieve without assistance. Like physical scaffolding, the supportive strategies are incrementally removed when they are no longer needed, and the teacher gradually shifts more responsibility over the learning process to the student.¹¹

Community justice organizing draws from this same understanding of providing temporary support to disempowered communities to allow them to more successfully advocate on their own.¹² The idea is to use litigation as *474 a scaffold for local mobilization and empowerment, rather than as a direct method to achieve change.¹³ As Michael Grinthal described it in a major work on models for social justice lawyering, in this approach, “litigation is the principal strategy for achieving the constituency's demands, but litigation is conducted in such a way as to maximize opportunities for organizing in the shadow or margins of the case.”¹⁴ Although he approached this idea “warily,”¹⁵ he concluded that

[S]mall-scale litigation may be even more effective as scaffolding for the development of local organizing. Micro-litigation in municipal bread-and-butter forums such as housing, small claims, and family court, with their quick pace and relative informality, provides a surprising number of opportunities for group action and the emergence of individual leaders. More importantly, municipal and local courts are often already familiar, even integral mechanisms in low-income people's day-to-day life and relationship-making struggles.¹⁶

Grinthal, however, may have been too wary. Community justice lawyers have since used the concept of scaffolding to empower the communities they represent. As Professor Anthony Alfieri, director of the Center for Ethics and Public Service and Environmental Justice Clinic, University of Miami School of Law, wrote that Third Wave supports

client and community difference by uncovering the salient aspects of identity in daily advocacy, and fostering client and community empowerment by integrating collaborative tactics and strategies into legal-political campaigns, erect the normative and practical scaffolding for a Third Wave conception of craft.¹⁷

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In turn, “Third Wave campaigns attempt to reintegrate the politics of client and community movement-building into the lawyering process and into the structure of legal services delivery systems.”¹⁸ Similarly, Charles Elsesser, *475 Director of Community Justice Project of Florida Legal Services, applies the scaffolding model to community-justice lawyering, stating that

True sustainable change comes from building large-scale, democratic organizations focused on building the power and conscious leadership of poor and working people. Community lawyering can assist fundamental and long-term change only through supporting grassroots organizing in all its aspects? community education, organizational development, and leadership development.¹⁹

In sum, the scaffolding approach to community justice lawyering focuses on amplifying the voices of the represented communities. And so, the scaffolding approach of community-justice lawyering works to create opportunities for communities to engage in the political process, provide focal points for movement rallying, and use structures and deadlines to galvanize campaigns post litigation.

A. Creation of Opportunities for Storytelling and Engagement in the Political Process

Related to the focus on creating rallying points, the scaffolding approach to community justice organizing also focuses on creating opportunities for community storytelling and engagement in the political process.²⁰ As described earlier, the creation of opportunities for storytelling and engagement in the political process can enhance the voices of community members.²¹ This is again especially important in environmental justice disputes, where the in-person stories of environmental injustices are often left out of administrative documents, yet can have real meaning in terms of supporting the dignity of communities.²²

For example, with respect to the siting of confined animal-feeding operations, these siting decisions are often made without adequate community input, leading to low-income and minority communities being disproportionately affected.²³ And so, environmental justice attorneys worked to raise “lawsuits [that] have challenged both of these barriers to the full participation and representation of marginalized North Carolina communities.”²⁴ As one observer states, these opportunities have created *476 sites for “grassroots organization and mobilization. By forging connections among neighbors, researchers, advocacy organizations, and public interest law firms, the communities created a formidable coalition of justice-minded people.”²⁵

B. Focus on Visible Rallying and Polarizing Points For Movements

The scaffolding approach of community lawyering focuses on creating visible rallying and polarizing points for movements.²⁶ The idea is to create avenues to center the voices of the communities themselves. This approach can be especially important in environmental justice disputes, where--though distributive justice is certainly a strong consideration²⁷-- participatory justice is a strong demand of many environmental justice advocates.²⁸

The creation of visible rallying and polarizing points can enhance community participation through a number of means. First, the creation of rallying points can create opportunities for “public attention and leadership development.”²⁹ Such efforts, in turn, can help “galvanize a national movement, focusing and mediating local groups,”³⁰ rather than leave local communities resting upon individual efforts. Grinthal, in his seminal paper, describes his work in representing tenants living in hazardous conditions:

I also filed a subpoena requiring a principal of “[building address] LLC” to appear. At the next tenant meeting, tenants signed up to attend the next court date, at which we would directly confront the landlord. On that date, half a dozen tenants arrived in court with photographs and other evidence from their apartments--Elizabeth M

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brought a pill jar full of dead bedbugs she had collected from her children's bedroom. The judge, eyeing the group nervously in anticipation of a long afternoon of testimony, sent us off to a conference room to talk settlement. Suddenly, the half-dozen tenants were sitting around a long table with their landlord, having the meeting he had refused earlier. They explained their photographs, with a court staffer interpreting between Spanish and *477 English. As they met, other court staff gathered around the edges of the room to watch. When Elizabeth held up her bedbug jar, the staffers gasped; when the landlord blustered, they laughed at him. When the landlord filibustered, as a group we stood up, threatening to walk away from the table to go see the judge. Knowing he was beaten, the landlord signed a consent agreement--enforceable as an order of the court--to perform all the repairs. More importantly, he also agreed to meet personally with the tenant association every month from then on. If he failed to do so to the tenants' satisfaction, they and he knew that they could drag him back into court for contempt. This was an organizing victory, not a litigation victory.³¹

Environmental justice disputes can benefit from the same strategies. Creating rallying points can amplify demands by communities beyond those afforded by courts. Take, for example, the Dakota Access Pipeline dispute, where the

confluence of protest, community organizing, and legal challenge resulted in a short-lived victory on December 4, 2016, when the U.S. Army Corps of Engineers (Corps) decided not to grant an easement for the pipeline to cross Lake Oahe, a half mile upstream of the Standing Rock Sioux Tribe reservation, without further environmental review and consideration.³²

Although this decision was ultimately reversed by the Trump administration and litigation still continues, “the momentum started by the Dakota Access pipeline protest has energized and rallied people from all walks of life concerning issues of environmental justice, specifically as it relates to indigenous people. Looking at this optimistically, this in itself is a victory for the environmental justice movement.”³³

C. Use of Structures and Deadlines for Galvanizing Nascent Campaigns Post-Litigation

Finally, community lawyers applying the scaffolding approach use structures and deadlines for galvanizing political campaigns after litigation.³⁴ That is, as Grinthal observed, litigation can be helpful because, “By forcing [community members] to follow a timeline, it helped these tenants to overcome their inertia and tendency to put off or avoid confrontation.”³⁵ The sheer act of having to dress up and attend court proceedings often acted to *478 heighten the seriousness of the proceedings for community members, which in turn led to further engagement in the legal/political process.³⁶

An example of this approach in action in an environmental justice dispute is the community battle against the Charles A. Poletti Power Plant in New York City.³⁷ There, community groups worked to shut down the Poletti Power Plant, described as “the single-biggest polluter in New York City, emitting more pollution than all sources in Brooklyn, Manhattan, Staten Island, and The Bronx combined.”³⁸ This was an environmental justice concern, as “The Poletti plant posed a particular risk to the thousands of children in Astoria's three major public housing projects, including Queensbridge Houses--the largest public housing project in the United States.”³⁹

The success of the advocates' efforts depended upon a number of things, from the focus on changing the narrative⁴⁰ to its focus on developing coalitions and partnerships.⁴¹ But all of these efforts involved developing structures for participation through litigation. For example, by “interven[ing] in the administrative permitting process for the new 500 MW facility,” a community-based organization called the Coalition Helping Organize a Kleaner Environment (CHOKE) was able to rally the community to submit briefings and expert testimony to the proceedings.⁴² And at subsequent hearings, “the CHOKE coalition had the

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opportunity to present briefing, testimony, and exhibits.”⁴³ This community engagement was successful, and ultimately led to “the Power Authority commit[ing] to a six-to eight-year timetable for shutting down the dirty Poletti Plant, converting to cleaner fuel and reducing the Poletti Plant’s operation in the interim, and making significant investments in the community.”⁴⁴

II. HOW ENVIRONMENTAL JUSTICE DISPUTES CAN DRAW FROM COMMUNITY-BASED LAWYERING SCAFFOLDING APPROACHES: THE DETROIT WATER SHUTOFF CRISIS AS A CASE STUDY

In 2014, the Detroit Water and Sewerage Department (DWSD) terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents’ health needs or ability to pay.⁴⁵ This *479 was largest residential water shutoff in U.S. history,⁴⁶ and part of an effort to address Detroit’s insolvency issues.⁴⁷ But DWSD’s aggressive approach created a powerful example of environmental injustice. In 2016, Food and Water Watch ranked Detroit as ninth in the United States in terms of water shutoff rates.⁴⁸ “According to the survey, the cost of water has become a strain on Detroit resident’s income. One in five residents were found to pay over 10 percent of their income on their water bills, the highest water burden cost of any city surveyed.”⁴⁹

A. Advocates in the Detroit Water Shutoff Crisis Focused on Expanding Access to the Political Process

Detroit’s water crisis began well before 2014, precipitated by the white flight and decades of steady economic decline beginning in the 1970s that led to a crashed local real estate market.⁵⁰ Back in 2005, Michigan Welfare Rights Organization (MWRO), a union of public assistance recipients and low-income workers, and Michigan Legal Services (MLS), a poverty law nonprofit, began noticing that their members and clients were increasingly experiencing water shutoffs. Together they developed a policy goal of an income-indexed water rate. The idea was to set water bills using indices that would take into account affordability, rather than use an absolute rate index. Armed with a Water Affordability Plan, developed by Roger Colton, a municipal utility expert, MWRO and MLS presented the Plan to the DWSD and Detroit City Counsel.⁵¹

Here, lawyers were engaged as political enablers and scaffolding, using their legal skills and knowledge of law and policymaking to help its community partner draft policy goals, i.e. the Water Affordability Plan. By selecting a strategy of public presentation to governmental bodies, they elevated the Water Affordability Plan’s status from a policy whitepaper to a matter of public discourse. This provided the community with multiple *480 opportunities for storytelling and the means by which to hold public officials accountable. Although the adoption of the Water Affordability Plan was tabled by the City on the basis of legal concerns surrounding the Headlee Amendment,⁵² the Plan continues to serve as both the policy lodestar for the movement as well as an instrument raised to resurrect the issue’s political profile.⁵³

B. Advocates in the Detroit Water Shutoff Crisis Focused on Rallying and Providing Points for Coalition Building

When the movement started, it initially approached access to water from the perspective of the public trust doctrine. As public outrage mounted, it added a rights-based approach, namely that access to water is a human right. On June 18, 2014, Blue Planet Project, Food and Water Watch, MWRO, and Detroit People’s Water Board, a broad coalition of environmentalists, poverty advocates, and union members, filed a petition with the United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation alleging that Detroit’s water shutoff crisis constituted a violation of the human right to water.⁵⁴ The petition included raw data regarding shutoffs, administrative burdens to reestablish water access inappropriate to impoverished persons, and stories of and from affected persons. Within 7 days, three UN experts concluded that “Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights.”⁵⁵ This brought the moral weight of international law into the framing of the Detroit Water Shutoff Crisis. Water marches after the UN’s declaration were now punctuated by chants of “Fight, fight; water is a human right.”⁵⁶ Several months later, the UN Special Rapporteur, *481 upon invitation of water advocates, visited Detroit to conduct listening sessions with affected persons and discuss the situation with the city’s congressional leaders and attorneys.⁵⁷ The visit and resultant

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statement both confirmed the movement's claims about the hardships experienced by Detroit's poor residents and championed its policy demands.

Motivated by principles of civil disobedience, further empowered with their rights-based legal arguments, and buoyed by offers of legal representation by attorneys from the National Lawyers Guild, water activists planned actions to block DWSD's contractor Homrich from executing additional water shutoffs. The planned protests coincided with a Netroots Nation conference to maximize its effect and media exposure. On July 18, 2014, nine protesters were arrested for misdemeanor disorderly conduct at a second Homrich action.⁵⁸ The defense strategy was to test the necessity defense,⁵⁹ with the greater harm here being the imminent harm posed by water shutoffs. Rev. Bill Wylie-Kellerman summed up the defense strategy stating, "We believe that what we did was right, and necessary, and an act of conscience that a jury can understand and vote on ... and they've been denied that."⁶⁰ The cases lasted nearly three years, with multiple motions and an appeal just before jury deliberations by the City seeking a mistrial. Each docketed event served as another opportunity for community rallying and coalition building via packing the courthouse and media exposure.⁶¹ The cases against the Homrich 9 were all ultimately dismissed as a violation of the defendants' right to a speedy trial.⁶² Despite the victory of having not *482 been worn down to take a plea, Rev. Wylie-Kellerman remained worried, "People are still being shut-off."⁶³

The action succeeded in doing two things. First, it raised the profile of the Detroit Water Shutoff Crisis from a local issue to an international one. Second, it elevated the public's perception on water access as not only a matter of human dignity, but also as a quasi-human right.⁶⁴

C. Advocates in the Detroit Water Shutoff Crisis Attempted to Create Structures and Deadlines for Galvanizing Nascent Campaigns Post-Litigation

Finally, advocates in the Detroit water shutoff crisis worked to create structures and deadlines looking forward to post-litigation community organizing efforts in order to further galvanize the community.

On July 18, 2013, after its emergency manager was unable to reach a deal with its creditors, unions, and pension boards, Detroit filed bankruptcy protection.⁶⁵ On July 15, 2014, just weeks after the UN Special Rapporteur's declaration regarding a human right to water and days after the first Homrich action, Judge Rhodes ordered the DWSD Deputy Director to appear in court later that month to present plans to address the water shut off crisis.⁶⁶ On July 30, 2014, advocates filed an adversary complaint within the bankruptcy action seeking declarative and injunctive relief in the form of a moratorium on shutoffs and implementation of a water affordability plan, among other things.⁶⁷ At a hearing on September 22, 2014, the court heard testimony from five victims of water shutoffs.⁶⁸ Judge Rhodes' ruling a week later found that although a water shutoff would result in irreparable harm, there is no constitutional right to water and that the bankruptcy court lacks the *483 jurisdiction to grant a moratorium on shutoffs.⁶⁹ Moreover, Judge Rhodes concluded "The last thing (Detroit) needs is this hit to its revenues."⁷⁰

While the appeals of this ruling were pending, the City, as part of its reorganization plan to reduce future infrastructure costs, shift pension-related obligations, and improve revenues, entered into talks with the surrounding county governments to lease its water assets to a regional authority, the Great Lakes Water Authority (GLWA), for a period of 40 years.⁷¹ The GLWA formation and lease documents include the creation and funding of, at .5% of budgeted revenues, a Water Residential Assistance Program (WRAP) to help low-income residents maintain water service.⁷² Detroit, in its appellate argument, cited WRAP's existence in its defense to the motion for a temporary restraining order.⁷³ The Sixth Circuit affirmed the lower court's determination of lack of jurisdiction.⁷⁴

Normally, this subtype of scaffolding uses filing deadlines and hearing dates to galvanize the grassroots activities. Here, the political pressure fostered by the UN report, protests, and civil disobedience creates legal pressure prompting the bankruptcy

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court to inquire about the city's plan to address the shutoff crisis. Then, the lawsuit and pending appeal, coupled with the imposed bankruptcy timelines, create political pressure to implement some water shutoff relief by the impending legal deadline.

III. THOUGHTS AND CONCLUSIONS

What does this all mean for environmental justice advocacy? The successes and hurdles faced by advocates in the Detroit Water Shutoff Crisis suggests the following. When entering the environment justice space from a community-based lawyering perspective, attorneys should first remind ^{*484} themselves that the community's accumulation of power is the paramount objective and all lawyering should be undertaken in a way that furthers that objective. Second, the messiness of movements will be manifest in the work; strategy and lawyering modalities will shift as often as opportunity windows open and close. Third, although there may be issues with the speed and efficacy of environmental impact litigation, there remains tremendous opportunity underneath the scaffold of litigation to galvanize public support for a movement and amass enough political power to effectuate change. By acting within a carefully designed community-based lawyering strategy, the movements win power regardless of whether the attorneys lose the argument.

To accommodate for the ever-shifting goals and goalposts, community-based lawyers should adopt a modular approach to their work, designing work product for multiple uses and reuse. The use of the Water Affordability Plan as both end goal and advocacy tool is a prime example of this principle. Similarly, leveraging Covid-19 pandemic-related guidance regarding handwashing to mount a second, ultimately successful attack on the lack of access to water problem as a public health crisis. Work product might end up rotting in a file cabinet only to be dusted off years later and repurposed. Thus by adopting a modular approach at the onset, work product will be designed and drafted so that it can be used in multiple ways, with each successive mention or citation adding to the efficacy of the work product and the power of the movement.

Your role is not always as an attorney. Sometimes you occupy middle spaces and need to be cognizant of the ethical and moral role you should or need to play in that moment. ⁷⁵ And it may push you out of your comfort zone.

Also, in community-based lawyering, attorneys are likely to be playing at the edges of current legal doctrine in a collective struggle with their clients to bring about change. It is unlike regular practice and often entails complicated ethical consideration. ⁷⁶ Nevertheless, the benefits of becoming embedded in a community and their struggle is intellectually and spiritually fulfilling.

Appendix

GUIDE TO GETTING IN THE COMMUNITY BASED-LAWYERING GAME

What To Ask Yourself Before You Jump In

- Do I believe in the movement and this theory of change?
- What am I good at? How can I best contribute?
- ^{*485} • Am I looking for a discrete engagement or deep involvement?

ENGAGEMENT BY CATEGORY

Corporate

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using knowledge of corporate and transactional legal expertise to bring structure or status to a group so as to maximize their collective power

- Corporate formations, including 501(c)(3) and (c)(4) designations
- Coalition building through MOUs and shared values statements that create a broad coalition with overlapping, divergent, and sometimes contradictory organizational interests toward a common policy goal
- Creative contractual provision and organizational structures to maximize participation

M*A*S*H

direct legal services to individual participants in an organizing effort to protect participants from backlash, retaliation, and life circumstances, freeing leaders to focus on the organizing

- Criminal defense arising out of protest activities
- Civil legal services, e.g. tenant defense, child support and custody, etc ...

Political Enabler

litigation, research, and drafting in direct support of the organizing process itself, securing and enhancing the group's right to organize, and helping identify strategies and access points to the political process

- Regulatory memorandum outlining government entities having control over an issue
- Strategy memorandum
- Securing political protest permits
- Drafting comments and petitions to government entities

Scaffolding

litigation provides opportunities and structure for nascent organizing initiatives, as well as opportunities for individuals to testify, negotiate, and plan

- Amicus briefs that highlight community voices and perspectives
- Litigation, coupled with organizing, to elevate issue in political space
- *486 • Mass litigation, repetitive argumentation to keep issue before decisionmakers, e.g. raising the same defense in successive landlord-tenant case in conjunction with a petition for a court rule change on the same issue or after rule change to educate the judiciary

Lawyer as Organizer

use of lawyer's own client base and network becomes the base for movement organizing, usually after experience that direct legal services alone will not resolve clients' issues

- Lawyers identify enabling issue, develop strategy and present to community, submit petition, and draft sample comments and talking points for distribution to partners, e.g. court rule amendments

Footnotes

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1 See, e.g., Richard J. Lazarus, “*Environmental Racism! That's What It Is.*”, 2000 U. ILL. L. REV. 255, 263-73 (2000) (describing various examples of institutional racism in the context of the environment).

2 See, e.g., Robert R. Kuehn, *Remedying the Unequal Enforcement of Environmental Laws*, 9 ST. JOHN'S J. LEGAL COMMENT 625, 627-42 (1994).

3 See, e.g., Alice Kaswan, *Environmental Justice and Environmental Law*, 24 FORDHAM ENVTL. L. REV. 149, 152-53 (2012-2013) (stating that “Systemic societal discrimination has created a legacy of inequity and disempowerment that has contributed to environmental injustice. Understanding and addressing that legacy of social injustice is key to addressing its deeper roots”).

4 See, e.g., Joshua V. Berliner, Note, *Environmental Injustice/Racism in Flint, Michigan: An Analysis of the Bodily Integrity Claim in Mays v. Snyder as Compared to Other Environmental Justice Cases*, 35 PACE ENVTL. L. REV. 108 (2017); Jonathon Lubrano, Note, *Water, Lead, and Environmental Justice: Easing the Flint Water Crisis with a Public Water Contamination Liability Fund*, 42 WM. & MARY ENVTL. L. & POL'Y REV. 331 (2017); David A. Dana & Deborah Tuerkheimer, *After Flint: Environmental Justice as Equal Protection*, 111 NW. U. L. REV. 879 (2017).

5 See, e.g., Christine Ball-Blakely, *CAFOS: Plaguing North Carolina Communities of Color*, 18 SUSTAINABLE DEV. L. & POL'Y 4 (2017).

6 See, e.g., Steph Tai, *Environmental Hazards and the Richmond Laotian American Community: A Case Study in Environmental Justice*, 6 ASIAN L.J. 189 (1999).

7 Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and “Justice”*, 47 AM. U. L. REV. 221, 268-70 (1997).

8 *Id.* at 270-71.

9 *Id.* at 271-73.

10 *Id.* at 273-75.

11 See *Scaffolding*, GLOSSARY OF EDUC. REFORM, <https://www.edglossary.org/scaffolding/> (last updated Apr. 6, 2016); see generally JENNIFER HAMMOND, ed., *SCAFFOLDING: TEACHING AND LEARNING IN LANGUAGE AND LITERACY EDUCATION* (2001).

12 This is not the only model of community justice organizing. While this paper focuses on the scaffolding approach in community-based lawyering, the necessary precursor and intervening steps require the use of the other modalities. These

models include: Corporate (using knowledge of corporate and transactional legal expertise to bring structure or status to a group so as to maximize their collective power); M*A*S*H (direct legal services to individual participants in an organizing effort to protect participants from backlash, retaliation, and life circumstances, freeing leaders to focus on the organizing); Lawyer as political enabler (using litigation, research, and training skills to secure right to organize and protest, provide access to political forums, and identify policy goals and strategies); and Lawyer as organizer (use of lawyer's own client base and network becomes the base for movement organizing, usually after experience that direct legal services alone will not resolve clients' issues). See Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J. L. & SOC. CHANGE 25, 52-58 (2011).

- 13 See, e.g., Scott L. Cummings, *Community Lawyering*, 2017 U. ILL. L. REV. 1645, 1709 (2017) (“Rather than enervate movements by individualizing conflicts, integrated advocacy seeks to use rights strategically and flexibly to build collective power at the grassroots level. Michael Grinthal's analysis of movement lawyering shows how litigation may serve as a “scaffolding” for local mobilization, describing a campaign by Christian right groups in which litigation was coordinated with local organizing to advance their goal of using public school space for religious purposes.”); Grinthal, *supra* note 12, at 52-58.
- 14 See Grinthal, *supra* note 12, at 52.
- 15 *Id.*
- 16 *Id.* at 53.
- 17 Anthony V. Alfieri, *Inner City Anti-Poverty Campaigns*, 64 UCLA L. REV. 1374, 1449 (2017).
- 18 *Id.* at 1400.
- 19 Charles Elsesser, *Community Lawyering--The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 384-85 (2013). See also Anthony V. Alfieri, *Things Fall Apart: Hard Choices in Public Interest Law*, 31 GEO. J. LEGAL ETHICS 335, 347 (2018) (describing Elsesser as “erect[ing] the scaffolding of community lawyering around the critical practices of “organizational work, leadership development and power building”).
- 20 See Grinthal, *supra* note 12, at 66.
- 21 See *id.* at 55.
- 22 Helen H. Kang, *Respect for Community Narratives of Environmental Injustice: The Dignity Right to be Heard and Believed*, 25 WIDENER L. REV. 219, 220-21 (2019).
- 23 See Ball-Blakely, *supra* note 5, at 4-5.
- 24 *Id.* at 12.
- 25 *Id.*
- 26 See Grinthal, *supra* note 12, at 66.
- 27 See Vicki Been, *What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001, 1028-55; Alice Kaswan, *Distributive Justice and the Environment*, N.C. L. REV. 1031, 1043-44 (2003).
- 28 See, e.g., Kaswan, *supra* note 7, at 1045-47 (discussing demands for participatory justice by environmental justice advocates); Kaswan, *supra* note 3, 150-52 (“In addition to focusing on the distributional and participatory justice implications of discrete decisions, the environmental justice movement has inevitably confronted and raised broader social justice considerations.”); Alice Kaswan, *Climate Change and Environmental Justice: Lessons from the California Lawsuits*, 5 SAN DIEGO J. CLIMATE & ENERGY L. 1, 33 (2014) (“Along with distributional justice, participatory justice is a core environmental justice theme.”).





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- 29 Grinthal, *supra* note 12, at 53.
- 30 *Id.*
- 31 *Id.* at 55.
- 32 Pearl Kan & William Parkin, *The Struggle Continues: Environmental Justice in These Changing Times*, 48 No. 5 ABA TRENDS 15, 15 (2017).
- 33 *Id.* at 16.
- 34 *See* Grinthal, *supra* note 12, at 55.
- 35 *Id.*
- 36 *See id.*
- 37 *See* Rebecca Bratspies, *Shutting Down Poletti: Human Rights Lessons from Environmental Victories*, 36 WIS. INT'L L.J. 247 (2019).
- 38 *Id.* at 248.
- 39 *Id.* at 249.
- 40 *Id.* at 265-69.
- 41 *Id.* at 270-72.
- 42 *See id.* at 258.
- 43 *Id.* at 263.
- 44 *Id.* at 263-64.
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