

2012

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Recommended Citation

William Quigley, *Ten Questions for Social Change Lawyers*, 17 Pub. Interest L. Rptr. 204 (2012).

Available at: <http://lawcommons.luc.edu/pilr/vol17/iss3/4>

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TEN QUESTIONS FOR SOCIAL CHANGE LAWYERS

by WILLIAM QUIGLEY¹

Social change lawyering starts with the idea that history shows us that systemic social change comes not from courts or heroic lawyers or law reform or impact litigation, but from social movements.² Social change lawyers work with, assist and are in constant relationship with social movements working to bring about social change.³

Social change lawyering is a process, not an achievement. It is a path we walk with others to confront the root causes of injustice. What lies ahead is not known. There is no map. Our directions are set by constantly checking a compass that points toward justice. There are obstacles that force us to change directions and ways of going forward.

What follows are 10 thoughts on social change lawyering. They are questions and criteria we can use to define and evaluate social change lawyering and to help us make sure we are following that path toward justice.

I. WHERE DOES THE DIRECTION FOR THE LAWYERING COME FROM?

Commercial lawyers are very clear about this — whoever pays the bills directs the work. For social change lawyers the direction of the legal work comes from the social movement that is working to bring about institutional or systemic or radical change. This work may include advice, defense, discussion, protection, advocacy or litigation.

The point is not what the work is, but why this work is chosen and who participates in making those choices. For social change lawyers, the movement makes these decisions in consultation and in ongoing relationship with the lawyer. This is unlike other types of public interest lawyering or law reform or impact litigation where the goal is often set by the lawyers themselves or the institution where they work.

2. WHERE DOES THE POWER GO?

Is the purpose of your legal work to redistribute unjust power relationships and diminish the power of the unjustly powerful and transfer that power to the unjustly disempowered? Is the legal work going to empower organizations of people on the margins working for change? Or is this about the lawyer and choices about what is important made by the lawyer?

There is nothing at all wrong with public interest lawyers achieving personal satisfaction in their work. But that is not the primary goal of social change lawyering. The primary goal of social change lawyering is to challenge the injustices identified by social movements working to dismantle unjust structures and to shift power to the people of the movement so they can bring about change.⁴

3. WHO GETS THE GLORY?

If the legal work or the publicity or the fundraising is about the lawyers or their legal organization, then it is not likely empowering social justice movements. If the lawyer is the media face of the work rather than the clients and

the movement, then it is not too likely really in service of the movements — unless that is what the movement decides is right for the occasion.⁵

4. IS THERE AN ONGOING COMMITMENT TO WORK WITH GROUPS OF THE MOST IMPOVERISHED AND THE MOST MARGINALIZED PEOPLE?

The focus of the work must remain on these groups and their efforts to overturn the root causes of the unjust status quo.⁶

5. IS HUMAN RIGHTS ADVOCACY AN ESSENTIAL PART OF THE WORK?

Human rights advocacy, though still in its infancy compared to constitutional and civil rights work, offers tremendous upside for social justice.⁷ It is people-based, offers a radical critique to most current law, and illustrates the gap between law and justice.

6. IS THE LEGAL WORK JUST ONE PART OF THE OVERALL SOCIAL CHANGE MOVEMENT?

Is the lawyer part of a team in the movement working in partnership with other strategies for social change? An organizer friend of mine likes to talk about the legal component of social change as one finger on the hand — or 20 percent of the effort. Other fingers can include education, outreach, communications, and continual organizing to build the group and to expand the number of people involved.⁸

If the legal work is the primary part of the campaign, it is unlikely that the legal component is in relationship with a real social change movement. The civil rights era provides cautionary examples here with examples of many different types of lawyering, from the lawyer-led litigation method of the NAACP Legal Defense and Educational Fund to the grassroots lawyers who specifically rejected lawyers as leaders of the movement.⁹

7. WHAT WORK IS THE LAWYER ACTUALLY DOING?

Social change movements depend on face to face and group meetings and outreach and planning and evaluating actions. Is the lawyer spending time on the ground, going out, meeting with movement partners, participating in group

meetings and actions? Or is the lawyer an office advocate whose primary relationship is with the computer and law?

This is a tough challenge. Litigation, once started, tends to create its own internal life, a very demanding life of memos and briefs and legal conferences and research and writing and emails that can quickly take over. All that is important, and it is important to do it well. However, the lawyer and the social change organization she is in relationship with need to work together to maintain that relationship.

All relationships demand time. An honest examination of how the lawyer spends her time will indicate whether the lawyer is working with and for a social movement or is some other type of lawyer. No matter how demanding litigation is, social change lawyers have to create room to work and be in relationship with the people and the movement that they are taking direction from.

8. IS THE LAWYER WILLING TO BE UNCOMFORTABLE ON SOME SORT OF REGULAR BASIS?

Legal education does not train anyone to be a social change lawyer — quite the opposite. Social change lawyering forces us to confront our training and our privilege and the patterns of work that sometimes constitute our definition of self. Law school culture encourages people to think of themselves not just as educated and trained but as culturally and politically and economically different from, even superior to, most other people. In order to be a social justice lawyer, people have to consciously set aside the social privilege of being a well-educated professional and rediscover their own shared humanity with the people whom our legal education would have us call clients.

This does not mean people have to stop being lawyers; it simply means to stop acting like socially privileged, specially powered individuals. Lawyers must learn that while they certainly have much to teach and to give, they also have much to learn and to receive in true social justice-based relationships. If lawyers are going to be in solidarity and service to social change movements, this is challenging but essential.

Working with groups of people involved in social change movements is often messy and chaotic compared to litigation. There is no book of rules or library

of precedents about how this is done, and no judge to make people behave or move on. Social change lawyers need to have good analytical tools but also need to have big hearts and understanding and patience and a willingness to participate in experiences where it is not clear that participation will necessarily translate into traditional legal work.

Consider, for example, the instructions from the Lawyers Constitutional Defense Committee to incoming volunteer grassroots social justice lawyers who were arriving to help out in the civil rights struggle in the South:

The volunteer civil rights lawyer is not a leader of the civil rights movement. We are there to help the movement with legal counsel and representation, not to tell the movement what it should do. You may, if asked, suggest what the legal consequences of a course of action might be, but you may not tell them whether or not they should embark on it. They have more experiences than you in civil rights work in the South, and they are responsible for the action programs. Even if they make mistakes, they are theirs to make; your task is to defend their every constitutional and legal right as resourcefully and as committedly as you can, even if they have made a mistake. Until the time comes when they ask us to lead the movement, do not be misled by any advantage of education, worldly experience, legal knowledge, or even common sense, into thinking that your function is to tell them what they should do. The one thing that the Negro leadership in the South is rightly disinclined to accept is white people telling them any further what to do and what not to do, even well-meaning and committed white, liberal Northerners.¹⁰

9. IS THE WORK ON THE MARGINS?

If someone else is already doing the work, social change lawyers are probably needed elsewhere. Social change lawyering is a bit like leaving the main camp and going out to scout and claim some unchartered or contested territory. Working out there is social change work. If enough others come out to join in the work, it is probably time to leave that area and move to another contested area where social change organizations need a partner.

For example, the National Guestworker Alliance worked with foreign student guestworkers to organize a challenge to the State Department's J-1 cultural visa program. The program, which turned a cultural exchange opportunity into the nation's largest temporary worker program, was overturned when State banned a leading sponsor company from bringing any more foreign students

to the United States for summer jobs. Students, with help from the National Guestworker Alliance and its legal team, protested working conditions at a plant in Pennsylvania that packed Hershey's chocolates, and they ultimately forced significant changes in the program.¹¹

10. IS IT WORK WITH PEOPLE?

Work on "issues" alone is not social change lawyering and, for most people, is not sustainable. You have to be in relationships with the people you are working with and for. You have to give but also realize you have to take — you teach but you also learn. Only people offer opportunities for excitement and joy and hope and love.

Real social change work will partner us with people who live on the edge. Life at that edge seems precarious and insecure from the perspective of the traditional legal profession. But working with people at the edge is amazing because where the world sees poverty, oppression, and want — at that same place you will find people and organizations demonstrating generosity, beauty, courage, community, and solidarity in inspiring acts that will radically transform your life.

This will give you the energy to keep challenging the status quo in your work and in your personal life. This is the essence of social change lawyering — addressing the root causes of injustice by putting your legal skills at the service of social justice movements and the people in them.

A FINAL WORD

These are just some preliminary thoughts of one person. They surely leave out many ideas and probably misstate some others. You must figure out your own way of being a social justice lawyer — but you have to do it as part of a team. There are no solo social justice actors; everyone is on a team.

Being on a team is critical because social change lawyers are swimming upstream against the current of our profession and usually the law itself. Law, as an institution and as a profession, is primarily about commerce and either maintaining the status quo or altering the current order slightly to accommodate modest change. It is uninterested in, if not hostile to, systemic social

change. Any type of justice-based lawyering is therefore only a tiny bit of the profession and is actually — despite high-minded pledges to do justice and the like — profoundly countercultural to the law and legal profession.

Further, we lawyers are not educated at all about social justice change or social justice movements unless we do it outside of legal education. Lawyers, like everyone else, take pride and satisfaction in their skills and the development of their abilities. Because of our training, our profession, and our models of lawyering, social change lawyering seems to challenge the idea of being a good lawyer because it seems to take skills and ideas and work outside of our skill set.

There is a good reason why we want to continue to do what we have been doing — we are comfortable and confident in those skills and in who we are. That is fine. That might even be some beneficial type of lawyering, but it is not social change lawyering.

All of us need to work continuously to re-center ourselves to become social change lawyers. We will fail many times, and we will make lots of mistakes. But when we fall, if we are willing to get back up and keep trying along with the rest of the team, we will be on the path to social change lawyering.

NOTES

1 William Quigley is Janet Mary Riley Distinguished Professor of Law at Loyola University New Orleans College of Law, where he also directs the Law Clinic and the Gillis Long Poverty Center.

2 See THE CONCISE HISTORY OF WOMAN SUFFRAGE (Mari Jo Buhle & Paul Buhle, eds., 2005); FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL (1979); F. ARTURO ROSALES, CHICANO: THE HISTORY OF THE MEXICAN AMERICAN CIVIL RIGHTS MOVEMENT (1996); GENE SHARP, FROM DICTATORSHIP TO DEMOCRACY: A CONCEPTUAL FRAMEWORK FOR LIBERATION (The Albert Einstein Institution, 4th ed. 2010).

3 Consider the experiences of Nelson Mandela, who, as a young lawyer, worked with the South Africa freedom movement. See NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA 60-195 (1995).

4 Arthur Kinoy, a legendary social change lawyer, worked with and represented the Mississippi Freedom Democratic Party in its challenge to the all white Mississippi delegation to the national Democratic convention. They fought before, during, and after the convention for the rights of black voters, especially those in Mississippi. When it ended, Kinoy wrote: "As I considered the result, I felt that we as people's lawyers, now not just a tiny band but hundreds of us all over the

country, had fulfilled our responsibilities. We had found ways to use our knowledge, our skills, and our techniques for the purpose of assisting and advancing the struggle of millions of people for their fundamental rights to freedom, liberty, and equality.” ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE’S LAWYER* 294 (1994).

5 “Another problem is when the lawyer comes in and just takes over and becomes the leader and the spokesperson and it disempowers the community. The lawyer becomes the one everyone wants to talk interview and everybody wants to talk to. Then the media and the powerful don’t ever talk directly to the people any more. The community’s struggle becomes the lawyer’s struggle and not the people’s struggle. . . . I find it real destructive when outside people speak for the community. It is the simple folk that sustain us as people — not some lawyer or nun or hot shot organizer who comes in and does work in the community.” Community organizer Barbara Major, quoted in William Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. U. L. REV. 455, 462–63 (1994).

6 Consider the excellent social justice lawyering work done at worker centers around the country. See Jennifer Gordon, *American Sweatshops: Organizing workers in the global economy*, BOS. REV. (Summer 2005), <http://bostonreview.net/BR30.3/gordon.php>.

7 One great example is the Vermont Healthcare is a Human Right Campaign detailed in James Haslam, *Lessons From the Single Payer State*, IN *THESE TIMES* (Oct. 27, 2011), http://www.inthesetimes.com/article/12122/help_wanted_lessons_from_the_single-payer_state/.

For a wider, more detailed discussion of the opportunities and challenges of human rights advocacy internationally and domestically, see Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL’Y 337, 366–77 (2011).

8 ERIC MANN, *PLAYBOOK FOR PROGRESSIVES: 16 QUALITIES OF THE SUCCESSFUL ORGANIZER* (2011).

9 See Thomas Hilbink, *The Profession, the Grassroots and the Elite: Cause Lawyering for Civil Rights and Freedom in the Direct Action Era*, in AUSTIN SARAT & STUART SCHEINGOLD, *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 60–83 (2006).

10 *Id.* at 73.

11 See Julia Preston, *Hershey’s Packer is Fined Over its Safety Violations*, N.Y. TIMES (Feb. 21, 2012), http://www.nytimes.com/2012/02/22/us/hersheys-packer-fined-by-labor-department-for-safety-violations.html?_r=1&ref=juliapreston.