

COMMON LAW'S LAWYERING MODEL: TRANSFORMING INDIVIDUAL CRISES INTO OPPORTUNITIES FOR COMMUNITY ORGANIZING

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We are alumni of the City University of New York School of Law, Class ("CUNY Law") of 2007 and founders of Common Law,¹ an organization that uses legal education and legal services to support and increase organizing and activism. We describe the origins of Common Law and our beginnings as an organization providing direct legal services to members of community organizing groups in Section I; the emergence of our unique legal clinic model supporting pro se (self-represented) litigants fighting foreclosure in Section II; and our challenges and hopes for the future in Section III.

I. INTRODUCTION TO COMMON LAW

A. *Common Law's Roots*

In the fall of 2006, during our last year of law school, a wave of panic moved through the hallways of our Main Street, Flushing campus.² The bar exam came into view and the administration regularly reminded us that CUNY Law students were not likely to pass. The job market was only slightly less condemning. The whole scene was captured perfectly by one long look over the graveyard across from the school toward the illusive Manhattan skyline. We began to scramble, applying for jobs in each and every sector and in fields we never knew existed. Many believed such panic was pointless. Others could only panic about one matter at a time. Most distress-

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¹ COMMON LAW, <http://www.commonlawnyc.org> (last visited Feb. 24, 2013).

² For nearly thirty years, CUNY Law was housed at 65-21 Main Street in Flushing, NY in a former junior high school. The school was also directly across from Mount Hebron Cemetery, making tombstones the only view from the street-facing windows. Despite isolation and meager funding, this location exuded warmth and community. See Paul Lin, *30 Years at 65-21 Main Street*, CUNY LAW MAG.,CFN], SPRING 2012, AT 18-19, available at <http://www.law.cuny.edu/magazine/archive/12-spring-cunylaw.pdf>.

sing, however, was the knowledge that we were competing among our own CUNY Law community for our livelihood.

Unfortunately, the fierce competition for staff attorney positions was not the first clue that public interest lawyering was not going to be radical lawyering. There were other clues that public interest lawyers should not challenge or even question the strategies, effects, or funding of legal non-profits. During our internships and clinic placements at public interest organizations, we witnessed what we later recognized as the “non-profit industrial complex,”³ or the ways that governments and foundations co-opt progressive movements. We observed that public interest lawyers were constantly engaged in the brutal hunt for grant support and were, therefore, focused on generating and reporting outcomes. The effect of this focus was that lawyers did not incorporate legal or political education into their services and that they did not consider the root causes of clients’ struggles in their daily efforts to bring healing.

In November of 2006, our last year in school, a few of us from the Class of 2007 decided to meet for dinner to discuss our impending legal careers. Emails were sent and a potluck was organized. The potluck night finally arrived and there was a terrible storm. Rain poured for hours. The dinner party was at Jay’s house in Jackson Heights, Queens. None of the Brooklyn folks made it. In fact, the only people who attended were Mike and the authors of this piece.⁴ That night we wondered aloud, could we remove peace and justice work from the capitalist framework? Could we really use the privileges of the legal profession to support movements to dismantle our systems of economic, racial, and social inequality?

By the end of the evening, the three of us committed to developing a legal services model that was more humane and—to be honest—more joyful. We knew that the first step toward social change work and, consequently, away from charity work, was to prioritize people over success. That evening, we committed ourselves to the experiment of community. We began treating one another as family. We would not compete with one another for financial or professional gain. We would share our personal resources while

³ The “non-profit industrial complex” generally refers to state and corporate control of political dissent through the non-profit sector. *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX* 1, 8–9 (INCITE! Women of Color Against Violence ed., 2007).

⁴ Mike Wang graduated from CUNY Law in 2007 and is a co-founder of Common Law. *Our Staff*, COMMON LAW, http://commonlawnyc.org/?page_id=36 (last visited Feb. 24, 2013).

learning to practice our profession together. Our shared goals as attorneys were to engage in social justice work and strive for personal and political transformation. We could not prioritize job security or even legal victories over these goals.

During the remainder of our third year of law school, we established only three principles for our collective. First, all members of the group would make the same amount of money, regardless of their job or degree. Second, we would only work with CUNY Law interns and graduates because of their generosity and commitment to others and because they are some of the most joyful people we know. Third, any one of us could, at any time, leave the collective if we were unhappy. This was not a job. We were in relationship with one another.

In those months before graduation we named ourselves the People's Lawyers Collective of Queens County ("PLC"). When we announced ourselves at school, responses varied from concerned to enthusiastic. Some cautioned against starting our own practice immediately out of law school. The old guard CUNY Law staff and professors, those who committed themselves to a young and scrappy law school, celebrated our decision to create a new organization. Dinesh Khosla⁵ was thrilled. Frank Deale⁶ encouraged us to hang a shingle. A classmate paid for our incorporation fee. Fred Rooney⁷ gave us the opportunity to develop PLC in the newly opened Community Legal Resource Network⁸ ("CLRN") Incubator

⁵ Dinesh Khosla has been a professor at CUNY Law since its inception. A passionate devotee of civil disobedience, he spent months in Indian jails during the 1960s. He received his L.L.M. and J.S.D. from Yale Law School. His fields of interest and areas of publication include international law, contracts, civil disobedience, comparative law, law and aging, human rights, and economic and social development. *Dinesh Khosla*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/faculty/directory/khosla.html> (last visited Feb. 24, 2013).

⁶ Frank Deale has been a professor at CUNY Law since 1989. Before joining the law school, he worked at the Center for Constitutional Rights where he served successively as Staff Attorney, Associate Legal Director, and Legal Director. He has published articles dealing with employment discrimination and international labor rights, including human rights, labor rights, and international trade. *Frank Deale*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/faculty/directory/deale.html> (last visited Feb. 26, 2013).

⁷ Fred Rooney graduated from the first CUNY Law class in 1986 and is the Director of the Community Legal Resource Network ("CLRN"). Rooney pioneered "a new model of legal service delivery to achieve justice for the poor and powerless" through CLRN. Press Release, CUNY School of Law, CUNY Law's Fred Rooney Awarded the AALS Drinan Award (Dec. 11, 2009), *available at* <http://www1.cuny.edu/mu/law/2009/12/11/cuny-laws-fred-rooney-director-of-cuny-laws-community-legal-resource-network-awarded-the-aals-drinan-award/> (citation omitted).

⁸ CLRN assists CUNY Law graduates in creating solo or small-group practices that are devoted to meeting the legal needs of underserved neighborhoods. CLRN facili-

for Justice⁹—an eighteen-month program supporting CUNY Law graduates starting their own small firms or non-profits.

At the CLRN Incubator for Justice, during our first year after graduation, we had the privilege of creating our organization alongside CUNY Law alumni launching their solo practices, and with the assistance of professor and practitioner Laura Gentile,¹⁰ who gave us office space in midtown Manhattan. During our first year at the Incubator we spent most of our time talking and writing. We examined models and theories of political and legal education, economic models to support ourselves, and issues and topics that were important to us and pertinent to New Yorkers. We also met with hundreds of people—lawyers, activists, community organizers, and directors of non-profits. During this time of formation, we worked for other CLRN attorneys to gain experience, and at non-legal jobs to pay our bills.

It was during our time at the Incubator that we decided to focus our work on legal education. We desired to chip away at the barrier between non-lawyers and the courts, namely, the legal profession. Legal language and judicial processes should become more accessible to those seeking justice and relief as well as organizers and activists changing economic, social, and political systems. The information available to lawyers should be common knowledge to those in need of access to justice and those working for social justice. It was a fellow Incubator attorney who understood these desires and renamed us “Common Law.”

We began our work slowly—crafting a single program over the course of months. For example, after we taught a “Know Your Rights” class or drafted even the simplest of advocacy letters, we would debrief for days. We critiqued our performance and work product. We considered the implications, consequences, outcomes, and impact of our work. In other words, we were careful.

In those early days, our slowness was often perceived as weak-

tates this objective by providing training and mentoring support to new attorneys, and linking attorneys to one another to share resources. *Community Legal Resource Network*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/clrn.html> (last visited Feb. 16, 2013).

⁹ The Incubator for Justice is a program created by CLRN in 2007 to help attorneys create their own law offices through trainings in the basic business issues necessary to create a small legal practice and in subjects related to their practice, such as immigration law. *Id.*

¹⁰ Laura Gentile, a 1987 graduate of CUNY Law, is a teacher in the CLRN Incubator for Justice program and has a small firm in Midtown Manhattan, where program participants pay a low monthly rent for office space and supplies. Jonathan D. Glater, *Lawyers Learn How to be Businesslike*, N.Y. TIMES, Jan. 9, 2008, at B6.

ness. How would we survive without taking on more projects, or applying for more grants? Why weren't we doing more? Even our biggest fans encouraged us to hustle. Without salary, without health insurance, when couch surfing, they nudged—maybe *now* is a good time to panic. But resistance to panic is a—if not *the*—founding principal of Common Law. We were undeterred from our process. We left the Incubator for Justice in April 2009, moved from Manhattan back to Queens and finally launched our new lawyering model.

B. The Evolution of Common Law's Lawyering Model

Common Law began—and continues to thrive—with a strong commitment to challenging the legal system and dismantling social injustices through organizing and political education. The way our lawyering model has reflected this commitment has evolved with time.

During law school, we decided to ground our work with a handful of rules we created for ourselves: lawyers should take a backseat in movement building; lawyers should do legal work, not organize; and organizers know best so they should lead the way. We wanted to use legal services as a political education tool to support organizing efforts already happening in New York City.

Once we were admitted into the New York Bar in the spring of 2008 and started working with individuals in crisis, we learned through experience that legal education, coupled with legal services, could lead to politicization. We found we could connect individual legal struggles to broader systemic injustices through legal education. For example, a food-vendor client's struggle to fight multiple \$1,000 fines could be linked to New York City's low cap on vending permits. Common Law could highlight *why* the New York City Council has not increased the number of permits since 1979. We found that legal services without legal education led to dependency and lack of agency on behalf of our clients.

We also knew, however, that politicization wasn't quite enough to build power to create material changes in people's situations. We needed to connect individuals to organizing campaigns so that the process of politicization could be refined through action. Vendor-clients, therefore, should have the opportunity to join other vendors lobbying City Council for increased permits. We began partnering with membership-led community organizations ("community partners") as a way to connect individuals to ongoing or-

ganizing campaigns. We thought our partners could advertise legal services as a way to elicit new membership.

However, conversations with our community partners shed light on how difficult it was to retain existing members and get them involved in organizing efforts. We adapted our work to reflect this challenge of retaining members and involving them in organizing and developed the first incarnation of our community lawyering model. We began providing free legal services to all active members of our community partners, “active” being determined by our community partners. All active members were entitled to free legal services from Common Law as a benefit of their membership. This entitlement model, we believed, challenged notions of charity and deepened members’ commitments to our community partners.

Providing free legal services to an entire membership base proved to be logistically challenging. Some of our partners had hundreds of members so it was impossible to address all of their needs. This model also proved ineffective because it perpetuated the separation between legal services and organizing. Legal services for individual members without the organizers present to speak about upcoming events and campaigns failed to spark involvement in the organization.

In response to these challenges, we adapted again by creating weekly legal clinics as a way to meet with members in a group setting. This was also an ideal setting for legal and political education. We began each legal clinic with legal education about the issues that affected everyone at the table, such as a violation for vending without a permit or a notice of eviction for a rent stabilized unit. The organizing staff of our community partners linked these shared, individual experiences to ongoing campaigns and reinforced the need to become or stay active in the organization. After the group legal and political education, Common Law met with individuals privately to address their specific issue, such as an upcoming hearing. However, it was the group setting that set our legal clinics apart from others: members sat around a large table together, shared their stories with each other, and engaged with each other’s legal struggles.

Once this model was in place, our community partners began using free legal services from Common Law as the “carrot” to recruit new members and retain existing ones. Very few grassroots community organizations can offer free legal services as a benefit of membership. We were initially pleased because we believed the

strength of organizing efforts would grow as their memberships increased.

However, as a result of our legal clinics, we witnessed the gradual shift among our community partners from the focus on organizing and community power to direct services. Paid organizing staff stopped prioritizing our legal clinic as an opportunity to organize and were rarely present at our legal clinics to help connect individual legal issues to ongoing organizing campaigns. The organizers spent much of their time scheduling members to attend the clinic and only spoke of the clinic when recruiting members or collecting dues. We frequently found that we had to make the connections between the individuals and the organizing movement on behalf of the absent organizers. The legal clinic became more important than their organizing efforts.

In addition, we discovered that our model was only reinforcing the non-profit industrial complex instead of strengthening organizing efforts. Our community partners, entangled in fierce funding battles with other organizations, leveraged legal services from Common Law as a way to make themselves more competitive for funding. They also used our services as a way to lure members of other similar organizations to their own. The organizing campaigns seemed less and less important to those leading our community partners. Moreover, we discovered that the term "membership-led" was rarely practiced. The paid organizing staff, rather than the members, were often leading community partners by making important decisions about what campaigns to launch and what tactics to use.

Once we stepped back to reflect on our model, however, we learned that our mission and social justice goals were being actualized in our legal clinics themselves. Clinic participants were eager to learn more about their situations and to share information with us and with each other as they realized that they were not alone. They were becoming empowered by learning about the court process and about their legal defenses. They identified the root causes of their issues and brainstormed ways to address them. Community discussions about shared struggles, their root causes, and a common solution sparked activism.

We felt confident that we had the capacity to facilitate conversations about individual legal struggles with broader social justice goals. With more experience operating our legal clinics, we were empowered to work alongside other organizations rather than for them or under their leadership. We decreased our work with non-

profit organizations and began to work primarily with groups of individuals organizing together.

Using this sense of confidence and renewed vision, we honed our legal clinics and formed the model we use today: legal clinics practiced in a group setting that focus on legal education, story sharing, individualized legal support, and organizing. Legal education is given texture by clinic participants who share their personal stories of struggle. Hearing personal stories helps us craft stronger legal documents and legal advocacy. Shared legal experiences help connect individuals to each other and become the foundation for a new community. Building community leads to increased support and politicization, which then turns our legal clinics into transformative, organizing spaces.

II. COMMON LAW'S LEGAL CLINIC MODEL SUPPORTING PRO SE (SELF-REPRESENTED) LITIGANTS FIGHTING FORECLOSURE

A. *The Development of Common Law's Foreclosure Defense Legal Clinic*

Common Law has been working with homeowners fighting back against mortgage foreclosure¹¹ for the past five years. Through conversations with CUNY Law professors, legal services attorneys, and organizers, foreclosure work seemed like a natural fit for a small, emerging organization. In 2008, 90% of homeowners in foreclosure received default judgments against them.¹² This was a problem that we felt we could address with legal education and pro se support. The number of foreclosure defense attorneys at legal services organizations in New York City was extremely low, with less than fifteen in the City,¹³ so experienced attorneys were eager to train us and share their resources since the need was overwhelming. And the foreclosure laws were changing quite fast, which allowed us to learn foreclosure laws at the same time as our experienced colleagues and adapt our programs to reflect the changing legal landscape.

We worked in tandem with housing organizers and launched our pro se legal clinic in March 2008. The legal clinic was designed to walk homeowners through the complicated foreclosure litiga-

¹¹ New York is a judicial foreclosure state where the lender must sue the borrower in state court to obtain a judgment and sheriff's sale. N.Y. REAL PROP. ACTS. LAW §§ 1301–1391 (McKINNEY 2012).

¹² Judith S. Kaye & Ann Pfau, *Residential Mortgage Foreclosures*, N.Y. STATE UNIFIED COURT Sys. 1 (June 2008), <http://www.nycourts.gov/whatsnew/pdf/ResidentialForeclosure6-08.pdf>.

¹³ Meeting between authors, other legal services attorneys, and the Neighborhood Economic Development Advocacy Project, Spring 2008.

tion process in New York State Supreme Court,¹⁴ a process that can take anywhere between two to five years. We began working with pro se homeowners because the need was too great. Through individual representation, we could help only a handful of homeowners per year. But we could work with several pro se homeowners per week through our group legal clinics. We also knew that legal education was much more effective when homeowners experienced the court process on their own.

Our pro se legal clinic meets every Tuesday evening from 6:30 to 8:30 with four to six homeowners per week. The clinic is divided into three discrete sections: legal and political education, brief legal services, and building community power. We begin each clinic with legal and political education. We prioritize legal and political education as the most important tool for pro se homeowners fighting foreclosure. It is the first order of business at the clinic, and it is the foundation of our legal assistance and organizing initiatives.

B. The Legal Clinic's Group Setting

At the beginning of every clinic, participant homeowners gather at the table with their pens ready and notebooks open. From the start, homeowners are participants in a meeting, rather than passive receivers of a service. The very set-up of the room during our legal and political education programming—as a group, around a table—encourages participation. Homeowners and Common Law attorneys are learning, responding, reflecting, and sharing. Such active and participatory group learning transforms the traditional legal services model in three distinct ways.

First, the group setting shifts some of the power imbalance between attorney and client. In a traditional attorney-client relationship, where the attorney meets individually with her client, she holds a tremendous amount of power over her client. The client looks to the attorney to fix her problem, resolve her conflict, or relieve her suffering. When Common Law provides legal education to a group of homeowners in foreclosure, the role of lawyer shifts from “provider” to “community resource.” The role of the attorney in legal and political education workshops is to share specialized information that is pertinent to everyone. The attorney no longer assumes the responsibility of managing someone’s personal crisis; rather, the attorney has the responsibility to share information that

¹⁴ Supreme Courts are the highest trial courts for civil cases in New York State. *New York County–Civil Branch*, N.Y. STATE SUPREME COURT, <http://www.nycourts.gov/supctmanh/> (last visited Feb. 24, 2013).

is critical but normally inaccessible. The attorney's work in legal education workshops is to demystify the judicial system and legislation, translating them into common, useful language. In this way, the group education setting begins to dismantle the wall our profession maintains between those seeking justice and the judicial system.

The second way that the group setting transforms the traditional legal services model is by emphasizing and valuing the homeowners' knowledge and experience. Homeowners' personal examples and practical questions guide the education programming. Homeowners and Common Law attorneys learn from the responses. For example, a Common Law attorney states that each courtroom or "part" is autonomous and that each part has its own rules and culture. A first-time homeowner then explains that he, personally, never saw a judge during his court appearance. He only spoke to the judge's law secretary and was required to describe each of his legal arguments and exhibits to the law secretary. A second homeowner then explains that she spoke directly to a judge and that the judge had already read her motion prior to her appearance. From such discussions, homeowners learn to adjust their advocacy based upon his or her particular judge. By sharing their experiences, clinic participants become the experts and the teachers.

The third way that the group setting transforms the traditional legal services model is by exposing the widespread nature of seemingly individual problems. Everyone in the room has the same frustration with banks and the courts. For example, *every* homeowner shares that they have submitted upwards of seven or eight loan modification applications to their lender or servicer. These applications are lengthy and personal—containing paystubs, bank statements, tax returns, credit reports, lease agreements, retirement accounts, and personal budgets to list a few. Some of these applications are lost or denied without any reason. Most often, however, lenders or servicers do not review these applications in a timely manner and then require homeowners to re-submit new applications with updated information. If a homeowner refuses, they are marked as "unresponsive" and "non-compliant." This struggle is daunting. Homeowners working in isolation to obtain a loan modification believe that they are to blame for their supposed failure: "I should have mailed it rather than faxing it." Others believe that if they keep trying, they will finally obtain a modification: "The bank will eventually reward me for my efforts." When homeowners hear

that others face the same obstacles, they recognize that the banks systemically treat borrowers a particular way. Homeowners no longer blame themselves as individuals for the system's failure. They no longer believe that the banking system compensates hardworking, honest individuals. This recognition sparks a sense of solidarity with other homeowners and a desire to find ways to fight back.

C. *The Legal Education Curriculum*

Our legal education curriculum covers three topics: (1) the judicial process and the judicial system, (2) homeowners' rights and options in foreclosure, and (3) the causes of the foreclosure crisis. Every week, Common Law begins the clinic with an overview of the foreclosure process in New York State. We draw on a whiteboard the path of a foreclosure action as it winds its way through New York State Supreme Court, from "Summons and Complaint"¹⁵ to "Settlement Conferences"¹⁶ through "Foreclosure Auction and Sale"¹⁷ to "New York City Housing Court."¹⁸ Each homeowner identifies their place in the foreclosure process. This orientation to the foreclosure process allows homeowners to first relax (there's time left!) and then gear up for a fight (there's work to do!) The orientation to the foreclosure process demonstrates visually that the homeowner is still in control of the property and can avoid a foreclosure auction and sale.

We then discuss the various ways that a homeowner can avoid a foreclosure auction and sale, i.e., their rights and options in foreclosure. Some resolutions involve the loss of the home, such as a short-sale,¹⁹ and other resolutions allow homeowners to stay in the

¹⁵ See N.Y. C.P.L.R. 3012 (McKinney 2012).

¹⁶ A settlement conference is a mandatory settlement discussion between the defendants and plaintiffs in a residential foreclosure action. In addition to determining the rights and obligations of the parties, the purpose of a settlement conference is to determine whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home. *Id.* 3408.

¹⁷ N.Y. REAL PROP. ACTS. LAW § 1351 (McKinney 2012) (authorizing public sale of foreclosed property.)

¹⁸ After a property has been sold at sheriff's sale in New York City, the new owner may bring a summary proceeding in the New York City Civil Court Housing Part to gain possession. See *id.* § 713; *The New York City Civil Court Housing Part*, N.Y. STATE UNIFIED COURT SYS., <http://www.courts.state.ny.us/courts/nyc/housing/general.shtml> (last visited Feb. 24, 2013).

¹⁹ N.Y. STATE BAR ASS'N, SAVING YOUR HOME FROM FORECLOSURE 22 (2008), ("when the amount due on the loan is more than the value of the property, lenders will sometimes agree to accept a short sale. In a short sale, the homeowner sells the property to a third party at fair market value and the lender agrees to accept less than

home, such as a modification.²⁰ Homeowners ask questions about the benefits and detriments of each option, such as tax consequences and damage to one's credit report. Because of our "rights and options" conversation, homeowners are able to make an informed decision about their next steps. After the rights and options conversation, most homeowners reassert their commitment to obtaining a fair and affordable modification. Others, however, choose to move on from the home and begin anew somewhere else. Homeowners also prepare to pursue multiple resolutions, should their first choice prove difficult or unlikely. Regardless of the desired outcome, homeowners must raise legal defenses and file motions in order to gain leverage and build the bargaining power necessary to achieve their goal.

Finally, we discuss the root causes of the foreclosure crisis. We learn about the deregulation of the mortgage industry and the mass production of subprime and predatory loans.²¹ We grapple with understanding the impractical and dangerous investing schemes that led to the packaging of subprime and predatory loans.²² We, as a group, begin to understand that the foreclosure crisis was caused by reckless behavior and was wholly avoidable. This shared understanding, combined with the sight of so many others in the same communities, of the same color and class with upheaved lives, sparks solidarity and resistance against the banks.²³

D. *Brief Legal Services*

In the next segment of the clinic, we meet with homeowners

the full balance in satisfaction of the loan." available at <http://www.courts.state.ny.us/courthelp/Booklets/MortgageForeclosure.pdf>.

²⁰ A loan modification is "[a]n agreement between the lender and the borrower wherein one or more of the original terms of the mortgage is changed in order to make the mortgage more affordable to the borrower." *Id.* at 19.

²¹ See generally KATHLEEN C. ENGLE & PATRICIA A. McCORY, *THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS* (2011).

²² See *id.*; Kurt Eggert, *The Great Collapse: How Securitization Caused the Subprime Meltdown*, 41 CONN. L. REV. 1257 (2009); Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial Crisis*, 13 N.C. BANKING INST. 5 (2009).

²³ For a discussion of the impact of the foreclosure crisis on low-income communities and communities of color, see generally Raymond H. Brescia, *The Cost of Inequality: Social Distance, Predatory Conduct, and the Financial Crisis*, 66 N.Y.U. ANN. SURV. AM. L. 641 (2011); CAL. REINVESTMENT COAL., *PAYING MORE FOR THE AMERICAN DREAM: THE SUBPRIME SHAKEOUT AND ITS IMPACT ON LOWER-INCOME AND MINORITY COMMUNITIES* (2008), available at <http://www.woodstockinst.org/publications/applied-research-reports/research-reports/10/20/>; CTR. FOR RESPONSIBLE LENDING, *LOST GROUND, 2011: DISPARITIES IN MORTGAGE LENDING AND FORECLOSURES* (2011), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf>.

individually to assist them in reaching their desired outcome. Our services are limited. Common Law attorneys provide support with discrete tasks, namely providing advice and consultation, drafting legal documents, preparing homeowners for court appearances, and making referrals to trustworthy brokers and other attorneys.

1. Advice and Consultation

We make time to meet with homeowners individually and privately to talk about personal information, such as finances or family dynamics. During this time, we ask homeowners questions to help them discern their next steps. It is an opportunity for homeowners to share personal concerns and for Common Law attorneys to offer advice and counseling. Because these conversations are between the homeowner and an attorney in private for the purpose of obtaining legal advice, these conversations are privileged. While the homeowners discuss general information (such as the New York State Supreme Court process) and public information (such as what happened at a homeowner's court appearance) during the group meeting, the individual conversations between attorney and homeowner are specific and personal. By holding private advice and consultation sessions, we honor the individual within a model that prioritizes community responses to the foreclosure crisis.

2. Drafting Legal Documents

Common Law attorneys draft documents such as answers, motions in opposition, and motions to dismiss. When "ghost writing" a legal document, we include a description of the Common Law legal clinic and the work Common Law has performed. In addition to document drafting, we review filing and service instructions and help homeowners complete affidavits of service. All legal documents are read aloud at the clinic so that homeowners fully understand and approve of the document they will submit. The oral presentation of the legal document also helps homeowners learn their strongest arguments in "legalese." Homeowners become powerful and even joyful as their story is wielded into a legal tool. There is palpable excitement when a homeowner hears words such as "fraud" or "deceptive practices" describing how homeowners were induced to drain their savings or take on second jobs to pay for loans they didn't agree to. The documents drafted at the legal clinic validate homeowners' experience of injustice, giving the injustice a name and the homeowners an opportunity to be heard.

3. Preparing for Court Appearances

Before each return date, clinic participants and Common Law attorneys engage in hearing preparation. Common Law attorneys prepare homeowners by mooted them, practicing legal arguments as well as tactics and techniques to communicate effectively with the judge and opposing counsel. Common Law attorneys pretend to be court personnel or opposing counsel and homeowners have the chance to respond. Together, attorney and homeowner identify any misunderstandings of law and prevent misstatements in court. Other clinic participants observe and provide feedback such as, “Your tone wasn’t forceful enough,” or, “Lead with the strongest argument, not the one that makes you most angry.” Clinic participants also take turns mooted the homeowner. The experience is valuable for all participants. As Richard Ogust, a homeowner who has participated in several hearing preparation exercises, points out, “Hearing preparation is critical. You have to anticipate what they will throw at us, and have answers and responses ready.” The homeowner attending the hearing has the opportunity to practice with many personalities and styles. The homeowners observing and role-playing become more familiar with the culture of court and share their expertise advocating for themselves in court. The process of hearing preparation reinforces the power of community support. Representing yourself in court is a truly terrifying experience. Hearing preparation at the clinic alleviates some of the burdens of isolation.

4. Trusted Referrals

Homeowners who choose to pursue foreclosure prevention resolutions that require them to vacate the home (those who choose to move on from the home and begin anew somewhere else) are referred to brokers or bankruptcy attorneys. Although a referral may appear to be a small service, a trusted referral is critical in a real estate industry wrought with scam companies and a legal profession crawling with dishonest people.²⁴ It is common for homeowners to pay thousands of dollars to companies that promise loan modifications or lawyers that advertise foreclosure prevention experience only to discover, months later, that no work has been done on their case. When the homeowners call the company

²⁴ See e.g., Andy Kroll, *Undercover in the Foreclosure Scamming Underworld*, MOTHER JONES (Mar. 25, 2010, 1:50am), <http://www.motherjones.com/mojo/2010/03/undercover-foreclosure-relief-scam-ncrc-report-house-oversight-committee>; Michael Powell, *Prosecutions Lag as N.Y. Foreclosure Frauds Surge*, N.Y. TIMES, Apr. 14, 2009, at A1.

or the attorney's office, the phone is either disconnected or they receive an unsatisfactory or confusing excuse. Common Law, therefore, vets brokers and lawyers for the homeowner and monitors all referrals. In this way, Common Law shares the privileges and resources of attorneys with those that do not have access to legal and real estate communities.

E. Building Community Power: Acts of Solidarity and Resistance

Homeowners in foreclosure often tell us that they were overwhelmed with feelings of shame and isolation prior to attending our legal clinic. Foreclosure is a difficult issue to talk about, especially when homeowners are not part of a community where it is acceptable to talk openly about the challenges and fears of the process. Our legal clinics have become that community for many homeowners—a space where homeowners struggling through similar issues can share their experiences and build relationships with one another. Because our legal education emphasizes that individual legal battles will not be solved through individual action alone, the legal clinic nurtures the need for collective action to fight for justice.

Homeowners have strategized many different ways to support one another and build community power throughout the legal clinic's history. Mary Lee Ward, an eighty-two year-old great grandmother who was fighting for her home, believed nothing created community better than food. She took the initiative to bring home-cooked, fried shrimp balls and pasta salads to the legal clinic. Homeowners brought their friends and neighbors to listen to the legal education portion of the legal clinic. The legal clinic was so overcrowded at one point (forty people!) that we had to ask homeowners to tone down their outreach. Homeowners accompanied each other to court when filing motion papers and acted as each other's process servers. In recent weeks, homeowners have been bringing in pictures of their homes to the legal clinic so that, in homeowner Mr. Ogust's words, "we can see what we're fighting for."

Our most consistent and most powerful act of community organizing at our legal clinic is court support. The court system is intimidating and convoluted, especially for pro se litigants. Court support is an organizing strategy that makes community support visible for an individual interfacing with the court system. Court support is not a new concept; it is a time-tested way of demonstrating community power when activists stand alone in court. We be-

gan court support as a way to resist the idea that being in foreclosure has to be an isolating experience. Homeowners at our legal clinic have organized court support for one another with tremendous success.

When a homeowner has an upcoming court hearing, all former and current clinic participants are contacted and asked to attend court support. We meet a half hour before the appearance time outside the court and distribute large orange buttons that say "Court Support." The buttons make court support visible not only to the homeowner, but also to the judge, court personnel, and attorneys in the courtroom. This time is also an opportunity for the homeowner to review the purpose of the court hearing, the arguments that they want to make, and to discuss any questions or concerns that may have arisen.

We review the court support guidelines for all participants: (1) we move and act as one unit because collective power is our strength; (2) our actions can positively and negatively affect the outcome for the homeowner so we must be respectful, quiet, and composed; and (3) we are acting as emotional support for the homeowner—he or she is the only one who can make decisions about the case so we must be supportive of those decisions. Inside the courtroom, we sit together and patiently wait for the homeowner to be called for his or her hearing. Afterwards, we debrief in the hallway as a group to discuss what went well, what curveballs were thrown at the homeowner, what we observed as a group, and what next steps the homeowner needs to take.

Case Study: Court Support for Mr. Newkirk

On July 12, 2012, homeowner Daryl Newkirk had a hearing at Kings County Supreme Court.²⁵ With the legal clinic's help, Mr. Newkirk had filed a pro se order to show cause²⁶ to amend his answer to the summons and complaint. He had previously submitted a timely pro se answer but did not include legal defenses because he did not know what they were. He was now asking the court for the opportunity to amend his answer to include his strong legal defenses to the foreclosure action, and had also in-

²⁵ The Kings County Supreme Court, located in Brooklyn, is a trial court where civil actions are initially filed. *Kings County Brooklyn*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/courts/2jd/index.shtml> (last visited Feb. 5, 2013).

²⁶ A show-cause order is an "order directing a party to appear in court and explain why the party took (or failed to take) some action or why the court should or should not grant some relief." BLACK'S LAW DICTIONARY 948 (9th ed. 2009).

cluded a proposed amended answer (drafted by Common Law at the legal clinic) outlining those defenses. The morning of Mr. Newkirk's hearing, a group of ten homeowners from the legal clinic and Common Law (Karen, Jay, and two CUNY Law legal interns) gathered around the flagpole in front of the Supreme Court. We put on our court support buttons, debriefed the case, and made sure Mr. Newkirk felt supported by his community. We entered the courtroom together and took up the entire left side of the room. Several attorneys asked us what court support is (our buttons are very large and bright!) and when Matthew Bowen, a homeowner also fighting against foreclosure, responded, "We are the cavalry!" one attorney commented, "*I need court support!*"

Mr. Newkirk had done everything perfectly; he had filed his motion, picked up the signed order to show cause, had his friend serve opposing counsel with the copy of the signed order, filed the affidavit of service, and made copies of all of his paperwork. On the day of the hearing, however, opposing counsel claimed that she was never served with the copy of the signed order. The Judge did not have a copy of the affidavit of service in the file so she asked Mr. Newkirk if he had brought a copy. He had accidentally left it at home so the Judge put the case on for second call. Panicked, we all met outside in the hallway to strategize Mr. Newkirk's next step. Mr. Newkirk said he knew exactly where he had left his copy of the affidavit of service at home. One of the court supporters asked him how long it would take for him to take a cab and pick it up from his house. Mr. Newkirk said he could probably be back within an hour. At the urging of the court supporters, Mr. Newkirk asked the court clerk if he could have an hour to pick up his affidavit of service, and the clerk agreed.

An hour later, as all of the court supporters were still sitting outside of the courtroom, Mr. Newkirk came running down the hallway, waving the affidavit of service in his hand. We all cheered and clapped, and then we hugged him and each other. We all entered the courtroom again and Mr. Newkirk's case was immediately called. Once Mr. Newkirk was in front of the Judge, opposing counsel changed her position and claimed that she had actually received the signed order but not the proposed amended answer. Mr. Newkirk was unfazed and continued to make every single one of the arguments that he had prepared and practiced at the legal clinic. The Judge told opposing counsel that she could have an adjournment to submit opposition papers but also said, very clearly and loudly so the court supporters could hear, that she would most

likely grant Mr. Newkirk's motion on the return date. We all followed Mr. Newkirk outside into the hallway and exploded with applause. During our debrief and celebration together in the hallway, Mr. Newkirk thanked everyone for coming out for court support and reiterated over and over how much more confident he felt with our support.

Mr. Newkirk was able to address the surprises and challenges that arose during his court hearing because he had the support of a community. The homeowners who provided court support were able to share in Mr. Newkirk's victories and learn from his experiences. And collectively, we were able to take an active role in fighting back against foreclosures.

Court support provides a wide range of benefits for both homeowners being supported and the homeowners and allies who participate in court support. One obvious benefit is emotional support. Litigation is often an isolating and disempowering process and it can be comforting to go through it as a community. As Mr. Bowen says, "Court support is extremely important. Being together takes the nervous edge off. Having people there to support you is unbelievably helpful." Court support also provides practical help. The small details like checking in, announcing yourself during the calendar call, writing notes during the hearing, etc., are often intimidating in their own right. Having court supporters volunteer to help out with these small details can make a huge difference. For homeowners who have upcoming court hearings, court support provides another chance to engage with the court process, which helps demystify the court and helps homeowners feel more comfortable with both the court building and process.

This is also the case for law students. In the summer of 2012, Common Law had two CUNY Law interns: Em Lawler and Sarena Melchert. Their internship focused on supporting our legal clinic, with participation in court support as one of their responsibilities. Their experience with court support helped them learn to navigate the court system. Sarena explained to us, "This summer has been the first time I have ever spent so much time in a court house. I feel very comfortable now. A lot of this comfort is due to the fact that my experience in court has been in a group setting of support and advocacy." It was also a valuable learning experience for law students struggling to merge legal theory with practice. As Em shared, "As a law student, I appreciate court support because it shows the ways that interactions with the court are far more numerous than law school leads you to believe."

Court support will undoubtedly remain the core of our organizing work at our legal clinic for years to come. In the last month alone we saw court support swell to twenty people at one hearing! With the help of Molly Kafka, another CUNY Law intern, we were able to create a quarterly newsletter about court support's impact. We hope that it will continue to grow and inspire an increasing number of homeowners and allies to join the struggle for justice.

III. CHALLENGES AND HOPES FOR THE FUTURE

Our legal clinic is not without challenges and is a constant work-in-progress. One of the challenges of our legal clinic is supporting homeowners with a wide range of literacy and language skills. It is imperative that homeowners representing themselves understand the contents of their motions and all other litigation-related documents. Even individuals with strong literacy skills, however, struggle with written legal documents. This is exacerbated when homeowners have limited abilities to read and write and/or are not fluent in English. We read documents out loud and translate legalese into everyday language. But the time constraints of a legal clinic setting require homeowners to continue practicing their arguments on their own time. Those who are unable to re-read the documents, therefore, receive less assistance.

As an under-resourced organization, we cannot provide interpreters at our legal clinic. We try our best to secure volunteer interpreters or ask homeowners to bring their own interpreters, all to varying degrees of success. Eventually, we hope to be able to create more visual materials to communicate legal concepts and processes to homeowners with limited proficiency in English. We also hope to obtain the financial resources to pay former clinic participants fluent in English and Spanish to work as interpreters at our legal clinic.

In addition, despite noticeable shifts in the traditional attorney-client relationship, Common Law has only *begun* to disturb the power imbalance between attorneys and those seeking justice and relief. We perceive small shifts in power when homeowners share their experience or strengthen one another during court support. We have built momentum for more shifts and hope the homeowners will take on new and more responsibilities, such as teaching others how to file and serve legal documents or orienting first-time participants to the clinic.

We hope that the legal clinic will continue to develop in ways

that truly make law common. Ultimately, we hope to see a horizontal movement of legal information so that homeowners are involved in all aspects of the legal clinic. Our legal clinics can become more like study sessions. We can teach homeowners how to research foreclosure-related topics. We can create space for homeowners to read and grapple with the text of news articles, legislation, or case law. In fact, as we write this, we plan to introduce at tonight's legal clinic excerpts from a recent case about banks' standing to foreclose. We have created a simplified statement of the facts and extracted the most important sections of the Judge's decision. We are excited to continue to work with the homeowners to deepen their understanding of the system of justice that controls their ability to secure affordable housing—and just about everything they care about and need to survive.

We also hope to vary our financial resources. We have not found a way to support ourselves without foundation and government support and are still searching for an alternative economic model that allows us to serve those with little or no resources.

As Common Law moves forward as an organization, we are hopeful about our ability to continue to resist the pressures and panic induced by the non-profit systems in which we work. We have remained small, avoiding growth for the sake of growth. We are not a machine; this is not an operation. Our programs, our curriculum, our daily schedules are shaped and re-shaped by the needs and talents of our community. We have retained self-determination over our work.

As we move and age and develop we are still driven by the simple but radical vision we articulated back in 2007 while still students at CUNY Law: "Legal knowledge should not be privileged discourse between lawyers, judges, law students, and law professors. We seek to dispel the notion that the law is for lawyers alone to understand. We believe that it is, instead, ordinary, everyday people that carry out the struggle for justice."