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Legal Rights, Real-World Consequences: The Ethics of Know Your Rights Efforts and Towards Improved Community Legal Education

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Legal Rights, Real-World Consequences: The Ethics of Know Your Rights Efforts and Towards Improved Community Legal Education

Brandi M. Lupo*

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INTRODUCTION

Legal rights function differently for different people. This is simply another way of saying that even if people are equal on the books, they are not treated as such in society. The ability of a black man to assert his rights against an unlawful police search looks different from a white man’s ability to do the same.¹ A migrant worker’s ability to protect herself from labor exploitation differs from a

* J.D., University of Pennsylvania Law School (2016)

¹ Compare Voices of Liberty: Liberty-Minded Multi-Channel Network, *Know Your Rights: Police Checkpoints*, (Aug. 6, 2014), <https://www.youtube.com/watch?v=A-HX7ZVkWdc>, (instructing viewers on their rights against unreasonable searches and seizures and featuring a series of predominantly white men resisting police officers’ instructions), with Sophie Jane Evans, *Terrifying Moment Police Smashed a Car Window and Tasered Passenger During Routine Traffic Stop in Indiana*, DAILYMAIL (Oct. 8, 2014, 9:03 PM), <http://www.dailymail.co.uk/news/article-2783809/Terrifying-moment-police-smashe-car-window-tasered-passenger-routine-traffic-stop-Indiana.html> (featuring video of a police officer smashing a car window and tasered the black passenger when the passenger did not give the officer a form of identification).

citizen's ability to do so.² Even more, to say that the right simply “looks different” is a farce. It is not merely that rights look different. The assertion of rights by certain people can escalate everyday scenarios into violent and even deadly encounters. A single individual's correct understanding of his or her rights may not — if ever — subdue the greater power dynamics at work. Thus, the old adage “knowledge is power” might end on different terms. Knowledge of one's rights, or the invocation and implementation of that knowledge, can mean escalation. It can mean injustice. It can even mean death.

Community legal education programs and Know Your Rights efforts³ designed to bring basic legal information to the public must be cognizant of this reality. Whether workshop or pamphlet, Know Your Rights campaigns are “often dry recitations of law” that “fail to mention the practical difficulties in implementing” the discussed rights.⁴ It can be easy to devalue these educational efforts out of concern that the information provides little in terms of practical applicability. Yet the current inability of lawyers to meet legal needs of both poor and middle class individuals⁵ necessitates new approaches to legal aid.⁶ Lawyers and community leaders must design Know Your Rights efforts that provide vital legal information within the lived reality of intergroup conflict.⁷

Despite the legal knowledge they bring to the table, this is hard work for lawyers. Most lawyers are not trained educators or social workers, and they are never full-fledged members of the disadvantaged groups they encounter through Know Your Rights efforts.⁸ Even if they were, the Professional Rules of Conduct, a set of rules governing ethical standards for the legal profession in the

² For discussion of one example, see, e.g., Mary Bauer & Meredith Stewart, *Close to Slavery: Guestworker Programs in the United States*, SOUTHERN POVERTY LAW CTR., (Feb. 18, 2013), <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states> (detailing the exploitation of foreign workers under the H-2 guest worker program).

³ For purposes of this article, community legal education and Know Your Rights efforts are used interchangeably. However, one could imagine “Know Your Rights” being under an umbrella of community legal education, with other forms of education including policy writing and paralegal training.

⁴ Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 393 (2013).

⁵ See, e.g., Janice Jones, *Too Many Lawyers for the Rich, Not Enough for the Poor*, THE GOODSPEAKS PROJECT, available at <http://www.goodspeaks.org/event/too-many-lawyers-for-the-rich-not-enough-for-the-poor> (“Experts are warning of an Access to Justice crisis for the poor and middle class despite an oversupply of law school graduates....”).

⁶ See, e.g., Dan Lear, *Lawyers Need to Move Beyond ‘Access to Justice’ to Close the Legal Services Gap*, ABA JOURNAL LEGAL REBELS (Sept. 1, 2015, 8:30 AM), http://www.abajournal.com/legalrebels/article/lawyers_need_to_move_beyond_access_to_justice_to_close_the_legal_services_g/.

⁷ Intergroup conflict, or any conflict that arises between two or more individuals that do not come from the same identity group, can generate even more subtle forms of bias, hostility, and negative sentiments. Identity here could mean any intersection of race, color, gender, sex, sexual orientation, religion, national origin, ancestry, age, disability, source of income, or class.

⁸ Put simply, lawyers—if they were not already privileged—acquired a number of privileges upon endowment of their legal education. A lawyer's assertion of their rights will often play out differently than a layperson's assertion of their rights.

United States, limit attorneys' abilities to engage critically with individuals who are not formal clients. Lawyer-led Know Your Rights programs are thus ethical minefields for lawyers. They must navigate their professional responsibilities as lawyers, social responsibilities as allies, political responsibilities as activists, and moral responsibilities as human beings.

This article is an attempt to provide guidance on crafting effective, socially-conscious Know Your Rights programs with the lawyer's professional responsibilities in mind. Given the diversity of community legal education efforts, Part I provides a brief summary of the rise of these programs and descriptions of various programmatic models. Part II discusses the ethical issues faced by attorneys during in-person modules. This discussion focuses both on the formal ethical obligations attorneys have as professionals and the responsibility of attorneys in recognizing both the boundaries of their understanding and position of power. Part III synthesizes Part I and Part II's findings and explains the ultimate merits of thorough and well-designed Know Your Rights campaigns. By fully understanding the shortcomings of some currently-existing Know Your Rights workshops, as well as the ethical issues faced by attorneys, four practical recommendations emerge for stronger community legal education programs.

I. KNOW YOUR RIGHTS AS A LEGAL SERVICE

Know Your Rights programming is on the rise. An increasing number of legal service providers offer some form of community legal education.⁹ Rather than leave indigent individuals without any representation, community legal education can provide at least some guidance that individuals can use to move forward on their own. The key objective is to provide a basic yet sufficient overview of the information necessary for participants to successfully navigate difficult legal situations. Topics covered by community legal programming range the gamut. When working with pro se litigants, facilitators may focus on the information needed "to understand and access the type of pleadings required, basic rules such as service of process, basic information that the court will require to render a decision, and a sense of the range of remedies available."¹⁰ Training for protesters may center on interactions with police, First Amendment rights, and

⁹ This trend began at the very latest in the early 1990s. See Stephen A. Rosenbaum, *Pro Bono Publico Meets Droits de L'homme: Speaking a New Legal Language*, 13 LOY. L.A. INT'L & COMP: L.J. 499, 504 (1991) ("A trend toward community legal education has been developing in [Legal Services Corporation] circles and among lawyers' associations generally"). See also Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for the New Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 56-57 (2000) (listing community legal education as a method taught in new clinical models "respond[ing] to the increasing crisis in the provision of legal services to the poor and the movement toward experimentation with limited or "unbundled" legal services approaches to reaching far greater numbers of people in need."). See also Amy Dunn Johnson, *Unbundled Legal Services: A Revolution Whose Time Has Come*, *The Ark. Lawyer* 28 (2014), https://issuu.com/arkansas_bar_association/docs/lawyer_summer_2014issuu?mode=embed.

¹⁰ Margaret Mead Barry, *Accessing Justice: Are Pro Se Clinics A Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1883 (1999).

the right demonstrators have to public space.¹¹ Environmental law educators may organize programs around the environmental impact of proposed infrastructure projects, landowner rights, and access to government information.¹² Ultimately, the goal is for individuals vulnerable to a particular legal problem to walk away with a better understanding of their rights, how to use them, and where they can go for further help.

A. *The Rise of Community Legal Education*

The rise of community legal education is both a story of community empowerment and legal aid's failure to meet legal need. Originating as a form of organizing over a century ago,¹³ vulnerable populations came together to learn and fight for their rights. These were communities without lawyers of their own and often targets of abuse. Black women activists called on each other to learn their rights and advocate for abolition and black autonomy.¹⁴ Jewish women working in the New York shirtwaist factories joined together to assert their rights to improved wages and safer working conditions.¹⁵ Immigrants, women, and minorities served themselves and worked towards both traditional and radical societal reform.

Lawyers took on a more formal role in community legal education in the 1960s. In 1964, the Johnson Administration established the Office of Economic Opportunity Legal Services Program to distribute federal funding for legal services.¹⁶ Recognizing both the legal needs of indigent individuals and "limitations on the resources available for legal services," the administration envisioned lawyers providing services beyond traditional courtroom litigation.¹⁷ Legal aid funding rose from a combined budget of five million dollars for all legal aid organizations in 1965 to an additional "forty-one million dollars in grants"

¹¹ See generally *Know Your Rights: Demonstrating in New York City*, NYCLU: OCCUPY YOUR RIGHTS (2015), <http://pages.citebite.com/g1s3x3d0d3jpv>.

¹² See, e.g., *How to Protect Your Property and Rights During Mariner East 2 Construction*, CLEAN AIR COUNCIL, https://cleanair.org/marinereastpipeline_rights/ (last visited Nov. 9, 2019).

¹³ For example, one of the most famous First Amendment cases in the history of the Supreme Court centers around Know Your Rights-esque anti-draft leaflets. *Schneck v. U.S.*, 249 U.S. 47 (1919). In *Schneck*, the defendant was convicted of violating the Espionage Act of 1917 for obstructing the draft. *Id.* at 48-49. The leaflets instructed draft-age men to resist the draft, reading: "If you do not assert and support your rights, you are helping to deny and disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." *Id.* at 51.

¹⁴ See, e.g., Maria W. Stewart, *Religion and the Pure Principles of Morality, The Sure Foundation on Which We Must Build*, THE LIBERATOR (Oct. 1831) ("Sue for your rights and privileges! Know the reason that you cannot attain them! Weary them with your importunities! You can but die if you make the attempt, and we shall certainly die if you do not!"). Maria Stewart was a Black abolitionist, feminist, and writer. A collection of her essays and speeches are available in MARIA W. STEWART, AMERICA'S FIRST BLACK POLITICAL WRITER (Marilyn Richardson ed., 1987).

¹⁵ See *Uprising of the 20,000: New York Shirtwaist Workers Strike, November 1909 to February 1910*, Harvard Univ. Women Working, <http://ocp.hul.harvard.edu/ww/uprising.html> (last visited Mar. 20, 2016).

¹⁶ This occurred through the passage of the Economic Opportunity Act of 1964. Pub. L. No. 88-452, 78 Stat. 508 (1964) (codified as amended at 42 U.S.C. § 2701 and repealed 1981).

¹⁷ Earl Johnson Jr., *The O.E.O. Legal Services Program*, 14 Catholic Lawyer 99, 100 (1968).

made available in 1967.¹⁸ For the first time, “community lawyering” — or lawyering that expanded outside the courthouse — would be bankrolled by considerable federal funds.

Guidelines advising legal aid organizations on the allocation of federal funds¹⁹ explicitly recognized “preventative law and client education as essential activities” of quality legal service providers.²⁰ Lawyers were called upon to “assist clients in identifying critical needs and fashioning legal responses . . . [t]hrough community education, outreach efforts, and physical presence in the community.”²¹ While the Legal Services Program was not met without controversy,²² a new league of lawyers emerged eager and encouraged to engage directly in community-based lawyering.²³

Recognition of education as a legal service was a radical concept.²⁴ Public interest lawyers had to push the bounds of their practice, moving the lawyer-client relationship away from its traditional vertical nature to one built off of the experiences of the community.²⁵ One practicing attorney argued that “the traditional model of legal practice for private clients is not what poor people need; in many ways, it is exactly what they do not need.”²⁶ In essence, community education was meant to empower communities, not reinforce existing hierarchies; it was meant to expand a person’s opportunities, not safely return the person to a prior unsettled life. This went against the standard legal model of making a person “whole” by compensating them for a sustained loss. Communities needed more.

On the other side, the introduction of lawyers into communities and organizing efforts often was — and still is — met with skepticism. Organizers feared the lawyers’ eagerness to institutionalize, and thus temper, a movement’s demands. Some progressive activists described lawyers as “necessary evils” that

¹⁸ *Id.* at 99.

¹⁹ Office of Economic Opportunity, Guidelines for Legal Services Programs (1967).

²⁰ *Id.*; *History of Civil Legal Aid*, NAT’L LEGAL AID & DEFENDER ASS’N, http://www.nlada.org/About/About_HistoryCivil (last visited February 12, 2016).

²¹ Alan W. Houseman, *Political Lessons: Legal Services for the Poor--A Commentary*, 83 GEO. L. J. 1669, 1684 (1995).

²² See Clifford M. Greene, David R. Keyser, & John A. Nadas, *Depoliticizing Legal Aid A Constitutional Analysis of the Legal Services Corporation Act*, 61 Cornell L. Rev. 734, 734-35 (1976) (acknowledging that “[c]ritics protested that the OEO program was dominated by ‘ideological vigilantes’ who subsidized their own radical crusades with Legal Services Programs funds”).

²³ See generally *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967).

²⁴ In fact, the OEO was considered a radical organization by more conservative corners of the bar and found its end in 1973 during the Nixon Administration. For a full conversation of the politics surrounding the OEO, See Clifford M. Greene, David R. Keyser, & John A. Nadas, *Depoliticizing Legal Aid: A Constitutional Analysis of the Legal Services Corporation Act*, 61 CORNELL L. REV. 734, 734-45 (1976).

²⁵ See Louis G. Trubek, *On Long Haul Lawyering*, 25 FORDHAM URB. L. J., 801-806 (1998) (“The struggle to broaden and legitimate skills that poverty lawyers can use to effectively assist poor people is long-standing. Organizing clients and educating people on rights has been advocated since the 1960s”).

²⁶ Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L. J. 1049, 1049 (1970).

“distort and destroy a struggle.”²⁷ Particularly when there is already a racial, gender, or cultural gap between the community and the lawyer, it is difficult on both sides to envision a role for the lawyer consistent with the community’s goals. Having taken on a clear role in the social hierarchy and current institution, lawyers are not always considered the best advocates for true revolution.

Of all of the guidelines specified by the Legal Services Program, community education received the least amount of attention, hours, and resources.²⁸ Many lawyers were more invested in legal reform and impact litigation efforts where they believed, as lawyers, they could effect the most change.²⁹ Despite its rise in popularity, lawyers today still struggle to recognize community legal education as a valid legal service. To some extent, its increasing acceptance signals a recognition of the void left by underfunded “full-service” public interest law centers.³⁰ At the same time, this means that education continues to not be appreciated as an essential part of full-service comprehensive legal aid.³¹

B. Approaches to Community Legal Education

Community legal education³² comes in a variety of forms. Each style aims to present a layperson’s introduction to legal rights and resources. Good campaigners may use multiple mediums to best reach their intended audience, or may restrict themselves to one approach because of a legal issue’s complexity. Each medium has its own strengths and shortcomings and, if used inappropriately, its own dangers.

1. Written materials

The easiest way to create and share, written materials — in the form of information packets and online modules — are a popular form for Know Your Rights materials. Legal organizations frequently prepare one-pagers and full booklets that provide quick, pocket-sized help for particular legal issues. Individuals can take these materials on the go and consult them regularly. Written materials and online modules can usually be easily accessed and translated into a

²⁷ See, e.g., Julie Su, *Making the Invisible Visible: The Garment Industry’s Dirty Laundry*, 1 J. GENDER, RACE & JUST. 405, 417 (1998) (explaining how activists have understood her role as a lawyer and the conflicts she has experienced in working towards a transformative legal practice).

²⁸ Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 442 (1996) (discussing a 1970 study on the OEO guidelines).

²⁹ Derrick Bell, *Law, Litigation, and The Search For The Promised Land*, 76 GEO. L. J. 229, 232 (1987) (summarizing the thinking that civil rights successes were the result of courtroom victories rather than grassroots organizing).

³⁰ See, e.g., *Roundtable: Funding Strategies*, 24 FORDHAM INT’L L. J. S254 (2000) (discussing whether and when community legal education is an appropriate end for legal aid funding).

³¹ *But see* Alan W. Houseman, *The Future of Civil Legal and Initial Thoughts*, 13 U. PA. J. L. & SOC. CHANGE 265, 271 (2009) (arguing that comprehensive legal aid includes outreach and community legal education on top of full-service legal aid).

³² The literature draws no distinction between “community legal education” and “know your rights” efforts. One might envision community legal education being a broader umbrella of outreach efforts in which Know Your Rights efforts is only one component. Here, the terms are used interchangeably.

number of different languages, and frequently are, thus increasing the amount of people who can access the material.³³

Written materials assume a certain level of sophistication on the part of their reader. Many of these guides are written using legalistic language and are not readily usable by the average person.³⁴ Even if they are in plain language, individuals who struggle with reading may still have a difficult time understanding the material. Categorically, quick, one-pager type materials cannot convey the nuance of a legal right. While an organization might be able translate black-letter law into an easier-to-understand two sentences, it will likely fail to highlight the difficulties of asserting a legal right.

2. Videos

Videos can also be made widely accessible on the internet³⁵ and further contextualized by written materials. YouTube features a number of Know Your Rights videos by organizations and individuals with a host of motivations. These videos are sometimes lectures and slideshow presentations, while others feature more active representations of legal rights in action.

These role-playing and real-life examples provide nuance that written materials cannot. While a handout or article can offer step-by-step guidance on what to do during a police interaction, a video can walk the viewer through the encounter. A visual and audible depiction can express critical information that may not be addressed or adequately depicted in a pamphlet. Videos can convey the tone of an individual's voice, the delivery of the legal right, and "law's impact as a lived experience."³⁶ By exploring multiple versions of the scenario, videos can signal to the viewer that rights are not one-size-fits-all or always treated equally, and that different situations may call for different responses.

Like written materials, videos contain a number of assumptions about their audience: who they are, what they are looking for, and how the message will be received best. Individuals in the video cannot take questions live or adapt to the audience's reactions. Poor alignment between message and audience will result in, at best, a less engaging film and, at worst, confused, conflicted, incomplete, or plainly incorrect conclusions among viewers. Since the viewers — with their own experiences, questions, and understandings of the world — are not in the filming room, video makers must be intentional about who they are addressing,

³³ *You Have the Right to Remain Silent*, NATIONAL LAWYERS GUILD, <https://www.nlg.org/resource/know-your-rights>, (last visited Sept. 22, 2018).

³⁴ For an interesting conversation about how to make self-help materials not only accessible but "deployable" by laypersons, see D. James Greiner, Dalie Jimenez, & Lois R. Lupica, *Self-Help Reimagined* 92 IND. L.J. 1119 (2017).

³⁵ Video is widely considered to be the most engaging form of digital content. On some platforms, daily watch time has quadrupled and by 2020, Cisco predicts that "over 75% of the world's mobile data traffic will be video." *Sight, Sound and Mobilization*, <https://www.facebook.com/iq/articles/sight-sound-and-mobilization#Mobile-video-viewers-look-for-convenience,-community-and-relevance> (last visited Sept. 22, 2018).

³⁶ Regina Austin, *The Next New Wave: Law Genre Documentaries, Lawyering in Support of Creative Process, and Visual Legal Advocacy*, 16 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 809, 820 (2006).

particularly when conveying how people can and should implement their rights. Is the film for the general public? Black men? Immigrant women? Production and directorial decisions must not only recognize what will resonate with viewers, but how the educational message should differ for each viewer.

3. *In-person short-term workshops*

Many legal and advocacy organizations hold in-person workshops. The most effective workshops are held with community leaders to ensure proper messaging and attendance. Good partners — community centers, organizing coalitions, churches, or treatment programs — are made up of members of the community, know the community's needs, and can get the right people to show up and engage.³⁷

Workshops allow for lawyers and laypersons to interact directly. Sometimes, lawyers bring slides and lecture to the group. Other times, lawyers attempt to lead a more open dialogue about rights. The amount of nuance that lawyers can present varies. Workshops suffer from a lack of time. Usually an hour- or two-hours long, and often one-off or short-term, there is no promise of a longer-term relationship between lawyer and participant. The group is forced to cram a substantial amount of information into a small window of time. Still, individuals who are unable to commit to a longer-term session can feel empowered through their attendance.

4. *Longer-term classes*

Longer-term community legal education provides individuals who can commit to a longer-term class with more legal information than can be shared in a one-off workshop. Perhaps the most famous version of a longer-term community legal education program is Street Law.³⁸ Founded by the National Institute for Citizen Education in the Law and three Georgetown students, Street Law began as a visit to two inner city high schools in Washington, D.C.³⁹ The group founded a practical law class intended to “provide information on how to avoid legal problems and what to do when such problems arose.”⁴⁰ Crafted for high school students, the materials promoted law not only as a punitive measure but a protective one that could be used to their benefit.

Longer-term courses, however, are limited in their reach. Attendees come from very specific and limited populations: either people who can afford to take time away from work and family to attend multiple classes or students who are already in class. Without programs capable of reaching people who have a only

³⁷ See, e.g., *Know Your Rights Training— Public Workshops and Training Sessions*, ACLU OF WISCONSIN, <https://www.aclu-wi.org/en/community-engagement/know-your-rights-training> (last visited Sept. 22, 2017). (“Many of the ACLU’s workshops are organized by other community groups and educational institutions, who invite ACLU staff to share their knowledge about specific topics.”).

³⁸ Street Law, <https://www.streetlaw.org> (Last visited Sept. 22, 2018).

³⁹ Edward L. O’Brien, *Community Education for Law, Democracy, and Human Rights*, in *HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY* (George J. Andreopoulos & Richard P. Claude ed., 1997).

⁴⁰ *Id.* at 418.

short period of time (or no time at all) to dedicate to a potential legal issue in their lives, organizers categorically will miss all the people too busy keeping food on the table or taking care of their children.

II. “LAWYERING” WITH YOUR HANDS TIED

Some of the resistance to community legal education stems from the professional quandaries it produces for lawyers. Lawyers are expected to be competent and thorough advocates for their clients.⁴¹ But in underfunded offices⁴² with excessive caseloads,⁴³ even the best legal aid attorneys struggle to provide diligent services to all those in need. “Unbundled” legal services, or services in which lawyers limit their responsibilities to portions of the individual’s legal needs, also require lawyers to step away from the traditional full-service model of representation. The farther away the profession steps from full service representation, the less the profession is able to regulate the quality of legal services provided to clients.⁴⁴

As such, many lawyers are resistant to limiting the scope of their services. The flexibility to do so is a relatively recent development — dating only back to 2002⁴⁵ — when the Model Rules of Professional Conduct were amended to allow lawyers to “limit the scope of the representation if the limitation is reasonable. . . .”⁴⁶ States have been slow to formally permit unbundled legal services.⁴⁷

Despite this new flexibility, community legal education efforts do not allow for a clean delineation of legal tasks. At the same time, the Model Rules remain plagued by other ethical restrictions that “threaten the viability of community practices.”⁴⁸ Lawyers might enter small, cramped community centers and face an audience of participants eager for advice about their individual cases. Spaces brimming with legal controversy and individualized questions may ease the way for acts of solicitation. The questions of when confidentiality attaches and what role privacy should play in workshops complicates the relationship between lawyer and participant. Lawyers often leave workshops understanding that there

⁴¹ MODEL RULES OF PROF’L CONDUCT r. 1.1 (AM. BAR ASS’N 2016) (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

⁴² Editorials, *A Fair Shake for Legal Aid*, WASH. POST (Jul. 13, 2009), available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/12/AR2009071201920.html?sub=AR>.

⁴³ ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 376-77 (2006) (discussing ethical obligations of overworked public defenders).

⁴⁴ Mary Helen McNeal, *Unbundling and Law School Clinics: Where’s the Pedagogy?*, 7 CLINICAL L. REV. 341, 358 (2001).

⁴⁵ Stephanie L. Kimbro, *Law a la Carte: The Case for Unbundling Legal Services*, 29 GP Solo 5 (2012), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2012/september_october/law-a-la-carte-case-unbundling-legal-services/ (last visited Sept. 29, 2018).

⁴⁶ MODEL RULES OF PROF’L CONDUCT r. 1.2(c) (AM. BAR ASS’N 2016).

⁴⁷ As of 2010, Illinois was only the 41st state to include a modified version of the revision into the State’s Rules of Professional Conduct. Timothy Eaton & David Holtermann, *Expanding Access to Justice: Limited Scope Representation is Here*, CBA Rec. (Apr. 2010), http://www.lians.ca/sites/default/files/documents/lsr_is_here-eaton_holtermann.pdf.

⁴⁸ Louis G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 FORDHAM URB. L.J. 801, 810 (1998).

were miscommunications along the way. Here, there may be no ethical rule that governs the problem, but the personal, political, and moral codes the lawyer follows may be threatened, and a layperson may leave with an incorrect understanding of his or her rights.

A. *Legal Information versus Legal Advice*

Lawyers acting as community legal educators must walk the blurry line between providing legal information and providing legal advice. A lawyer who gives legal advice can inadvertently form an attorney-client relationship with the recipient,⁴⁹ thereby opening herself up to various forms of responsibility and liability.⁵⁰ Moreover, since most states prohibit the practice of law by those who have not been admitted to the state's bar, a non-lawyer can also expose themselves to liability by leading a Know Your Rights campaign and inadvertently providing legal advice.⁵¹

The traditional distinction drawn between legal information and legal advice is a notion of breadth. Legal information is generic and factual. It applies to all people and objectively states a black-letter recitation of the law, the court procedure for completing a task, or the resources available for further aid.⁵² Legal advice, on the other hand, is infused with analysis and recommendations. A person providing legal advice might "recommend a specific course of conduct" for an individual pursuing a legal claim or "appl[y] the law to the individual's specific factual circumstances."⁵³ Legal advice might also predict a case's outcome or the necessity of attempting to settle before trial.⁵⁴

Courts frequently run into the information-advice dilemma when working with pro se litigants. Court clerks traditionally are instructed to never provide legal advice.⁵⁵ This instruction purportedly promotes the court's goals of neutrality and impartiality, while also protecting its non-legal staff from

⁴⁹ Ingrid A. Minott, *The Attorney-Client Relationship: Exploring the Unintended Consequences of Inadvertent Formation*, 86 U. DET. MERCY L. REV. 269, 279 (2009) (stating that "an attorney-client relationship, even if not created expressly, may nonetheless be deemed to exist depending on the client's intent and the lawyer's actions or lack thereof.").

⁵⁰ The relationship is governed by the State's code of professional responsibility and rules of confidentiality, diligence, and communication can be applied. *See* Randall Ryder, *Did You Give Legal Advice Without Realizing It?*, <https://lawyerist.com/64508/casual-legal-advice/> (last visited Sept. 29, 2018) (arguing that the traditional "cocktail party" hypothetical of a friend asking you for legal advice at a cocktail party can make "a perfect recipe for a malpractice claim").

⁵¹ *See* Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581 (1999).

⁵² *See, e.g., Legal Information v. Legal Advice*, State Bar of Ariz., <http://www.azbar.org/lawyerconcerns/regulationofnon-lawyers/legalinformationvlegaladvice/> (last visited Apr. 1, 2016).

⁵³ *Id.*

⁵⁴ *Legal Information vs. Legal Advice*, EDUC. SUBCOMM. OF THE UTAH JUD. COUNCIL, LEGAL INFORMATION VS. LEGAL ADVICE: GUIDELINES AND INSTRUCTIONS FOR COURT STAFF WHO WORK WITH SELF-REPRESENTED LITIGANTS IN UTAH'S STATE COURTS (2010), available at https://www.co.washington.or.us/LawLibrary/upload/TF_Utah_Legal_Info-v-Advise.pdf.

⁵⁵ *See generally* John M. Greacen, *No Legal Advice from Court Personnel - What Does That Mean?*, 34 JUDGES J. 10 (1995). *See also* Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987 (1999).

inadvertently practicing law without authorization.⁵⁶ Pro se parties, however, may need information beyond a black-letter explanation of the law or a dry recitation of procedure to merely understand — not even assess — their options.⁵⁷ Litigants rarely come with questions phrased in a way that makes the information-advice categorization clear. Out of fear of consequence, court staff may unnecessarily restrain themselves when responding to pro se questions. Thus, “unconstrained discretion” guides their answers, as clerks decide which questions and to whom they will decide to answer.⁵⁸ Ultimately, many pro se litigants are left without the information they need to move forward.

Community legal education may edge even closer to the information-advice line. The goal is not merely to inform individuals of their legal rights but empower them to take action.⁵⁹ Empowerment requires not only an informational sharing of the law, but the development of “a deeper understanding of legal rights and responsibilities.”⁶⁰ Individuals need the pros and cons, the hoops to be jumped through, and smart approaches.

Legal education in communities also necessitates a broader view of the law. When an individual asks a court clerk a question, the individual is already mired in a formal legal dispute. Community questions may not focus on the particularities of, or next steps in, a legal claim. It may not be clear that the individual is speaking about a personal problem. Instead, he may speak to larger community interactions. How should someone respond to a police officer if asked for immigration status? Are photographs permitted at the protest this weekend? How much force can a prison official use against a prisoner, and when can she use it? If lawyers say too much, they can quickly begin “recommending” courses of action and accidentally cross the legal advice line.

In effect, lawyers providing legal education must hold themselves back, not in the interest of effective pedagogy, but in the interest of their own careers. Lawyers attempting to educate a crowd about legal rights must simultaneously consider the scope of the material they are sharing. How much education is “too much education,” or when does the information become “too personalized,” are questions at the forefront of many attorneys’ mind during a community legal education event.

⁵⁶ EDUC. SUBCOMM. OF THE UTAH JUD. COUNCIL, *supra* note 54 at 4 (April 2010).

⁵⁷ The average layperson finds the legal system inaccessible. See Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), http://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html?_r=0. Even more, “[m]any pro se litigants are poor, destitute, [and] uneducated.” *Representing Yourself*, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/1076.htm> (last visited Nov. 4, 2018) (advising that “[y]ou may not need a lawyer if... [y]ou understand all your options and can make informed choices about your case”).

⁵⁸ *Greacen*, *supra* note 55, at 12 (arguing that the result “of a fuzzy definition of ‘giving legal advice’ is...the potential for abuse, favoritism, and undesired consequences”).

⁵⁹ Margaret Martin Barry, et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401, 404 (2012).

⁶⁰ Jeff Giddings & Michael Robertson, *‘Informed Litigants With Nowhere To Go’: Self-Help Legal Aid services in Australia*, 26 ALT. L. J. 184 (2001) (discussing the difference between “legal information” and “legal education”).

B. Solicitation of Legal Work

Community legal educators must ensure that their efforts do not solicit legal work for financial gain because such solicitation is prohibited by the Professional Rules. Know Your Rights efforts, if done appropriately, may not only protect people from illegal uses of force or help them navigate difficult legal situations before they occur. They may also alert individuals to legitimate legal claims they already have. Thus, lawyers who may ultimately work for a fee must be conscious of the information they provide and how they present it to the public.

Prior to the mid-twentieth century, lawyers flatly were prohibited from advertising their services in all arenas.⁶¹ The bar's justification was not only that a ban on advertisement would protect vulnerable members of the public from greedy, overreaching lawyers, but that "stirring up litigation" was an inappropriate drain of judicial resources.⁶² By 1958, just before the Johnson Administration came out in support of community legal education,⁶³ the bar revisited its perspective on solicitation. It concluded that:

The obligation to provide legal services for those actually caught up in litigation carries with it the obligation to make preventive legal advice accessible to all. It is among those unaccustomed to business affairs and fearful of the ways of the law that such advice is often most needed. If it is not received in time, the most valiant and skillful representation in court may come too late.⁶⁴

States around the country began revising their ethics codes, incorporating more room for "preventative law" measures.⁶⁵ Today, Model Rule 7.3, governing direct contact with prospective clients, prohibits solicitation only in cases where the lawyer is significantly motivated by "pecuniary gain."⁶⁶ Thus, legal work that is to be done for free is exempt. Many states explicitly recognize this pro bono exemption.⁶⁷

While many Know Your Rights activities concern issues that would likely be covered pro bono, lawyers conducting Know Your Rights in areas in which they ultimately practice for a fee must be careful of their presentation. Particularly

⁶¹ ABA Canons of Prof'l Ethics Canon 27 (1908).

⁶² *Id.* at Canon 28. For an interesting revival of the stirring up rationale, see ALEXANDER SCHWAB, *In Defense of Ambulance Chasing: A Critique of Model Rule of Professional Conduct 7.3*, 29 YALE L. & POL'Y REV. 603, 628 (2010).

⁶³ Professional Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159 (1958)

⁶⁴ *Id.* at 1216.

⁶⁵ For a fuller discussion of this time period, as well as an interesting discussion about preventative law today, see generally Ritchie Eppink, *Are We Missing Something: A Case for Public Legal Health*, 52-APR ADVOCATE (IDAHO) 28 (2009). The bar's powers to ban advertising wholesale have also diminished. See generally *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977).

⁶⁶ MODEL RULES OF PROF'L CONDUCT r. 7.3 (AM. BAR ASS'N 2016) ("A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain....").

⁶⁷ See, e.g., Attorney Advertising, Solicitation, and Professional Notices, N.Y. State Bar Ass'n, https://www.nysba.org/uploadedFiles/NYSBA/Practice_Resources/Law_Practice_Management/LPM_Reports_and_PDFs/QA-Attorney_Advertising.pdf.

vulnerable to this issue are lawyers who work on a contingency fee arrangement in which the lawyer only gets paid if the case is won.⁶⁸ Unique to the United States civil justice system, the use of a contingency fee is widespread in personal injury, employment discrimination, and wrongful death lawsuits.⁶⁹ Lawyers who take on these cases do not work often with individuals who can afford legal services: a central justification for the contingency fee. However, the aid they provide is not strictly pro bono.

The community legal education that lawyers can engage in when not working pro bono is the subject of intense debate due to the possibility of solicitation.⁷⁰ A recent decision by the Ohio Board of Professional Conduct found that lawyers holding “seminars” on legal issues would be in violation of the state’s rules against solicitation if they met with attendees afterwards to answer legal questions, “even if attendees sign[ed] up to do so in advance.”⁷¹ Instead, individuals must be directed to contact the lawyer’s office directly and on a separate occasion.⁷² Lawyers interested in producing a dialogue about legal rights are thus tightly restricted in their ability to do so.

This limitation affects facilitators not just as lawyers but educators. Unable to take individual questions, no matter the content of those questions, community legal educators become the sole source of knowledge in the room — a role incompatible with a good lawyer’s understanding of her relationship to the community’s lived experience. The more the conversation is directed by participant questions, the more likely inadvertent legal advice may seep into the conversation.⁷³ A more participant-centric model with potentially paying customers would almost certainly be unethical under the recent Ohio ethics decision since lawyers cannot address individualized questions at legal seminars.⁷⁴

C. Adherence to Confidentiality Rules

The loose exchange of information during Know Your Rights Workshops also present attorneys with ethical challenges. Lawyers are required to maintain the confidentiality of all attorney-client communications.⁷⁵ Yet confidentiality can

⁶⁸ One justification for a contingent fee system is that it promotes access to justice for individuals who would otherwise be unable to afford legal services. For a discussion and international critique of contingent fee systems, see generally, Allison F. Aranson, *The United States Percentage Contingent Fee System: Ridicule and Reform from an International Perspective*, 27 TEX. INT’L L. J. 755 (1992).

⁶⁹ *Contingent Fee Reform Debate*, American Tort Reform Ass., <http://www.atra.org/issue/contingent-fee-reform/>.

⁷⁰ See Brian Faughnan, *Bad Ethics Opinion or the Worst Ethics Opinion? – Ohio 2015 – 2 Edition*, FAUGHNAN ON ETHICS (Aug. 28, 2015), <http://faughnanonethics.com/?p=465>.

⁷¹ Ohio Adv. Op. 2015-2, *Direct In-person Solicitation of Prospective Clients at Seminars* (Aug. 7, 2015).

⁷² *Id.*

⁷³ See *infra* section II.A.

⁷⁴ See *infra* note 62-64 and accompanying text.

⁷⁵ MODEL RULES OF PROF’L CONDUCT r. 1.6 (AM. BAR ASS’N 2018).

apply even when a lawyer receives information from a non-client⁷⁶ to allow prospective clients to freely consult with a lawyer without fear that the information they share will be used against them. Considered essential to a successful attorney-client relationship, confidentiality protections allow for the free-flow of information that may be sensitive but essential to the individual's needs.⁷⁷

In the Know Your Rights context, individuals who do not understand the community legal educator's role may openly share information that they would not otherwise reveal. Participants raising their hands to lament on a legal problem is a common experience. While a community legal educator can attempt to explain that she is not providing legal advice and that information shared during a workshop will not necessarily be confidential, the lawyer may ultimately receive sensitive information. Even if the lawyer ends up taking the participant as a client, information shared in a public meeting would not be considered confidential.⁷⁸ This rule holds true for partner organization leaders who, attempting to direct aid towards an individual, may overshare publically about an individual's experience. In the case in which a lawyer is roped into an interdisciplinary team of individuals working on one individual's issues, the lawyer will be responsible for upholding confidentiality standards within the entire team.⁷⁹

Navigating misinformation about the confidentiality of a Know Your Rights meeting is important not only for the ethical issues that arise from the information, but for the success of the workshop. Participants who could otherwise help each other understand their individual legal situations, receive aid, or merely empathize with one another may no longer feel safe sharing their stories.⁸⁰

D. An Incomplete Program

For community legal educators intending to genuinely engage with the public, these professional and ethical limitations culminate into a personal, political, and moral problem: the issue of an incomplete program. Lawyers are well-aware that many people are confused and overwhelmed by the legal system and the particularities of their legal rights. Lawyers also understand that they must appear in a limited capacity when they participate in a Know Your Rights effort, and thus cannot explain every detail, clarify every element, or answer every

⁷⁶ See ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 358 (1990) ("Information imparted to a lawyer by a would-be client seeking legal representation is protected from revelation or use under Model Rule 1.6 even though the lawyer does not undertake representation of or perform legal work for the would-be client.")

⁷⁷ Jackie Unger, *Maintaining the Privilege: A Refresher on Important Aspects of the Attorney-Client Privilege*, BUSINESS LAW TODAY BY THE AM. BAR ASS'N (2013).

⁷⁸ *Id.* (explaining the standard waiver of attorney-client privilege when a third party is present for and privy to the communications).

⁷⁹ See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 506 (2001).

⁸⁰ See Shauna I. Marshall, *Mission Impossible? Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 167 (2000) (explaining that Know Your Rights leaders sometimes fear that "warnings about the lack of protections afforded to participants' communications might silence" some participants).

question. Knowing that the effort will be in some way incomplete, they must capitalize on their resources—time, space, reach, and whatever else may be available—and make the absolute most of the experience.

Lawyers approach this challenge in different ways. Some lawyers use community legal education opportunities to provide rudimentary, black-letter versions of the law. These programs are the safest route ethically for lawyers since they allow facilitators to strictly limit the scope of their presentation and defer all questions to legal aid organizations. Dullness aside, these formal presentations can “depoliticize...the legal structure” and “suggest that the law operates independently from oppressive systems of power.”⁸¹ Thus, recipients all receive the same information, no matter who they are and what prior experience they bring to the table. Race, gender, sexuality, and other identities are not recognized as the law is conceptualized as an omniscient, unbiased power. Imagine a young, white female law student informing a room of middle-aged, black women about their “rights” during police interactions and drug law enforcement. A formal presentation of the law, especially without even basic questions from participants, will not explicitly recognize the differences between the law student and the workshop participants, where they come from, and the reality of their interactions with police powers. Participants may leave either knowing that the information does not apply to them, or with a “false sense of individual power” with no sense of the “practical difficulties in implementing [her] rights.”⁸² Ultimately, an individual attempting to assert their legal rights may inadvertently escalate the situation.

Alternatively, some facilitators may “lay out the difficulties [of asserting legal rights] in excruciating detail.”⁸³ In an attempt to break from the black-letter and give attendees the “real story” about rights in the United States, lawyers may lament on excessive delays in the court system or the injustice of current drug policy. Here, individuals with even the most legitimate legal claims may leave the workshop with “no hope” about their prospects and no understanding of how to proceed in the future.

Lawyers, organizers, and community members may rightfully question the role of Know Your Rights in their communities. Addressing the realities of rights assertion in the context of an educational program could equate to victim-blaming. While individuals may be interested in learning how to safely assert their rights, should it not be the police officers, judicial clerks, and other officials who need further education on the limits of their authority? Why put the responsibility to “be safe” on Know Your Rights participants? The role of profession-specific trainings, or those targeted at “offending” classes is outside of the scope of this paper. Still, rightfully-cynical participants will wonder how much knowing their rights will truly matter if met by resistance.

The everyday applicability of the legal information provided in a Know Your Rights workshop can intensify the already tenuous relationship between

⁸¹ Aaron Samsel, *Toward a Synthesis: Law as Organizing*, 18 CUNY L. REV. 375, 387-88 (2015).

⁸² Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L 375, 393 (2013).

⁸³ *Id.*

lawyer and community. Not only must the lawyer withhold information due to her ethical obligations; she must attempt to convey as much culturally relevant and actually deployable legal information as possible in a short period of time. Participants will rightfully question what they are getting out of their attendance. Failure to quickly build trust and meet educational standards begs the question of whether Know Your Rights efforts are worth the investment.

III. TOWARD AN IMPROVED KNOW YOUR RIGHTS

Lawyers need a more strategic approach to community legal education. This approach must be mindful of the profession's ethical rules, while also incorporating a model of empowerment that is highly functional and reality-centric. Most community legal education efforts today maintain the traditional hierarchy between teachers and students. This format leads to more than just boredom; it reinforces traditional ideas about authority, oppression, and who owns knowledge. Lawyers as outsiders must find balance "between un-self critical ethnocentrism" or a lawyer-hero complex and a "hyper-self critical cultural relativism," both of which may hinder effective partnership and resource sharing.⁸⁴

Many workshops fail to fully realize the amount of knowledge in the room. Participants are not dumb. While they may not speak the language of law, they will likely have a better understanding of reality because of their proximity to the issue. They know how the law acts in real life, or have an idea about what their experience will be like based on their own experiences and stories of other people in the community. Individual participants may also have different goals for the workshop than the workshop coordinator, the hosting partner organization, or other participants in attendance. Good community legal educators will recognize these priorities and respond accordingly.

All of these recommendations can find both ethical and unethical implementations. While the true community lawyer may want to push boundaries, they must also be cognizant of the ethical rules that govern their abilities. Recognizing these limitations upfront will allow the lawyer to better interact with others as a lawyer, educator, activist, and resource partner.

A. Encourage Attendees to Actively Participate Even if Individual Questions are Not Permitted

Quality Know Your Rights workshops will impart power within participants and not position them as passive recipients of knowledge. Workshops should build on the unique knowledges of every individual participant. Programs should be a content-sharing and problem-solving dialogue that do not place lawyer over participant, but recognizes the experiences participants bring to the

⁸⁴ See Brenda Cossman, *Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project*, 1997 UTAH L. REV. 525, 527 (1997) (discussing the "hazardous terrain somewhere in between un-self critical ethnocentrism and hyper-self critical cultural relativism"). See also Katie R. Pryal, *American Lawyers Have an Atticus Finch Complex, and it's Killing the Profession*, QUARTZ (Mar. 31, 2016), <http://qz.com/651270/the-american-legal-system-has-an-atticus-finch-complex-and-its-killing-the-profession/>.

room. Still, lawyers should not play a passive role either as passive listening—while allowing participants to feel heard—does not appreciate the unique skills that a lawyer can use. A host of professionals and non-professionals can listen. What can a lawyer uniquely contribute to the conversation that no other individual can?

A new structure requires a reframing of the traditional educational model. In *Pedagogy of the Oppressed*, Brazilian educator Paulo Freire draws a distinction between two approaches to education: the “banking” model of education and the “problem posing” model of education.⁸⁵ The banking model regards students as depositories and teachers as depositors.⁸⁶ Teachers act as independent authoritarians in the classroom, lecturing and “depositing” information into their students. Students are expected to listen “meekly” to what the teacher tells them.⁸⁷ Students are not expected to actively contribute to the conversation; in fact, there is no conversation. Communication is one-way. The students know nothing, and the teacher is the sole fountain of knowledge.

The “problem posing” model rejects this dichotomy between teacher and student. Instead, “[t]he teacher is no longer merely the-one-who-teaches, but one who is himself taught in dialogue with the students, who in turn while being taught also teaches.”⁸⁸ It recognizes that no individual is the single “depositor” in a learning setting. Instead, knowledge is shared and communicated between people. Everyone reflects, challenges, and intervenes in the dialogue.

In practice, educators of all kinds have used problem posing pedagogy to disrupt the traditional single-narrative classroom. Teachers report that students feel more “involved,” “connected,” and “engaged” when learning is framed not as a passive chore but an active problem-solving conversation.⁸⁹ The framework is particularly well-suited “for adults because adulthood is typified by the process of becoming independent.”⁹⁰ In the Know Your Rights context, the problem posing model can allow lawyer-participants to share information non-condescendingly as they are only one voice in a room of many different knowledges.

Problem posing workshops must be carefully orchestrated to ensure they are professionally ethical and provide deployable information. As previously discussed, the more the conversation is directed by participant questions, the more likely legal advice may seep into the conversation.⁹¹ A more participant-centric model with potentially paying customers could be unethical if individualized

⁸⁵ See generally PAULO FREIRE, *Pedagogy of the Oppressed* (1972).

⁸⁶ *Id.* at 58.

⁸⁷ *Id.* at 59.

⁸⁸ *Id.* at 67.

⁸⁹ Philip Melvin Brown, *An Examination of Freire’s Problem-Posing Pedagogy: The Experiences of Three Middle School Teachers Implementing Theory into Practice* (2013), available at https://getd.libs.uga.edu/pdfs/brown_philip_m_201308_phd.pdf.

⁹⁰ Matthew Cowie, *Toward a Critical Pedagogy for Adult Education*, HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY 236, 246 (George J. Andreopoulos & Richard Pierre Claude eds., 1997).

⁹¹ See *infra* Section II.A.

questions are addressed.⁹² Organizers must find a way to encourage participation without opening up the proverbial floodgates to ethical issues.⁹³

The Workplace Project provides one example of a problem posing approach. Jennifer Gordan, the founder of The Workplace Project and a current professor at Fordham Law, developed a community legal education program on labor laws for immigrant workers.⁹⁴ Rather than a cold lecture about worker rights, trainings began with the screening of a video about farm worker rights and the dangers of working with pesticides.⁹⁵ The movie ultimately sparked dialogue about safety and health in the workplace and why certain hazards still exist.⁹⁶ Workers then applied their findings to their own workplace: what problems did they face and why might they be so prevalent? By the time a more traditional recitation of rights occurred, participants were armed with questions and ideas, and support from their fellow attendees to raise key issues.⁹⁷ Individuals were able to unite and design “action plan[s]” for how to improve their own workplace.⁹⁸

The Workplace Project used the “classroom” as an organizing session. Workplace Project workshops were longer-term, asked for weekly participation, and cost attendees not money but time; that is, participants were required to put at least ten hours into Workplace Project initiatives.⁹⁹

While the Workplace Project represents a more ideal, longer term form of engagement, some of its ideas are applicable to one-off workshops. Educators may want to consider how they can best spark dialogue. Open-ended questions are one way to begin conversation, yet can be intimidating to a less vocal population or lead to unfocused or overly individualized discourse. Multimedia—a short video documentary or song outlining a problem—can make difficult subjects more approachable and provide a common language for people to communicate in.

How the group maintains an interactive environment throughout the entire presentation while conveying important legal information depends on the purpose of the workshop. Engaging in the hypothetical assertion of an individual or group of individuals’ rights may be the best way to maintain peoples’ interest, keep the discussion relevant, and conform to the profession’s ethical rules. While a hypothetical situation may not perfectly parallel an individual’s experience, it can

⁹² See *infra* note 62-64 and accompanying text.

⁹³ In no way does this suggest lawyers should not respond to and encourage questions; rather, it recognizes the difficulty questions can pose and their all-out prohibition in certain circumstances.

⁹⁴ Louise G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 FORDHAM URB. L.J. 801, 806 (1997).

⁹⁵ Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 435-36 (1995).

⁹⁶ *Id.* at 436.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 436-37 (explaining that this payment strengthened the community and the organization by involving more people in the fight for workers rights).

provide valuable information without crossing the traditional legal advice line.¹⁰⁰ Lawyers can tailor the hypothetical so that it provides generic, factual information, but name and characterize the hypothetical individual so that the information is conveyed in a more engaging, personalized way. Thus, instead of running a PowerPoint on how to file for custody of an individual's child, the lawyer may follow Janet, a Hispanic working mother of three, on her quest to file for custody in the local family court.

If the discussed rights involve more direct contact such as police interactions, large-scale protests, or workplace confrontations, organizers could encourage people to get on their feet and role-play those interactions. Augusto Boal, a Brazilian theater practitioner, developed a theatrical method based on Paulo Freire's work. *Theatre of the Oppressed* and its current practitioners offer a number of games and techniques that encourage people to intervene and break oppression.¹⁰¹ Thus, some workshop participants may act as police officers while others work as protesters. Workshop facilitators and spectators cannot only ask general questions of the performers to explore different scenarios, but stop the scene and intervene—that is, step in as an actor—and try out another approach.

These types of hypothetical and role-playing simulations allow for participants not only to discuss legal rights in the abstract but also their real-life implementation. Attendees can try on different tones, responses, and behaviors, better equipping them for an array of possible circumstances.

B. Ensure Programming is Reality-Centric by Incorporating Real Life Events

Know Your Rights programming should not shy away from the reality of intergroup conflict. It is tempting to speak about rights as universal concepts. Doing so means that the content of the right “can't be reduced to a mere ‘value judgment’ that one outcome is better than another.”¹⁰² Instead, the right comes from a common set of needs and preferences that exists objectively and dictates a right universal to everyone.¹⁰³ A “universal to everyone” rendition of the law is also preferable under the Model Rules because it is widely applicable. The more specific an attorney's explanation of the law is, the more likely she may cross the legal information-legal advice line.¹⁰⁴

Yet when rights are discussed in universal, general terms, they can easily “operate in and as an ahistorical, acultural, acontextual idiom: they claim distance from specific political contexts and historical vicissitudes, and they necessarily

¹⁰⁰ *Legal Information v. Legal Advice*, ST. B. ARIZ. (last visit Apr. 2, 2016), <http://www.azbar.org/lawyerconcerns/regulationofnon-lawyers/legalinformationvlegaladvice/> (distinguishing between legal advice and legal information).

¹⁰¹ See generally AUGUSTO BOAL, *THEATRE OF THE OPPRESSED* (Charles A. & Maria-Odilia Leal McBride trans., 1985); Gopel Midha, *Theater of the Oppressed a Manual for Educators*, U. Mass. Amherst MASTER'S CAPSTONE PROJECTS (2010), available at https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1010&context=cie_capstones.

¹⁰² DUNCAN KENNEDY, *The Critique of Rights in Critical Legal Studies*, LEFT LEGALISM/LEFT CRITIQUE 177, 185 (Wendy Brown & Janet Halley eds., 2002), available at <http://www.duncankennedy.net/documents/The%20Critique%20of%20Rights%20in%20cls.pdf>.

¹⁰³ *Id.*

¹⁰⁴ See *infra* Section II.A.

participate in a discourse of enduring universality rather than provisionality or partiality.”¹⁰⁵ Without directly addressing the racial, gendered, and heteronormative origins and implications of the law, group oppression and subordination are erased. On one end of the spectrum, Know Your Rights participants may feel unfulfilled by the conversation; on the other, overconfident about their ability to assert their rights. Know Your Rights facilitators cognizant of these issues may wish to rely on the unique experiences of the participants to inform the conversation. Yet again, over-focusing on individualized experiences can make for a slippery slope.

Facilitators can still focus on “what happens in real life.” While Know Your Rights organizers can frame their presentation in response to questions, they should seize on current events, whether it be a highly publicized police interaction or a local controversial infrastructure project, not only to make the conversation more relevant, but to negate any impression that the law in theory is also law in fact. Facilitators should also capitalize on the diversity in the room to understand the complexities of rights implementation. In a recent protest arrest, was the participant a woman or a man? Black or white? Discuss current events with a focus not only on the legal right but the real-world consequences: might the right look different because of who the person is and what the person looks like? Take time to explore reasons for the treatment difference and ways to navigate that difference both from a legal and humanistic perspective.

Conversations about lived oppression and inequality may result in justifiably “powerful emotional responses.”¹⁰⁶ Participants may accuse others—and particularly accuse the facilitator—of advocating for differential treatment. Alternatively, individuals may recognize a difference, but shut down with hopelessness. This discomfort, accompanied by emotions like “guilt, shame, embarrassment, or anger,” is an understandable response. Facilitators should do their best to recognize and validate these reactions.¹⁰⁷ Even more, they should rely on the expertise in the room—community partners, workshop participants, and others—to flesh out what these experiences mean. If necessary, community legal educators can also make use of differential treatment that may not be as controversial to ease people into the conversation. If racial or gender terms are too provocative, begin with easier—though still layered—topics, such as: might a person be treated differently based on how they are dressed or how fit they are?

Again, the lawyers in the room may not be the experts on these interactions, and thus a banking approach is unhelpful. Lawyers should recognize that legal information is only one source of knowledge that will help an individual address this issue in the future.

¹⁰⁵ Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* 97 (1995).

¹⁰⁶ Beverly Daniel Tatum, *Talking about Race, Learning about Racism: The Application of Racial Identity Development Theory in the Classroom*, 62 HARV. EDUC. REV. 1, 1 (1992).

¹⁰⁷ *Id.* at 19 (arguing that informing students that personal reactions to the conversation are expected is a way of “normaliz[ing] the students’ experience”).

C. Understand Participant Goals and Priorities

Know Your Rights participants may have very different priorities in mind when entering a training. Some attendees may merely want to be left alone in future interactions with the police; others may know that they are going to confront police officers in an upcoming demonstration. Lawyers should not encourage lawbreaking,¹⁰⁸ but should be explicit about the safety concerns involved in different contexts. Different people will come to different conclusions about what lawful resistance looks like in practice and when it is safe or valuable to engage in a “rights assertion.” Lawyers may be more effective contributors to the conversation if they understand participants’ goals for the session.

Goal-setting can be completed in part during the planning stage. Lawyers should be explicit about the scope of the information they can provide and should encourage partner organizers to be transparent in their needs and expectations. Some questions that will help define the goal include: what purpose do you want this workshop to serve? Why? Have people in the community expressed a need for this workshop? Other questions will help lawyers understand the scope of expectations. Will these materials be made available to the public? Will they only be made available to people who express a need for the materials? Have you already defined the group in need? These questions will not only help community legal educators prepare—it will also help them better assess the scope of the legal information they can provide.

Same-day goal-setting can also be helpful. In the context of an in-person event, all workshops can begin with a sign-in survey. The survey can begin with basic demographic information and end with questions about the participant’s expectations. What did they come here to do? How do they expect to be treated? Do they have any initial questions before the workshop begins? Answers to these questions can better improve workshop facilitation. Organizers can tailor their discussion—if not that instance, at least during the next seminar—to better suit the needs of the population. Is this a group that wants to get on its feet or would a more free-flowing conversation be more comfortable? Participant priorities can also be spelled out, therefore improving the organizer’s content. Are the right questions being addressed, or are people interested in other kinds of information?

Exit surveys can also be used to understand whether participant expectations were met. Were they able to achieve what they wanted to do? If not, were they able to achieve other important goals? What did the workshop lack? Would they come back? Exit surveys might also test participants’ understanding of the materials, though usable surveys will be short and not overwhelm users with questions. Survey facilitators can better structure their seminars based on participant feedback, or at least inform their partner organization of other needs in the community.¹⁰⁹

¹⁰⁸ The Professional Rules of Conduct render such activity unethical. *But see* Kathryn Abrams, *Lawyers and Social Change Lawbreaking: Confronting a Plural Bar*, 52 U. PITT. L. REV. 753 (1991).

¹⁰⁹ It is important that these surveys are understood as general questionnaires and not legal intake forms. Facilitators and partners should make it clear—both on the form, and out loud—that the questions are based on the workshop and will not result in any formal legal aid or advice.

D. Examine Know Your Rights Program Outcomes

Quality programming requires constant self-reflection that critically explores programming intentions, processes, and results. Unfortunately, very few longitudinal studies have been completed on the effect of community legal education. When they are completed, the metrics are largely self-serving.¹¹⁰ While Know Your Rights coordinators may be interested in how many people they reach, the end number can be irrelevant to actual, livable impact. Amount of action does not equate with quality of result.¹¹¹ Did the workshop help the unrepresented litigant better navigate the justice system? Was the protester able to participate in the sit-in? How did the man assert his rights against a police search—and was he safe while doing so? Coordinators should work in conjunction with their organizing partners to better facilitate programming evaluation.

Measuring abstract social justice goals can be difficult. As opposed to a water nonprofit that can measure the increase in accessible clean drinking water available to a community, measurements for equality, solidarity, and cultural shift are less tangible. Inability to produce hard numbers can leave efforts fruitless, incapable of gaining funding because investors are suspicious of impact, and unable to move forward because organizers believe their money, time, and resources can be better used elsewhere—perhaps, in traditional litigation.¹¹²

Know Your Rights impact can also be difficult to measure because of its usual one-off model. While longer-term Street Law programs endow organizers and participants with regular contact and follow-up, a one-off workshop or one-pager does not necessarily lead to a longer-term relationship. Thus, the value of the one-hour meeting on a Tuesday night or the crumpled paper in a woman's purse can go unrecognized.

Still, community legal educators can take a number of steps to better understand programming strengths, weaknesses, and results. McKinsey Consulting offers three types of metrics to “measur[e] what matters.”¹¹³ Two of the types of metrics—capacity measurements and activity measurements—are relatively easy to track.¹¹⁴ They focus on whether resources are available to get things done—amount of funding or amount of volunteers, for example—and what activities are taking place to work towards the group's larger mission—how many Know Your Rights workshops were conducted and how many people attended.¹¹⁵

¹¹⁰ John Sawhill & David Williamson, *Measuring What Matters in Nonprofits*, McKinsey Q. (May 2001), <https://www.mckinsey.com/industries/social-sector/our-insights/measuring-what-matters-in-nonprofits> (“Most nonprofit groups track their performance by metrics such as dollars raised, membership growth, number of visitors, people served, and overhead costs. These metrics are certainly important, but they don't measure the real success of an organization in achieving its mission.”).

¹¹¹ MARC EPSTEIN & KRISTI YUTHAS, *MEASURING AND IMPROVING SOCIAL IMPACTS: A GUIDE FOR NONPROFITS, COMPANIES, AND IMPACT INVESTORS* 3 (2014).

¹¹² *Id.* at 17.

¹¹³ John Sawhill & David Williamson, *Measuring What Matters in Nonprofits*, *supra* note 110.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

The third metric—impact metrics, or measurements of mission success—is more difficult to capture. McKinsey suggests creating microgoals to understand the effort’s success,¹¹⁶ focusing not on a larger goal of educating people about the law or helping people navigate the justice system. This means evaluating the success of your specific participants moving forward which requires longer-term tracking or partnership with a local court or organization interested in the participants’ success.

In the context of community legal education, facilitators should choose metrics most in-line with the group’s goals. When the Know Your Rights workshop is crafted around a specific event—a public demonstration or the filing for child custody, for instance—the follow-up can be concrete. Were participants able to access all of the paperwork necessary to complete a filing? Were participants able to obtain food stamps? Were participants able to obtain special education eligibility? When the Know Your Rights workshop is crafted around a broader right—the right to remain silent, rights during a stop-and-frisk, rights to be free from sexual harassment—the questioning is more difficult. Still, one might ask the individual to describe his next interaction with the police. Multiple follow-ups, where possible, can help facilitators understand the longer-term effects of the program and contributing factors to the ultimate outcome.

Ideally, longitudinal studies would also have a control group featuring individuals who did not participate in Know Your Rights educational workshops. By assessing the differences between the groups—demographically, in their understanding of the material, and in their ultimate success—facilitators and community members can better understand the value of community legal education. The ability to secure this kind of data is highly dependent on the resources available. Facilitators should think critically about what kind of long-term examination is possible and partner with community leaders for the highest quality assessments.

CONCLUSION

Good lawyers invested in using law in the social justice movement have spent years transforming traditional legal practice into something more admirable. The profession continues to extend beyond the formalities of the courthouse to something that is more empowering for movements seeking larger societal goals and individuals interested in personal justice. Many of the solutions proposed are frequently and critically integrated in other fields: education, social work, and the like. These suggestions for Know Your Rights in-person workshops aim to bridge the gap—or at least recognize the gap—between lawyers and non-lawyers both on a knowledge and cultural level, while still abiding by the Model Rules. By improving these one-on-one relationships and addressing this intergroup conflict, lawyers can provide better educational program and improved unbundled legal services. Even more, by understanding the limits and promises of their legal skills, they can better engage in real change making.

¹¹⁶ *Id.*

