

On The Front Lines of Law Reform

Moderator:

Suzanne B. Goldberg '90, Professor and Director, Center for Gender & Sexuality Law,
Columbia Law School

Panelists:

Amanda C. Goad '05, Staff Attorney, Lesbian Gay Bisexual Transgender & AIDS Project,
American Civil Liberties Union

Linda D. Kilb '88, Director, California Legal Services Trust Fund Support Center Program,
Disability Rights Education & Defense Fund (DREDF)

Lenora Lapidus '90, Director, Women's Rights Project, American Civil Liberties Union

Nancy A. Ramirez '90, Western Regional Counsel, Mexican American Legal Defense and
Educational Fund

Camille D. Holmes '93, Director of Leadership and Racial Equity, National Legal Aid &
Defender Association

SG: Welcome to "On the Front Lines of Law Reform." I'm pleased to be here with a terrific group of HLS alumnae, each of whom is a leading advocate in her field.

When I came to law school, somehow I had in my mind that I wanted to be a law reform lawyer. I think my interest dated back to elementary school when I was the first girl to join little league baseball where I grew up. Although I didn't have to litigate to get into little league, I read stories about girls who had to litigate to play baseball, and the idea that you could use the legal system to make change stayed with me. When I arrived here, I wanted to do either race or sex discrimination work, and though my focus shifted to LGBT and HIV-related discrimination work

at Lambda Legal for a decade and now is on sexuality and gender law through the clinic I direct at Columbia Law School,¹ I continue to see important connections across the wide range of law reform advocacy.

The prompt for this panel, then, was partly to step back and think about where law reform work is today and where it is headed. Everyone on the panel has been doing work related to law reform in one way or another for different amounts of time, and our aim today is both to talk about what we are each doing in our areas and then to step back and ask the question: What does law reform look like now?

What we know for sure is that the nature of law reform work is changing. It has certainly changed from the time that many of us were in law school. And, given all that is happening in the world, now is an opportune time to think about what it might look like going forward. We are going to proceed with this panel in the form of a conversation, so I will ask each panelist to begin by introducing herself. We'll start on the end with Linda Kilb from the Disability Rights Education and Defense Fund.

LK: Lovely to have such a wonderful turnout, both in the audience and in this fabulous group of folks to discuss the interesting work they're doing. I work with the Disability Rights Education & Defense Fund (DREDF), which is a nonprofit national law and policy center based in

¹ *Sexuality and Gender Law Clinic*, COLOMBIA LAW SCH.,

<http://web.law.columbia.edu/sexuality-gender-clinic> (last visited Mar. 11, 2014), *archived at*

<http://perma.cc/RUP8-GZUP>.

Berkeley, California.² We also have a Washington, D.C. office. DREDF was founded thirty-five years ago, in 1979, as a unique alliance of adults with disabilities and parents of children with disabilities. We remain board- and staff-led by members of the disability community that we represent. DREDF is dedicated to advancing and protecting the civil rights of all people with disabilities. This includes those with mobility or orthopedic disabilities, sensory disabilities, medical conditions, cognitive or learning disabilities, mental health conditions, and any other kind of impairment. We represent people of any age, including children and seniors. We pursue disability rights work in a wide range of contexts, including employment, government programs

² DREDF grew out of the Berkeley Center for Independent Living (CIL), the world's first community-based independent living center, which was established in 1972. FRED PELKA, *THE ABC-CLIO COMPANION TO THE DISABILITY RIGHTS MOVEMENT* 60–61 (1997). By the mid-1970s CIL had launched the Disabled Paralegal Advocacy Program (DPAP), staffed mostly by volunteers. *Id.* at 100. In 1978, the DPAP transformed into the Disability Law Resource Center (DLRC), a unit within CIL that was supported by federal grants, including some funding from the Legal Services Corporation (LSC). *Id.*; *see also infra* notes 16–25 and accompanying text. The DLRC unit ultimately spun off from CIL to become the independent 501(c)(3) nonprofit DREDF. PELKA, *supra* note 2, at 100. More history as to both CIL and DREDF is provided in PELKA, *supra* note 2, at 60–62, 100–01. *See also* DISABILITY RIGHTS EDUC. & DEF. FUND, www.dredf.org (last visited Mar. 10, 2014), *archived at* <http://perma.cc/D4W9-PFK5>. Since 2010, DREDF's Berkeley office has been housed at the Ed Roberts Campus, a state-of-the-art accessible building. *See* ED ROBERTS CAMPUS, <http://www.edrobertscampus.org> (last visited Feb. 22, 2014), *archived at* <http://perma.cc/T7HW-LYEN>.

and activities, higher education, housing, public accommodations, and transportation.³ About one-third of our work is dedicated to the educational rights (including special education entitlements) of children with disabilities.⁴

We revise our priorities and focus on new issues as they become relevant. For example, we are now actively engaged with implementation of federal health care reform as it affects people with disabilities. We are also addressing the multi-faceted implications of fast-evolving twenty-first century technology and social media. New technology can alleviate isolation and ease historic barriers to full integration—but it can also create new access barriers if not designed with thoughtful attention to general “digital divide” problems and the specific needs of users with disabilities.

DREDF pursues its mission through education, advocacy, and law reform efforts. We provide disability rights training to people with disabilities and parents of children with disabilities. We litigate, representing clients with disabilities, and their parents, in both individual and class action cases brought under a range of different federal and California disability civil rights statutes. We do extensive amicus work, filing “friend of the court” briefs predominately in

³ For more detailed discussion of specific federal disability rights laws, see *infra* text accompanying notes 46, 70.

⁴ Federal special education entitlements were first put in place by the Education for All Handicapped Children Act of 1975 (EAHCA), Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1400–1482 (2012)). Subsequently renamed the Individuals with Disabilities Education Act (IDEA), Pub. L. No. 101-476, 104 Stat. 1103, § 901(a)(1), it requires periodic Congressional reauthorization because it includes funding allocations to states to implement its mandates, *see, e.g.*, 20 U.S.C. § 1444 (2012).

the federal courts, but also in state appellate courts. We do public policy development and legislative education, and we have participated in the legislative processes leading up to most key federal and California disability rights statutes. Once statutes are on the books, we monitor and participate in public regulatory and administrative activities, such as submitting public comments on proposed regulations. We provide assistance to other attorneys, including nonprofit and legal services attorneys, and the increasing numbers of private bar attorneys who are also doing disability rights work. This includes offering substantive and strategic advice and sample pleadings to those who need background and support in terms of issues they haven't encountered before. DREDF has also taught disability rights courses at various Bay Area law schools over the past two decades, including a Disability Rights Law Seminar currently offered at U.C. Berkeley (Boalt) School of Law.

SG: And what is your role at DREDF?

LK: I was hired as a staff attorney with DREDF about eight months after I graduated. The cause is close to my heart, as I am a person with a hearing impairment who uses a hearing aid. It was my first permanent job out of law school, although I had arranged a temporary job at a mid-sized law firm while I was studying for the bar and searching for public interest employment, which I know would be difficult to arrange now. Since then I have had multiple careers in one, participating in all aspects of my organization's work over the course of twenty-five years at DREDF. I have helped design and run intensive disability rights training programs. I represent people with disabilities and parents of children with disabilities in litigation. I am involved in policy development, legislative work, and regulatory comment submissions. I have primary

responsibility for DREDF's amicus work, and I provide disability civil rights advice to attorneys and advocates who are from around the country. I have had various administrative roles, serving as DREDF's managing director from 1992–1995. I also had an adjunct faculty appointment at Boalt from 1999–2008, where I was a co-instructor for the Disability Rights Law Seminar.

Currently, I am the director of DREDF's California IOLTA Support Center Program.⁵ In that role I provide disability civil rights expertise and advocacy support to frontline legal services

⁵ DREDF's program is part of California's general Interest on Lawyers Trust Accounts (IOLTA) system, alternatively called Interest on Lawyer Account Funds (IOLA) in some states. Dating to the 1980s, IOLTA programs are now a mainstay of legal services funding throughout the United States. See Hillary A. Webber, *Equal Justice Under the Law: Why IOLTA Programs Do Not Violate the First Amendment*, 53 AM. U. L. REV. 491, 495–502 (2003). The programs leverage unique aspects of attorney professional responsibility obligations to systematically fund civil law access to justice for low income communities and litigants. Details offered here are specific to California, but the same basic model is replicated in other states.

Pursuant to rules of professional conduct, attorneys are precluded from comingling funds; they are obligated to maintain a separate “client trust account” to ensure that unearned retainers, settlement or business funds in transit, and other client moneys, remain segregated from earned fees and general firm operating funds. CAL. RULES OF PROF'L CONDUCT R. 4-100 (2008). Such accounts are maintained at financial institutions that pay interest on the principal. The interest attributable to any one client is often negligible or modest, as unearned retainers may be earned in a matter of weeks or months, and settlement or business funds may transit through trust accounts within a matter of days. However, viewed in the aggregate over time, there is sufficient principal in all attorneys' collective trust accounts to generate millions of dollars in interest.

In California, as in other states, the California Legislature has specified that the collective “interest on lawyers trust accounts” generated by the state’s now 180,000 attorneys shall be used for the provision of legal services to indigent persons, seniors, and people with disabilities. *See* CAL. BUS. & PROF. CODE §§ 6210–6228 (West 2003). Pursuant to this enabling statute, the Board of Governors of the State Bar of California is empowered to administer the IOLTA program. The Board created the Legal Services Trust Fund Program (LSTFP), which oversees the distribution of IOLTA grants.

Though IOLTA programs do not guarantee representation, they have nevertheless accomplished in the civil law context some of what the public defender system has accomplished in the criminal law context: they provide elegantly designed, systematic support to enhance access to justice for vulnerable communities and clients. However, the concept has come under attack. This attack includes constitutional challenges to the general structure of IOLTA programs. Challengers asserting Fifth Amendment violations crafted a two-step argument, asserting first that individual clients had a valid “property” right in IOLTA proceeds, and second that the appropriation of such property constituted an invalid “taking.” In 1998, the U.S. Supreme Court agreed that “property” was indeed at issue, but declined to address whether an unconstitutional “taking” was occurring. *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 172 (1998). First Amendment challenges have also been raised. *See generally, e.g., Webber, supra* note 5. Of equal concern is the uncertainty of funding that is dependent on prevailing interest rates. Reacting to that reality, in 1999 the California Legislature created the “Equal Access Fund” to supplement variable IOLTA monies with additional funds allocated through the courts budget. *See* S.B.160 (Cal. 1999), *archived at* <http://perma.cc/F9BB-ZK8L> (including the gubernatorial signing statement, “I am sustaining the \$10,000,000 legislative augmentation to

offices throughout California. I am actively involved in legal services collaborations, and from 2003–2008 I served on the Board of Directors of the Legal Aid Association of California (LAAC), which is a statewide organization representing California IOLTA-funded offices.

SG: Great, thanks. Amanda Goad, from the ACLU LGBT and AIDS project.

AG: Thanks, and thank you for having me. I'm a staff attorney with the LGBT and AIDS Project of the national ACLU. Lenora will be talking about the ACLU as well, but we are the nation's oldest and largest civil liberties organization, founded in 1920. The ACLU has been doing some form of LGBT work since 1936 when the ACLU of Massachusetts took on the defense of a Boston production of Lillian Hellman's *The Children's Hour*, which was being censored for its lesbian plotline.⁶ In 1970, the ACLU of Minnesota took on the first freedom to marry lawsuit in the United States.⁷ And in 1986, largely in response to the *Bowers* decision,⁸ the LGBT and

this item for the Equal Access Fund which will provide legal services for indigents in civil matters; however, I am sustaining this augmentation on a one-time basis.”).

⁶ See *ACLU History: Earliest Advocacy on Behalf of LGBT People*, AM. CIVIL LIBERTIES UNION (Sept. 1, 2010), <https://www.aclu.org/lgbt-rights/aclu-history-earliest-advocacy-behalf-lgbt-people>, archived at <http://perma.cc/JNA2-95L7>.

⁷ *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), *app. dismissed for want of a substantial federal question*, 409 U.S. 810 (1972).

⁸ *Bowers v. Hardwick*, 478 U.S. 186 (1986) (upholding, 5-4, the constitutionality of Georgia's statute criminalizing oral and anal sex between consenting adults), *overruled by* *Lawrence v. Texas*, 539 U.S. 558 (2003).

AIDS Project was established as a formal entity within the ACLU, with one purpose being to form a new strategy around taking down sodomy laws and perform the other advocacy that was needed to follow on those sodomy law victories, and another purpose being to address the AIDS crisis. And then of course, this past summer, we won at the Supreme Court in the *United States v. Windsor*⁹ case, striking down Section III of the Defense of Marriage Act.¹⁰

Looking at the LGBT and AIDS Project specifically, we pursue impact litigation, policy advocacy, and legislative work around the country on behalf of lesbian, gay, bisexual, and transgender individuals, and people living with HIV. Through our affiliates and chapters, the ACLU has a presence in every state, and that helps us to be on the ground as part of legislative and policy coalitions as well as to find out about affirmative litigation opportunities and defensive litigation needs. Currently, although the marriage work is getting a great deal of attention right now and it's a very exciting time for that work, that's by no means all of what we are working on. This past week, for example, I was in Alabama for settlement proceedings in a case regarding Alabama being the last state to segregate its HIV-positive prisoners within the state prison system.¹¹ I also have a particular personal interest in advancing the rights of

⁹ 133 S. Ct. 2675 (2013).

¹⁰ 1 U.S.C. § 7 (2006), *invalidated by* *United States v. Windsor*, 133 S. Ct. 2675 (2013).

¹¹ *See Henderson v. Thomas*, 913 F. Supp. 2d 1267 (M.D. Ala. 2012); Margaret

Winter, *Stigmatized No Longer: The End of HIV Segregation in Alabama Prisons*, JURIST - SIDEBAR (Oct. 9, 2013), <http://jurist.org/sidebar/2013/10/margaret-winter-hiv-segregation.php>, *archived at* <http://perma.cc/ZA5G-XHXA>.

transgender and gender non-conforming people, and it's a very active and exciting time for that work at the ACLU and across our movement.¹²

SG: I'll just add, having done LGBT work since I graduated in 1990, people sometimes say, "Well your work is getting close to being done, right?" [Laughter] Next is Camille Holmes, who is from the National Legal Aid and Defender Association.

CH: Hello everyone. While I grew up in Memphis, Tennessee, I now live in Washington, D.C. and work at the National Legal Aid and Defender Association (NLADA). NLADA, founded in 1911, is the oldest association for legal services and public defender organizations in the country.¹³ Our members are organizations that provide free and low cost legal services to people who are very poor, usually at 200% of the federal poverty line or lower.¹⁴ Half of our association

¹² See generally *Blog of Rights: Transgender Rights*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/blog/tag/transgender-rights> (last visited Mar. 9, 2014), *archived at* <http://perma.cc/PQ7D-7CKB>.

¹³ *About NLADA*, NAT'L LEGAL AID & DEFENDER ASS'N, http://www.nlada.org/About/About_Home (last visited Mar. 11, 2014), *archived at* <http://perma.cc/7V9N-H5FD>.

¹⁴ See, e.g., TEX. ACCESS TO JUSTICE FOUND., 2013 INCOME GUIDELINES 3 (2013), *archived at* <http://perma.cc/G7TW-55YK>; Legal Services Alabama & Pro Bono Net, *Site Help*, ALABAMALEGALHELP, <http://www.alabamalegalhelp.org/site-help> (last visited Mar. 27, 2014), *archived at* <http://perma.cc/UY3Y-5SQ2>; Southeast Louisiana Legal Services, *2013 Poverty and Legal Services* LOUISIANALAWHELP, <http://louisianalawhelp.org/resource/2010-poverty->

focuses on indigent defense; the other half focuses on civil legal services. We also have members who are clients of legal services organizations and members of their boards of directors. For all of our members we promote good governance, good leadership, and good management, and we work to ensure fully funded, high-quality civil legal aid and public defender programs in all fifty states, the District of Columbia, and the territories.

For today's panel I will focus primarily on civil legal services organizations. NLADA has about 400 civil legal services nonprofit organization members from across the country.¹⁵

NLADA lobbies Congress for increased funding for legal services at the federal level and works with our partners to expand funding at the state and local levels. Legal services organizations are primarily independent nonprofit organizations that provide services across a wide range of substantive areas—housing, employment, domestic violence, health care, public benefits, family law, foster care, school discipline, land use, etc.¹⁶ Federal funding for legal services began as part

guidelines-and-legal-services?ref=ALegw (last visited Mar. 27, 2014), *archived at*

<http://perma.cc/E4JJ-3V9D>; *What Is LawHelpCalifornia and What's Available?*,

LAWHELPCALIFORNIA, <http://lawhelpca.org/site-help> (last visited Mar. 27, 2014), *archived at*

<http://perma.cc/ERM9-P37K>.

¹⁵ See NAT'L LEGAL AID & DEFENDER ASS'N, CHAMPIONING JUSTICE: MARCHING TOWARD 100 YEARS 9 (2010), *archived at* <http://perma.cc/N6L4-BV9J>.

¹⁶ Legal aid programs secure the social safety net. The people served by legal aid programs include tenants facing wrongful eviction, homeowners facing foreclosure due to illegal lending practices, workers wrongly denied unemployment or cheated out of earned wages, children seeking appropriate education or a stable home, women trying to escape abusive relationships, veterans seeking the full range of supports from mental health to housing to employment, and

of the War on Poverty through the Office on Economic Opportunity (OEO).¹⁷ The range of funding sources include federal funding from the Legal Services Corporation (LSC), other federal funding streams like the Violence Against Women Act (VAWA) and the Older Americans Act, state funding from Interest on Lawyers Trust Accounts (IOLTA), state appropriations, state and local filing fees and fines, individual contributions, and foundation grants.¹⁸ LSC provided \$316 million in field grants to fund 134 civil legal services nonprofit organizations in fiscal year 2013.¹⁹ This is down from \$322 million in fiscal year 2012,²⁰ \$378

more. Legal services programs are the last line of defense to ensure that good public policies impacting poor people get enforced and bad policies, often impacting poor and middle class people, get reformed or eliminated. *See generally* ALAN W. HOUSEMAN & LINDA E. PERLE, CNTR. FOR LAW & SOC. POLICY, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES (2007), *archived at* <http://perma.cc/QC29-5MXZ> (detailing a history of the legal services movement and the creation of the Legal Services Corporation).

¹⁷ *Id.* at 7.

¹⁸ *See, e.g.*, LEGAL SERVS. CORP., FACT BOOK 2011 12 (2011) [hereinafter FACT BOOK 2011], *archived at* <http://perma.cc/TF5E-N8QY>; LEGAL SERVS. CORP., FACT BOOK 2010 12 (2010) [hereinafter FACT BOOK 2010], *archived at* <http://perma.cc/UQ9E-UYJG>.

¹⁹ *LSC Funding*, LEGAL SERVS. CORP., <http://lsc.gov/congress/lsc-funding> (last visited Mar. 9, 2014), *archived at* <http://perma.cc/6RS3-EEYQ>; *What Is LSC?*, LEGAL SERVS. CORP., <http://lsc.gov/about/what-is-lsc> (last visited Mar. 9, 2014), *archived at* <http://perma.cc/BP6U-SC6M>.

²⁰ *LSC Funding*, *supra* note 19.

million in fiscal year 2011,²¹ and \$395 million in fiscal year 2010.²² IOLTA funding is generated from the interest that accrues on thousands of low value and/or short-term bank accounts held in trust for lawyer’s clients in every state. The pooled funds generate millions of dollars that is then granted to worthy causes, including legal aid.²³ Since it is dependent on interest rates, IOLTA funding has plummeted down from \$371 million in 2007 to \$93.2 million in 2011.²⁴ To fully understand the crisis levels of funding facing legal services programs, add to these funding reductions sequestration, budget cuts at the state and local levels, reapportionment of funding based on changes in census numbers, and the greatly increased numbers of eligible poor people due to the economic downturn.²⁵

²¹ FACT BOOK 2011, *supra* note 18, at 12.

²² FACT BOOK 2010, *supra* note 18, at 12.

²³ *See generally supra* note 5; *What Is IOLTA?*, LEADERSHIP FOR EQUAL JUSTICE, <http://www.iolta.org/grants> (last visited Mar. 9, 2014), *archived at* <http://perma.cc/DJ6R-XBBN> (explaining IOLTA funding).

²⁴ Terry Carter, *IOLTA Programs Find New Funding to Support Legal Services*, ABA JOURNAL (Mar. 1, 2013, 1:29 AM), http://www.abajournal.com/magazine/article/iolta_programs_find_new_funding_to_support_legal_services/, *archived at* <http://perma.cc/4NVV-7JKL>.

²⁵ *See, e.g.*, BUDGET REQUEST FISCAL YEAR 2014, LEGAL SERVS. CORP. 5 (2013), *archived at* <http://perma.cc/R4LG-E2SK> (describing the impact of budget cuts at the state and local levels and highlighting increased numbers of eligible constituents due to the economic downturn); *id.* at 8 (explaining that “[t]he number of Americans eligible for LSC-funded legal assistance . . . continues to be at an all-time high” and estimating that in 2012 “nearly one in five—61.8 million

In this climate we are trying to help funders and federal agencies understand what legal services lawyers do and why it is important: often the health benefit that you need, or the education outcome that you need, or the housing outcome you are seeking requires the intervention of a lawyer.²⁶ We are educating funders and community partners about how you can

Americans—were eligible for services, a 21% increase since 2007”); *Estimated Census Adjustment on LSC Grantees’ 2014 Funding*, LEGAL SERVS. CORP., <http://lsc.gov/congress/lsc-funding/estimated-census-adjustment-lsc-grantees-2014-funding> (last visited Mar. 9, 2014), *archived at* <http://perma.cc/W3M6-V9AL> (providing information on the impact of the census adjustment on legal service programs); *Remarks of LSC Board Chairman John Levi at the LSC Forum on the Importance of Access to Justice*, LEGAL SERVS. CORP. (July 22, 2013), <http://www.lsc.gov/board-directors/chairmans-page/statements/remarks-lsc-board-chairman-john-levi-lsc-forum-importance>, *archived at* <http://perma.cc/6ARE-F4PY> (detailing the impact of sequestration on legal services programs and noting that “[i]n fiscal year 2013, funding was set at \$365 million, but that was reduced by rescissions and sequestration to \$341 million, below the historically low rate of 2012”).

²⁶ In fact, the Access to Justice Initiative of the U.S. Department of Justice has created the Legal Aid Interagency Roundtable (LAIR), which the Initiative staffs.

The purpose of the LAIR, which includes 18 participating agencies, is to raise awareness about the profound impact legal aid programs can have in advancing federal efforts to promote access to health and housing, education and employment, family stability and community well-being, and to remove unintended barriers that prevent legal aid providers from participating as partners, grantees or sub-grantees in federal safety-net programs.

THE ACCESS TO JUSTICE INITIATIVE, U.S. DEP’T OF JUSTICE, THREE-YEAR ANNIVERSARY ACCOMPLISHMENTS 5 (2013), *archived at* <http://perma.cc/GCG3-AZ9W>; *see also* THE PUB.

use the law to get basic services or meet basic needs. At the same time we are educating lawyers about the need to partner with non-lawyers to advance social justice.

Personally, I do anti-racism and anti-poverty work, and I help people think about the intersection between those two.²⁷ Through my work, I try to facilitate the conversation within the progressive community about how we link all of our various “struggle identities” and develop an intersectional approach that reinforces one another.

SG: Thank you, Camille. Now, Lenora Lapidus from the ACLU Women’s Rights Project.

LL: Hi everyone. I’m the director of the Women’s Rights Project at the ACLU, and I came to law school—like Suzanne and at the same time as Suzanne, we have a few 1990s up here—not only to do law reform but really to do women’s rights law reform. The summer after my first year I was an intern at the ACLU Women’s Rights Project and little did I know that twelve years later I’d be back as the director. I’ve now been there for twelve years and it’s been wonderful. The Women’s Rights Project was started in 1972 by Ruth Bader Ginsburg and she directed the project for basically the decade of the ’70s.²⁸ She wrote the first brief in *Reed vs. Reed*,²⁹ actually

WELFARE FOUND. & THE KRESGE FOUND., *NATURAL ALLIES: PHILANTHROPY AND LEGAL AID* (2013), *archived at* <http://perma.cc/GCG3-AZ9W>.

²⁷ See, e.g., Francisca D. Fajana & Camille D. Holmes, *Advancing Racial Equity: A Legal Services Imperative*, 47 CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 139 (2013).

²⁸ *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, AM. CIVIL LIBERTIES UNION (Mar. 7, 2006), <https://www.aclu.org/womens-rights/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff>, *archived at* <http://perma.cc/RYD7-GJSZ>.

in '71, before we were formally started, which established constitutional equal protection for women. Today our top three priorities are economic justice, educational equity, and ending violence against women. And one of the things that we've been doing that is novel is bringing in international human rights strategies and law into the advocacy that we do.³⁰

SG: Thanks, Lenora. And Nancy Ramirez from the Mexican American Legal Defense and Educational Fund.

NR: Good afternoon everybody. It's really an honor to be here with such a distinguished panel. I work for the Mexican American Legal Defense and Educational Fund. It's a national Latino civil rights organization and the only national Latino civil rights organization that litigates. It's been around for forty-five years, since 1968. We have offices in Sacramento, Chicago, San Antonio (where we were founded), Washington, D.C., and Los Angeles, our national headquarters, where I work. MALDEF does impact litigation in a number of areas: voting rights, where we strive to eliminate barriers to political participation and enhance representation in policy-making positions; employment, where we challenge discriminatory employment practices including securing the right to safe and fair working conditions and the right to hire and promotion; immigrants' rights, where we work to promote and preserve the right of all Latinos living in the United States to be free of unjustified discrimination on the basis of actual or perceived immigration status; and education, where we work to promote the educational advancement of

²⁹ 404 U.S. 71 (1971); Brief of Appellant, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70-4), 1971 WL 133596.

³⁰ See *infra* text accompanying notes 79–81.

the Latino community through securing equal access to quality education. One of our landmark cases is *Plyer v. Doe*,³¹ the U.S. Supreme Court decision that gives undocumented immigrants the right to a K-12 public education.³²

We also do legislative policy work. MALDEF's legislative work is directly linked to our litigation. We work on developing policies to fill gaps that our litigation has not addressed. In addition, MALDEF has a parent education program that teaches immigrant parents how to navigate the education system in order to advocate on behalf of their children. I am the Western Regional counsel, which means that I am responsible for the region that encompasses the Ninth Circuit, but I primarily focus on California and Arizona.

SG: Can you say just a bit more about your time at MALDEF, since you have worked there at two different points in your career?

NR: Sure. I am on my second tour of duty at MALDEF, having spent five years at the organization as a staff attorney in the 1990s. In between my first and second stints at MALDEF I did direct legal services for six years at the Los Angeles Center for Law and Justice. Having worked in both legal services and impact litigation, I have seen the benefits and disadvantages of both strategies for law reform. Working in direct legal services, you have a lot of client contact and develop close relationships with your clients. You also can see the impact of your work on your client's life—for example, securing a restraining order against an abusive partner or reinstating government benefits that allow someone to live in dignity. Plus, cases are resolved

³¹ 457 U.S. 202 (1982).

³² *Id.* at 230.

more quickly in legal services than in impact litigation, where cases can go on for up to ten years or more. On the other hand, in impact litigation you are touching thousands of people. You are invalidating discriminatory statewide laws or keeping elected officials accountable for their actions. While it takes longer to resolve impact cases, when you are successful you reach large segments of the population and send a powerful message to the wrongdoer. I have concluded that both direct legal services and impact litigation are equally effective tools for social change. Both strategies impact people's lives in powerful ways.

SG: Thanks, Nancy. I was talking to somebody earlier today about organizing this panel on the Front Lines of Law Reform, and she asked, "What's that? What's law reform?" That's really our next question—what is law reform? We could talk for days about this question, of course, including in the conversation many, many people in this room who have worked or are working as law reform lawyers of one sort or another. But within the time constraint of the gathering, each panelist will speak just briefly about what she thinks is law reform. I have asked them each also to illustrate, if they can, with an example. Lenora, why don't you start us off?

LL: To me, law reform is using the law to bring about social change. It is seeking to address a problem using a wide range of tools. At the ACLU, we engage in litigation. But whenever we decide to bring a case, we always do that along with policy reform and communications. Pregnancy discrimination is an example of a problem that we've seen out there that just seems to be intractable. It has been thirty-five years, at the end of October, since the Pregnancy Discrimination Act³³ was passed, and yet we still see women being pushed out of jobs when they

³³ Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified at 42 U.S.C. § 2000e(k) (2006)).

become pregnant, sometimes still fired on the spot.³⁴ And so we have been bringing litigation—filing charges with the EEOC—but at the same time drafting new federal legislation—the Pregnant Workers Fairness Act³⁵—to explicitly say what we thought the PDA said, which is that you must treat a pregnant woman the same as any other worker who has a similar capacity or incapacity and provide necessary accommodations.³⁶

In addition to the federal legislation, we're working in various states to draft and advocate in support of state bills to provide this protection.³⁷ Along with all of this, we also use communications strategies. And I think that one of the things that we're continually adapting is

³⁴ Examples we've seen of the ways in which women are pushed out and denied accommodations include supervisors putting employees on unpaid leave in response to requests for light duty so as to avoid heavy lifting, denying requests for an extra bathroom break, and refusing to allow employees to carry a water bottle to stay hydrated, among others. *See, e.g.*, *Young v. United Parcel Serv., Inc.*, No. DKC 08–2586, 2011 WL 665321 (D. Md. Feb. 14, 2011), *aff'd*, 707 F.3d 437 (4th Cir. 2013), *petition for cert. filed*, No. 12-1226, 2013 WL 1462041 (U.S. Apr. 8, 2013); *Wiseman v. Wal-Mart Stores, Inc.*, No. 08–1244–EFM, 2009 WL 1617669, at *1 (D. Kan. June 9, 2009).

³⁵ Pregnant Workers Fairness Act, H.R. 5647, 112th Cong. (2012); Pregnant Workers Fairness Act, S. 3565, 112th Cong. (2012).

³⁶ H.R. 5647, *supra* note 35, at § 2.

³⁷ *See, e.g.*, MD. CODE ANN., STATE GOV'T §20-609 (LexisNexis 2013) (pregnancy accommodation bill passed); S. 2995, 215th Leg., Reg. Sess., 2013 N.J. Laws ch. 220 (amending N.J. STAT. ANN. § 10:5-12 (West 2013)) (pregnancy accommodation bill passed); H.B. 4284, 81st Leg., Reg. Sess. (W. Va. 2014) (pregnancy accommodation bill pending).

trying to use new tools in communications like social media, using Facebook and writing blogs, in order to engage younger folks and really try to continue to build the movement for women's equality more broadly.

SG: As we continue across the panel to think about this question of what is law reform in various fields, I will ask all of us in the room to be thinking, too, about how much of what law reform lawyers are doing matches up to what any of us learned in law school. Nancy, since you have a different focus in much of your work, why don't you go next?

NR: My sense of law reform is using the law to make social change. MALDEF has been very actively engaged in that by challenging the many anti-immigrant measures that have become law around the nation. As the demographics are changing and the Latino community is becoming a greater proportion of the United States population,³⁸ there's a lot of backlash. Some of this backlash has resulted in discriminatory anti-immigrant local ordinances and statewide laws. For example, some cities, such as Farmers Branch, Texas, have passed ordinances that prevent landlords from renting to undocumented immigrants.³⁹ The Farmers Branch ordinance required prospective tenants to obtain a license from city officials who were to determine the tenants' immigration status. MALDEF and the ACLU successfully challenged the ordinance as

³⁸ The increase in the Hispanic population between 2000 and 2010 accounted for over half of the increase in the total population of the United States. SHARON R. ENNIS ET AL., U.S. DEP'T OF COMMERCE, THE HISPANIC POPULATION: 2010: 2010 CENSUS BRIEFS 2 (2011), *archived at* <http://perma.cc/K9BG-237D>.

³⁹ Farmers Branch, Tex., Ordinance 2952 (Jan. 22, 2008).

unconstitutional because it conflicted with federal immigration law.⁴⁰ In other words, we've used the law to enforce the laws that are on the books.

Another example of using the law to enforce constitutional rights that were violated as a result of the backlash against immigrants is the racial profiling lawsuit against Maricopa County Sheriff Joe Arpaio.⁴¹ Last year a federal judge permanently enjoined Sheriff Arpaio and the Maricopa County Sheriff's Office from conducting racially discriminatory traffic stops of Latino drivers and passengers to enforce federal and state immigration laws because this practice violated Latinos' Fourth and Fourteenth Amendment rights.⁴² One more example is MALDEF's challenge of anti-day labor ordinances that focus on workers congregating on the street to seek work. MALDEF was a pioneer in challenging these ordinances using the First Amendment's guaranteed freedom of speech, and First Amendment challenges of anti-day laborer ordinances are examples of how we've used constitutional protections to expand protections for some of the most vulnerable people.⁴³

SG: Thanks, Nancy. Linda, why don't you jump in next?

⁴⁰ *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 539 (5th Cir. 2013) (en banc), *cert. denied*, No. 13-516, 2014 WL 801104 (U.S. Mar. 3, 2014).

⁴¹ *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959 (D. Ariz. 2011).

⁴² *Id.* at 992-93.

⁴³ Some of the successful challenges were *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 950-51 (9th Cir. 2011) (en banc), and *Jornaleros Unidos de Baldwin Park v. City of Baldwin Park*, No. CV07-4135 ER (C.D. Cal. dismissed Oct. 5, 2007) (stipulated dismissal due to settlement favorable to plaintiffs).

LK: Certainly, using law as a tool of social change is integral to the disability rights movement. Through the centuries, and even to this day, there has been a medical and individualized model of disability.⁴⁴ Disability has been viewed as an individual problem to be fixed, something that has historically excluded you from the mainstream of human life and of human rights. The central organizing principle of the disability civil rights movement is the idea that, regardless of the specific impairment you may have, there's a common societal reaction—an impulse towards segregation and exclusion.⁴⁵

It's very much what David Wilkins was saying at lunch: to become a full and equal participant, you first have to get the door open. The challenge, of course, is to find ways to get over the threshold. To that end, part of law reform involves using the tools that have already been gathered and building on already established foundations and principles. Certainly in that regard, the disability rights movement references the achievements of the racial and gender civil rights movements that have gone before. Measured by the chronology of our key statutes and

⁴⁴ See generally PAUL K. LONGMORE, *WHY I BURNED MY BOOK AND OTHER ESSAYS ON DISABILITY* (Robert Dawidoff, ed., 2003).

⁴⁵ The U.S. Supreme Court recognized the powerful commonality of this discrimination experience in one of the earliest high court disability rights cases. Identifying the impetus for Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. § 794 (2012)), the Court noted that “Congress acknowledged that society’s accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment.” *Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 284 (1987).

legal victories, disability rights can be viewed as being about twenty years behind the racial and gender civil rights movements.⁴⁶ Among the movements, there are many parallels in the use of consciousness-raising, grassroots organizing, and, of course, legal constructs.

But at a very fundamental level there's an added complexity to disability rights. What does it mean to "open the door" if the door has steps, and the doorbell is auditory only, and the welcome mat is off-gassing and exacerbating your lupus? The practical issues are thus uniquely nuanced, and to be effective, the legal entitlements and defenses must take that into account.

But the law must also move in tandem with broader efforts to change attitudes and culture—to address the "accumulated myths and fears" that drive the adverse societal reactions to disability. While apparently apocryphal from an etymological perspective, there's an old canard circulating within the disability community that the word "handicap" derives from the concept of persons with disabilities cap-in-hand begging, because they are unable to otherwise

⁴⁶ One example in support of this very generalized statement is the fact that disability nondiscrimination protection (along with familial status protection) was added to the pre-existing federal Fair Housing Act in 1988—two decades after the original statute had been enacted. Fair Housing Amendments Act (FHAA) of 1988, Pub. L. 100-430, 102 Stat. 1619 (adding "handicap" and "familial status" to the existing list of protected diversity characteristics). While there had been disability-specific federal statutory protections enacted prior to 1988, the FHAA was the first instance in which disability was added to a broader civil rights statute, thus offering subliminal as well as overt support for the concept of disability as a civil rights issue. See *infra* note 70 for additional discussion of the chronology of federal disability rights laws.

earn a living or take care of themselves.⁴⁷ And I'll just share one anecdote that illustrates how deeply embedded that idea of helpless dependence is:

Back in the 1980s one of my colleagues, who uses a wheelchair, had been traveling in connection with DREDF's development activities, engaging in a series of in-person meetings

⁴⁷ The terminology update from "handicap" to "disability" was reflected in federal legislative language beginning in the late 1980s. As ADA legislative history explains, this was not intended to constitute a substantive definitional change, but rather an effort to conform to the disability community preferences of the time:

It is the Committee's intent that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare of the regulations implementing section 504 (42 Fed. Reg. 22685 et seq. (May 4, 1977)) and the analysis by the Department of Housing and Urban Development of the regulations implementing the Fair Housing Amendments Act of 1988 (54 Fed. Reg. 3232 et seq. (Jan. 23, 1989)) apply to the definition of the term "disability" included in this legislation.

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Committee to make use of up-to-date, currently accepted terminology. In regard to this legislation, as well as in other contexts, the Congress has been apprised of the fact that to many individuals with disabilities the terminology applied to them is a very significant and sensitive issue.

As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." [In recent legislation, Congress has begun to recognize this shift in terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability, Public Law 100-630].

The Committee concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.

H.R. REP. NO. 101-485, pt. 2, at 50–51 (1990), *reprinted in* 1 LEGISLATIVE HISTORY OF PUBLIC LAW 101-336, THE AMERICANS WITH DISABILITIES ACT, at 323 (1991).

with foundation representatives and other potential funders to discuss why DREDF's work was worthy of support. She was professionally dressed, waiting in a public transit space to connect with another colleague. She had bought a cup of coffee and was hanging out, off to the side of the pedestrian way, much like anyone might do when arriving first at a designated rendezvous location. And she suddenly found herself splashed with coffee because someone had walked by and thrown a quarter into her coffee cup. She looked up in surprise, and at the same moment, this person realized, "I've made this very grave mistake by assuming that someone using a wheelchair with a cup in her hand needs a quarter." The overall experience was of course dismaying, although as my colleague likes to say, it was the only fundraising money DREDF made on that trip. So on occasion erroneous stereotypes offer modest compensating benefits.⁴⁸

SG: There's a terrific book by a disability studies expert and advocate, Simi Linton, who asks the question: I am in a wheelchair and want to go into the building—do I need a doctor or a lawyer?⁴⁹ Building on her point, it seems to me that in different ways, all law reform lawyers are thinking about access: How do we open up the law? How do we change the law, as a tool to create a more accessible society? What are the many fields in which we need to work? In fact, that's a great segue to you, Camille, to talk about your different angle on law reform.

⁴⁸ This colleague, Mary Lou Breslin, is a co-founder and former Executive Director of DREDF who still works with the organization as a Senior Policy Advisor. A version of this anecdote is included in Joseph P. Shapiro's book *NO PITY*, which chronicles the history of the disability rights movement. *See* JOSEPH P. SHAPIRO, *NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT* 19 (1993).

⁴⁹ SIMI LINTON, *MY BODY POLITIC: A MEMOIR* 120 (2006).

CH: I think so as well. At NLADA, I work with organizations that do similar kinds of law reform to what has been described. Some bring class action lawsuits. Some do policy reform. Some engage in other multi-forum complex work, and others do all of the above. I also work with organizations that, due to the kinds of funding they receive, are restricted from pursuing certain kinds of advocacy.⁵⁰ Legal services programs funded by LSC are not allowed to bring class action lawsuits, represent most undocumented immigrants, represent prisoners, or, until recently, receive attorneys' fees.⁵¹ The restrictions are highly politicized and sometimes have a chilling effect on organizations such that they are less likely to pursue controversial or impactful work, even when the regulations do not prohibit the work. In that frame, law reform can mean changing the way legal aid advocates and programs think about their role. When you learn to practice law under restrictive conditions (or you've practiced the same way for a long time), sometimes you can forget what is possible. Some of what we do is help advocates understand that they can pursue law reform, i.e. work that has a broader impact beyond their individual cases and creates lasting results for clients and the communities in which they live.⁵² They probably shouldn't say

⁵⁰ A list of LSC restrictions can be found at *About Statutory Restrictions on LSC-Funded Programs*, LEGAL SERVS. CORP., www.lsc.gov/media/fact-sheets/about-statutory-restrictions-lsc-funded-programs (last visited Mar. 8, 2014), *archived at* <http://perma.cc/ZP3N-SM3B>.

⁵¹ *Id.*

⁵² *See, e.g.*, Victor Geminiani, *Somewhere Along the Line We Fell off Track: One Step Up and Two Steps Back*, MGMT. INFO. EXCHANGE J., Winter 2011 (discussing the need for legal services programs to pursue aggressive systemic advocacy despite funder-imposed limitations on certain types of advocacy); Gary Smith, *Poverty Warriors: A Historical Perspective on the Mission of*

too loudly that it is law reform, though, because federal funding for legal services is a big political football. For some reason there are people who don't want federal funding used to provide legal services to people who are poor. But shifting the lawyer who's thinking about that individual case to a mindset where they are saying, "How can I use this individual case to change the law for similarly affected people?" is one way to expand the reach of our limited resources. For both restricted and non-restricted programs, law reform includes moving the individual advocate and the program to an approach that incorporates a broader view. Another part of that broader view is seeing civil rights and racial justice as a critical part of the work. So often, clients don't even know they are being discriminated against. Lawyers on the ground must be prepared to look for civil rights violations and either pursue those cases or pass them to advocacy organizations with more resources or better expertise. Applying systems thinking and a racial and economic justice analysis at the local level can lead to law reform.

There's an organization I love in Northern California, called Legal Services of Northern California.⁵³ They work with many community-based organizations, and because they are well-known and respected for their community-based work, people came to them and said, "You know, someone is offering us money for easements to access our land. They're going to give us money and we just want to do something with this money for the community." Legal Services of Northern California did not stop with the request to develop some strategy for the money that

Legal Services, 45 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 34 (2011) (discussing the original mission of legal services as an anti-poverty program and tension between the anti-poverty and access to justice agendas).

⁵³ For more information on Legal Services of Northern California see LEGAL SERVICES OF N. CAL., <http://lsnc.net> (last visited Mar. 11, 2014), *archived at* <http://perma.cc/8BM8-BZQ8>.

would be coming into the communities; they dug deeper. It turned out that the easements would allow a company to store natural gas a mile or so below the homes in this predominantly African American working class community. They did more digging and uncovered natural gas explosions in other marginalized communities. This law reform-oriented organization thought expansively about their role as legal services providers and developed creative strategies for protecting the community against this impending environmental disaster. They prepared and presented testimony before the local land use council and used the environmental impact report process to bring significant media attention and public engagement to the issue.⁵⁴

Their strategies (1) recognized there was a racial inequity involved and engaged the issue strategically, (2) built on the strengths of the community and amplified their voices (rather than using lawyers as the spokespeople and saviors),⁵⁵ and (3) did not rely solely on a legal victory (which considering the venue was hardly assured) but used media, data, and public pressure partnering with organized communities. This is not work that all legal services organizations necessarily usually do and it is not “inside the box” lawyering. This program pushed the envelope in terms of the impact they could make.

⁵⁴ See generally, WALKING ON GAS, <http://www.walkingongas.com> (last visited Mar. 11, 2014), archived at <http://perma.cc/7S97-4WZV> (describing the case, the players, and the impact on the community as part of the strategy to bring significant public engagement to the issue).

⁵⁵ For more information on similar approaches to community lawyering see generally, for example, Karen Tokarz et al., *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 J.L. & POL’Y 359 (2008); Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363 (1993); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988).

SG: Thank you, Camille. I teach a class in advocacy theory and practice, and one of the articles I teach is by Julie Su, who graduated right around when many of us on the panel did. She writes about advocating on behalf of Thai and Latino garment workers and makes an important point about how sometimes the tools you learn as a lawyer and the professional norms you absorb constrain you from doing things that you ought to do to get the work done.⁵⁶ Put another way, as we each spend more time in practice, do we get more conservative but perhaps at the same time more creative in the kind of tools we use? Amanda, you're the relatively newest lawyer on our panel, so can you weigh in a bit about your view of your role as a law reform lawyer?

AG: Sure. From an LGBT movement perspective, like Linda said, we're doing a lot of the same work in terms of assessing what is law reform, what are the best ways to achieve it, and what strategies help us move legal rules forward on behalf of a social movement. We're just at a very different place by most measures of formal equality. One could track the progress of a legal movement many different ways, but one way would be based on federal statutory protections against discrimination in employment and housing. That was a goal achieved in the 1960s for some civil rights movements in this country,⁵⁷ or in subsequent decades for others,⁵⁸ but we in the LGBT movement are still working on it.

⁵⁶ Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 U. IOWA J. ON GENDER, RACE & JUST. 405, 408, 412–13, 416–17 (1998).

⁵⁷ The Civil Rights Act of 1964 established federal statutory protections against employment discrimination based on sex, race, color, national origin, and religion. Pub. L. No. 88–352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a–2000h-6 (2006)). The Fair Housing

Sometimes it feels as though LGBT work has been a victim of its own success. A recent poll reported that eight out of ten Americans think it's currently against federal law to fire someone for being gay.⁵⁹ That's great that social acceptance has reached that level, but that's not helpful for passing the ENDA statute that we don't yet have, and very much need.⁶⁰ So, as time has gone by, I think that the tools in the tool kit that are really available to the LGBT movement have evolved drastically. Some of that is a product of the social acceptance that has come through other channels, partly through deliberate public education work, but often just through personal experiences and personal interactions. When people are living openly L, G, B, or T lives in their communities, that has consequences that you ultimately see working their way through the political and legal systems such that legislators and judges are more able and willing to recognize LGBT people's shared humanity and therefore entertain and credit equality and

Act of 1968, building on existing law, established federal statutory protections against housing discrimination based on sex, race, color, national origin, familial status, and religion. Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601–3631 (2006)).

⁵⁸ For example, the disability civil rights movement enjoyed significant federal legislative victories, including realizing employment and housing protections, during the period from 1973 to 1990. For more detailed discussion and citations, see *infra* notes 69–70.

⁵⁹ Maggie Haberman, *Poll: Big Support for Anti-discrimination Law*, POLITICO (Sept. 30, 2013, 5:05 AM), <http://www.politico.com/story/2013/09/poll-big-support-for-anti-discrimination-law-97540.html>, archived at <http://perma.cc/S6NA-7XZ8>.

⁶⁰ Employment Non-Discrimination Act of 2013, S. 815, 113th Cong. (2013).

rights arguments that often weren't taken seriously awhile back.⁶¹ More specifically, within the LGBT movement, as the culture has changed pretty dramatically in the course of my lifetime, we've started to have some interesting conversations about what are the appropriate tactics for making change these days. For the last two decades, there were a lot of ballot campaigns aimed at either taking away state and local discrimination protections for LGBT people or verifying yet again that same-sex couples in a given state would not have the right to marry.⁶² And one of the mantras of the opposition in each of those campaigns was that it's never appropriate to put civil rights to a popular vote.⁶³ But if you fast forward to today, I'm now doing some work with a

⁶¹ See generally DANIEL R. PINELLO, *GAY RIGHTS AND AMERICAN LAW* (2003) (investigating two decades of appellate litigation over LGBT rights and reporting on demographic patterns and other variables as to when judges are more likely to rule favorably on gay rights issues); Denis Dison, *Study: LGBT Legislators Enhance Prospects for Gay Rights*, GAY POLITICS (June 28, 2013), <http://www.gaypolitics.com/2013/06/28/study-out-legislators-enhance-prospects-for-gay-rights>, archived at <http://perma.cc/7TBT-ZPM7> (noting that legislatures with one or more openly LGBT members are much more favorably disposed toward bills advancing LGBT rights).

⁶² See, e.g., Brief for The Organization of American Historians and the American Studies Association as Amici Curiae Supporting Respondent at 21–22, *United States v. Windsor* 133 S. Ct. 2675 (2013), archived at <http://perma.cc/E8SB-SYUR>; *The History of Same-Sex Marriage in the U.S., 1970 to now*, THE BOSTON GLOBE (Mar. 7, 2014), <http://www.bostonglobe.com/2013/07/30/same-sex-marriage-over-time/mbVFMQPyxZCpM2eSQMUsZK/story.html>.

⁶³ See Laurel Ramseyer, *Mayor Booker: Dear God, We Should Not Put Civil Rights Issues to a Popular Vote*, PAM'S HOUSE BLEND (Jan 26, 2010, 9:10 PM),

group called Oregon United for Marriage.⁶⁴ Folks in Oregon have become very excited about going to the ballot in 2014 to repeal their state constitutional amendment that excludes same-sex couples from marriage⁶⁵ because folks in Oregon who support marriage equality are now confident they can win that fight.⁶⁶ And if it is the clearest, surest, quickest path to marriage

<http://pamshouseblend.firedoglake.com/2012/01/26/mayor-booker-dear-god-we-should-not-put-civil-rights-issues-to-a-popular-vote>, *archived at* <http://perma.cc/QG4C-LT3G>; *see generally* Barbara S. Gamble, *Putting Civil Rights to a Popular Vote*, 41 AM. J. POL. SCI. 245 (1997) (discussing arguments that popular votes on civil rights issues are inappropriate).

⁶⁴ OREGON UNITED FOR MARRIAGE, <http://www.oregonunitedformarriage.org/> (last visited Mar. 8, 2014), *archived at* <http://perma.cc/VZR6-CR4L>.

⁶⁵ OR. CONST. art. XV, § 5a.

⁶⁶ *See* David Mixner, *Look to Oregon for Our Most Important Ballot Battle in 2014*, TOWLEROAD (Jan. 9, 2014), <http://www.towleroad.com/2014/01/lgbt-look-westward-for-our-most-important-election-in-2014.html>, *archived at* <http://perma.cc/3XXA-PYSQ>; Matt McTighe, *Referendums Can Be a Tool for Either Side*, N.Y. TIMES (Mar. 26, 2013, 12:01 AM), <http://www.nytimes.com/roomfordebate/2013/03/26/civil-rights-decisions-in-courts-or-legislatures/referendums-can-advance-civil-rights-not-just-slow-them>, *archived at* <http://perma.cc/U8RT-MR4Y> (discussing prospects for attaining marriage equality at the ballot in Oregon in November 2014); *see also* Complaint at 1, *Rummell v. Kitzhaber*, No. 6:13-cv-02256 (D. Or. Dec. 19, 2013) (federal lawsuit filed by ACLU and other counsel on behalf of two same-sex couples and Basic Rights Education Fund, seeking marriage equality in Oregon, and subsequently consolidated with a separate previously filed federal lawsuit also seeking marriage equality in Oregon); *Oregon United for Marriage Celebrates Attorney General's Statement*

equality for Oregonians, these days it seems entirely appropriate to call that kind of a popular vote on a civil rights issue and bring about what you might call “law reform by direct democracy.” That reflects a shift not only of messaging but of more conceptual framing as to what’s reasonable and what’s appropriate to move the law forward.⁶⁷

SG: So we’ve talked a bit about the organizing principles by which we work or by which our organizations work. We have also talked some about the array of tools used for law reform work, including litigation, public policy advocacy, legislative work, grass roots organizing, and media advocacy. There are other big questions, too. One, which we’re not going to jump into right now but I want to flag for further thought is: Who is the client? Who is the client for whom we are doing this work and how are we accountable?

Calling Measure 36 Indefensible, OREGON UNITED FOR MARRIAGE (Feb. 20, 2014),

<http://www.oregonunitedformarriage.org/agannouncementresponse>, *archived at*

<http://perma.cc/7CV8-8YNT> (reporting the Oregon attorney general’s refusal to defend the state’s ban on same-sex marriage and suggesting that Oregon may achieve marriage equality before November 2014 through pending litigation).

⁶⁷ See generally Lani Guinier, *The Importance of “Culture Shifting,”* N.Y. TIMES (Mar. 26, 2013, 6:54 AM), <http://www.nytimes.com/roomfordebate/2013/03/26/civil-rights-decisions-in-courts-or-legislatures/meaningful-changes-depend-on-culture-shifts-not-just-rules>, *archived at* <http://perma.cc/H4XN-JLQT>; Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 EMORY L.J. 663, 736 (2012) (discussing need for deeper change in public opinion and understanding to accompany changes in formal legal rules).

What I really want to ask you to focus on now is this: How do you gauge your impact? How do you know the effects of what you are doing? In a human rights panel at this conference, people talked about how effectiveness measures are influenced by what funders want. How many people have sat in your meetings? How many people have taken this training? That's not really the question I'm asking. The question here is more about, when you consider what you're doing each day, and you think about either the cases you're winning or the legislation you're getting passed or not getting passed, how do you gauge your success?

NR: Well obviously when you have a successful outcome in your case and you're able to enjoin an illegal practice like racial profiling or overturn an unconstitutional law, clearly that's one way that you can gauge your impact. I think, in addition, even if you file a lawsuit that may not be successful, you're holding others accountable for their actions and you're sending a message that they're being watched and that they cannot get away with what they are doing. I think that's an extremely important message to send. But also, I think for those of us who work in these areas, sometimes we just give a voice to people who don't have one. As an example, I had the great fortune to go to trial against Sheriff Arpaio last year.⁶⁸ One of the victims of racial profiling was a young woman who had been five months pregnant when she was pulled over by a sheriff's deputy. The deputy pulled the woman's arms behind her back, gripped her wrists very tightly, and then shoved her belly-first into the side of her car multiple times. He then threw her into the back of the patrol car. She hit very hard and bruised her tailbone. She was very concerned about her fetus. Her fetus was okay, but he had gripped her so tightly that she had bruises in the shape of his fingers on her wrists and arm. The deputy claimed he pulled her over for a broken license

⁶⁸ Ortega-Melendres, *supra* note 41, at 968.

plate light, but there really was no reason for him to pull her over, and the charges were eventually dismissed. This woman had tried multiple times to file a complaint with the sheriff's department. Nobody took her complaint. The first time she was able to tell her story was during the trial. I had the great privilege of putting her on the stand and giving her the opportunity to tell her story, and even that has a huge impact in giving people who feel powerless an opportunity to share their story.

SG: Linda?

LK: I have the great good fortune of working in a field where I can literally see our success in the streets—as well as in the kinds of ceremony that help to confirm the scope of our progress.

I began practicing slightly before the passage of the Americans with Disabilities Act (ADA),⁶⁹ which is certainly the most visible and (correctly) celebrated federal disability civil rights law. Though it is not the earliest, like many ostensibly overnight successes, it was the result of many, many decades of work, and it was carefully built on a foundation of previous federal disability rights laws.⁷⁰ But that timing gave me the privilege of going to the South Lawn

⁶⁹ Americans with Disabilities Act (ADA) of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12213 (2006)).

⁷⁰ The ADA itself addresses five basic areas of human endeavor: (1) employment, (2) state and local government activities, (3) public accommodations (i.e., privately operated businesses open in some way to the public), (4) some (but not all) forms of public and private transportation, and (5) telecommunications. *Id.* Upon close examination, one of this statute's most notable features is what it excludes. Indeed, most people are shocked to learn that the ADA does not cover the

of the White House for the ADA signing ceremony on July 26, 1990. It was incredible to be in that crowd, to feel the warm reception that was being given in the halls of power to the people with disabilities who were legion on the South Lawn.

U.S. Postal Service or the federal government—though the federal legislative branch is addressed. *Id.* § 12209. It does not, for the most part, cover residential housing. And it does not cover air travel. But these apparently major omissions are intelligible in light of the fact that the ADA is a base, supplemental piece of legislation: it is intended to fill in the gaps left by prior federal disability rights laws.

The earliest federal disability rights statute was the Architectural Barriers Act of 1968 (ABA), Pub. L. No. 90-480, 82 Stat. 718 (codified as amended at 42 U.S.C. §§ 4151–4157 (2006)), which requires that certain buildings and facilities designed, constructed, altered, or leased with federal funds be accessible to people with disabilities. This was followed by Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. § 794 (2012)), which prohibits disability discrimination by entities that receive federal financial assistance. Section 504 was amended in 1978 to extend the nondiscrimination mandate to the executive branch of the federal government, and to the U.S. Post Office. Pub. L. No. 95-602, 92 Stat. 2955.

Air travel was addressed by the Air Carrier Access Act (ACAA) of 1986, Pub. L. No. 99-435, 100 Stat. 1080 (codified as amended at 49 U.S.C. §41705 (2006)), while public and private residential housing come within the ambit of the 1988 amendments to the Fair Housing Act, discussed at *supra* note 46. Residential housing may also be subject to Section 504 or ADA mandates, to the extent that housing providers are recipients of federal financial assistance, or state or local governments.

But I think the biggest impact that I felt specific to the ADA was on the twentieth anniversary in 2010, when I was staffing the media response in our Berkeley office. Because many of my colleagues were in Washington, D.C. to participate in other anniversary events, I was commissioned to go get the celebratory cake that our Berkeley staff was going to share. I parked my car a couple of blocks from the bakery, and I went down a curb cut, and up a curb cut, and across the little surfaces of truncated dome detectible warnings, which alert people who are blind as to when they're about to go into the street. I pushed the automatic door opener to get into the bakery. Unfortunately, we didn't do so well on the diabetes front that day (it was a rich and sugary cake), so clearly the journey towards full inclusion needs to continue. But it was really compelling to me to see the path we had forged with the law in the streets.

SG: Camille?

CH: Okay, I have two different impact stories to tell. The first relates to a current discussion within the legal services community about measuring impact. I'm just going to say the tiniest word about that because it is exactly what you said you didn't want us to talk about, that is, how do we let federal funders, state funders, corporate partners, and law firm partners know that when you provide legal services to poor people, you are actually increasing the economic value in that community—that there's a social return on your investment.⁷¹ This is calculated by valuing the money recovered during the course of the case from a predatory lender or unemployment

⁷¹ See generally *What is Social Return on Investment (SROI)?*, THE SROI NETWORK, <http://www.thesroinetwork.org/what-is-sroi> (last visited Mar. 8, 2014), *archived at* <http://perma.cc/665T-P59T>.

benefits, the cost of services that no longer need to be provided, and the longer-term benefits of a child getting an education or a person getting a job. So that's one conversation that's going on vigorously because the fear is of course that once you put that measure together, that will become the compliance standard. So that's impact story number one.

The second impact story I'll tell is about my own journey into the legal services community. I didn't say before, but my journey was a little more circuitous than the journeys of others on this panel. I came to law school with vague notions of equality and justice. I was active in progressive causes and wanted to make a difference, and at the same time I looked at my overwhelming debt and decided to go to a law firm so I could pay down that debt. I did that and worked in corporate transactions and made my way into the nonprofit community through pro bono. One of my pro bono projects was with the Southern African Legal Services and Legal Education Project (SALSLEP), a small nonprofit created by Lloyd Cutler to serve as a bridge between the American Bar Association and South African anti-apartheid lawyers during the height of apartheid. I was privileged to represent the nonprofit at meetings with the Legal Resources Centre, a key anti-apartheid organization experiencing the challenge of having much of their leadership promoted into government and onto the Constitutional Court. Watching the legal services advocates at the Legal Resources Centre, I gained an appreciation for real community-centered lawyering.⁷² I worked with SALSLEP for a few years and then turned my focus to domestic legal services, first at the Center for Law and Social Policy (CLASP) and now at NLADA.

Over the last twelve years or so, between CLASP and now NLADA, I have built bridges between social service organizations, civil rights organizations, and racial justice organizations. I

⁷² For more information on community-centered lawyering, see generally White, *supra* note 55.

have advanced concepts of community problem solving and racial equity and helped people think about their roles in the context of a larger movement: How are our struggles connected and how can we work together to address the root causes of poverty and exclusion? Even law reform—it's more like life reform. How do people actually get what they need? How much of that depends on lawyering and how much of that depends on connecting differently with the issues and each other? When is the key to this reform changing the law, when is it changing the way the law works, and when is it changing the experience of justice?

By pushing this connection between anti-poverty advocacy and anti-racism advocacy, I have tried to get people in our community excited about the fact that, from my perspective, in order to do anti-poverty work you have to do anti-racism work because racism is one of the things that causes and impacts one's experience of poverty. Not the only thing—you also have to do anti-sexist work, anti-ablism work, and all down the line—but if you are working in a country that has racialized our access to resources (from welfare benefits to community investment dollars to prime loans and so on), you have to understand race, racism, and racial justice advocacy strategies in order to be effective for and with poor people, especially poor people of color.

This spring, I did a survey of legal services organizations and advocates and asked them about their view of racial justice advocacy in the legal services community.⁷³ On a positive note, the overwhelming majority believe that legal services programs have a role to play in addressing systemic racial bias, and half believe they are doing some type of racial justice advocacy.⁷⁴ That's exciting. On the other hand, when asked to agree or disagree with the statement

⁷³ Fajana & Holmes, *supra* note 27.

⁷⁴ *Id.* at 143–44.

“addressing poverty will address racism,” 42% agreed with the statement and another 24% had no opinion.⁷⁵ The racial justice literature of the past decade states affirmatively that racism must be addressed directly—through analysis of the problem, in the ways we communicate, and when developing remedies to racialized problems.⁷⁶ So we all have a ways to go, but the good news is that there is more of a fluency and a willingness to engage on those issues of community problem solving, racial justice advocacy, and the nexus between anti-poverty and anti-racism. The key is developing our capacity, competency, and fluency with these nuanced and complex concepts. We are not currently prepared but we can get there.

SG: The ways we measure impact turn out to be quite interesting, as our panelists have been discussing. It’s partly through traditional lawyering—that we won this case, we got this piece of legislation passed. But it’s also very much through measuring changes in the public conversation and seeing the absorption within the broader society of the vocabulary of social change and law reform.

⁷⁵ *Id.* at 143.

⁷⁶ *Id.* at 145 n. 37 (citing *Racial Equality*, W.K. KELLOGG FOUND., <http://www.wkkf.org/what-we-do/racial-equity> (last visited Mar. 27, 2014), *archived at* <http://perma.cc/5EA5-866Q>; *Race Matters*, ANNIE E. CASEY FOUND., <http://www.aecf.org/KnowledgeCenter/PublicationsSeries/RaceMatters.aspx> (last visited Mar. 27, 2014), *archived at* <http://perma.cc/U7JC-WSA4>; RACE FORWARD, <https://www.raceforward.org/> (last visited Mar. 27, 2014), *archived at* <http://perma.cc/F3EY-DSXX>).

This prompts the question, which we'll get to in a few minutes, of how we work across issues, which can be a tremendous challenge while also offering great opportunity. But before I ask Lenora to talk about impact, let me just offer my anecdotal observation that many Harvard Law School women have played a central, leading role in shaping and impacting this field. [We then learned, by show of hands in the audience, that many in the room considered their work to have a law reform dimension across each decade of graduates.] We are an impressive group! [Applause.]

So, back to impact. Lenora?

LL: I have an example of a time when what you think is the impact may not actually be the impact. The ACLU has been fighting for decades for women's equality in the military. And over the years, starting in the '70s and later, we did accomplish many goals and made a lot of progress.⁷⁷ Still, women were excluded from combat. We decided finally the time was right and in November of 2012, we filed a lawsuit to strike down the combat exclusion.⁷⁸ We filed the suit on behalf of the Service Women's Action Network (SWAN) and four individual women who

⁷⁷ See, e.g., Crawford v. Cushman, 531 F.2d 1114 (2d Cir. 1976) (striking down mandatory discharge of pregnant women from Marine Corps); Owens v. Brown, 455 F. Supp. 291 (D.D.C. 1978) (striking down bar on women serving on Navy vessels); cf. Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination*, 85 N.Y.U. L. REV. 83, 127 (2010) (explaining that, although the Ninth Circuit dismissed a challenge to the mandatory discharge of pregnant women from the Air Force in *Struck v. Sec'y of Defense*, 460 F.2d 1372 (9th Cir. 1971), vacated, 409 U.S. 1071 (1972), the Air Force subsequently granted Struck a waiver).

⁷⁸ Complaint, *Hegar v. Panetta*, No. 12-CV-06005 EMC (N.D. Cal. Nov. 27, 2012).

had been in combat in Iraq and Afghanistan but were not officially classified as being in combat. About three days before the Department of Defense's answer was due, they announced that they were lifting the combat exclusion. At first we felt like celebrating. This seemed like a quick victory. However, although the Department announced it would lift the ban, positions remain closed and women continue to be excluded. Accordingly, the case is ongoing and we are continuing to press the Department to fully integrate women into combat.

A second case that illustrates a similar point is that of Jessica Gonzalez, now Lenahan. I think many of you have probably heard of this case, which involved a woman who had a domestic violence order of protection. In violation of that order, her ex-husband came one afternoon and kidnapped their three children from the front yard. She called the police, asking them—begging them—to go after him. During the course of ten hours, she repeatedly requested police assistance. The police refused to go after him. Finally, the ex-husband drove up to the police station in Castle Rock, Colorado and opened fire. The police shot back. And when they looked in the cab of his truck, there were the bodies of the three girls, who had been killed. Jessica filed a lawsuit, and it went up to the U.S. Supreme Court.⁷⁹ The U.S. Supreme Court found no constitutional violation, holding she had no due process right to enforcement of her protective order.⁸⁰

As I mentioned at the beginning, we've been using international human rights strategies in our work. Usually, one would think that going to the Supreme Court is the last step. However, we didn't stop there. We filed a petition before the Inter-American Commission on Human Rights, and two years ago, we got this wonderful decision saying that the United States had

⁷⁹ *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

⁸⁰ *Id.* at 768.

violated international human rights obligations and that the government should take further steps to address domestic violence.⁸¹ This was a major victory; however, for the last two years we've been trying to implement the decision and recommendations. We are having meetings with the Department of Justice, the State Department, and others in the federal government, trying to actually make this ruling real. So I think our answer to the question, "What is success?" is that a win is not the end. When you win a case or get a law passed, you must see it through to implementation and that can take a long time.

SG: To paraphrase what somebody said on an earlier panel— there is no finish line. It's a process. Amanda?

AG: Well, I think, given the different place that LGBT work is in compared to some of these other movements, it's a little bit easier to see visible impact. I see it even in little things— for example, there are still newspapers and news websites that occasionally run a picture of a U.S. soldier in uniform returning from a deployment and kissing a same-sex partner.⁸² That's

⁸¹ *Lenahan v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 215 (2011).

⁸² *See, e.g.*, Matthew Rosenbaum, *Homecoming Photo of Gay Marine Kissing Boyfriend Goes Viral*, ABC NEWS (Feb. 27, 2012, 3:30 PM), <http://abcnews.go.com/blogs/politics/2012/02/homecoming-photo-of-gay-marine-kissing-boyfriend-goes-viral>, archived at <http://perma.cc/S24D-V7JM>; Brock Vergakis, *2 Women Share 1st Kiss at US Navy Ship's Return*, NBC NEWS (Dec. 21, 2011, 8:51 PM), http://www.nbcnews.com/id/45753034/ns/us_news-life, archived at <http://perma.cc/FG85-LFE7>.

perceived as news. And in a sense, it is, because until two years ago, that was an impossible thing under the Don't Ask Don't Tell regime.⁸³ But it's also a very mundane, personal thing, that moment of reunion for a particular couple or family. And going beyond the very visible moments like those reunions, or the same-sex wedding photos that are so well represented in the news recently, I think a lot of the impact of our recent work and victories on LGBT issues manifests itself in things that are not visible, that are just everyday practices in people's lives. Every time someone puts a same-sex partner onto employer health insurance, that is a pretty direct result of recent legal victories in this area.⁸⁴ Similarly, every time a transgender person is able to get a legal name change or change the gender marker on a driver's license or a birth certificate, the ability to take those steps—steps critical for moving on into a personal and professional life in one's new gender and identity—results from changes to the law that transgender people and our movement achieved not all that long ago. So in addition to the big litigation victories and the

⁸³ 10 U.S.C. § 654 (2006) (repealed 2010); *see also Don't Ask, Don't Tell*, U.S. ARMY, <http://www.army.mil/dadt> (last visited Mar. 8, 2014), *archived at* <http://perma.cc/9JPU-XPWT> (explaining procedures for the end of Don't Ask Don't Tell).

⁸⁴ *See, e.g.,* Bassett v. Snyder, 951 F. Supp. 2d 939 (E.D. Mich. 2013) (enjoining enforcement of Michigan's Public Employee Domestic Partner Benefit Restriction Act of 2011); Collins v. Brewer, 727 F. Supp. 2d 797, 815 (D. Ariz. 2010) (enjoining enforcement of Arizona statute that excluded same-sex partners of state employees from family benefits eligibility), *aff'd sub nom.* Diaz v. Brewer, 656 F.3d 1008 (9th Cir. 2011); S.D. Myers, Inc., v. City and Cnty. of San Francisco, 253 F.3d 461 (9th Cir. 2001) (upholding constitutionality of local ordinance that required municipal contractors to make benefits available to their employees' same-sex domestic partners).

clients whom we serve directly and the press releases we issue about what they've gained, I think there are all sorts of smaller processes playing out around the country that are traceable in large part to the successes we've had in recent years.

SG: Thanks, Amanda. I am now going to consolidate a couple of additional questions and toss them out for our panelists, who can just take their pick of what they would like to respond to.

One of the questions is, if you were going to change something about law reform work that you do or that your organization does, what would it be?

Another, perhaps related, question, which is an important one to me, concerns how organizations collaborate. Law reform organizations all collaborate with each other to some degree, with lawyers working in the private sector, and sometimes with government actors as well. But that is actually not the kind of collaboration I have in mind. Instead, I am thinking of collaboration across issues. Partly because I handled many amicus briefs when I was at Lambda Legal, I performed a study a while back of amicus brief filings in identity-based law reform cases.⁸⁵ It was always interesting to me that we would go to the women's rights groups to write the women's rights briefs and the race-focused groups to write the race-focused briefs. Nobody at that time wanted to come to the gay rights groups because we were so marginalized that to get the gay rights advocates on your side was considered to be terribly helpful.

So the question, again, is, "How do we work across issues?" Some of that work is done successfully, some of that is not. Certainly in the social movements more generally there is

⁸⁵ Suzanne B. Goldberg, *Intersectionality in Theory and Practice*, in *INTERSECTIONALITY AND BEYOND: LAW, POWER AND THE POLITICS OF LOCATION* 124 (Emily Grabham et al. eds., 2009), archived at <http://perma.cc/WM3X-258U>.

plenty of collaboration. But when you look at the legal defense fund world, at the law world as distinct from the political world, you do not necessarily see a lot of cross-issue organizations. And when you think about people who have multiple aspects of their identities that trigger discrimination or harm or violence of some sort, there is a sense that they have to pick one organization to go to. Once they get there, that organization is likely to look at the issue or case through the lens of the identity in which the organization specializes. While its analysis will not disregard all of the other aspects of the potential client's life, there will almost certainly be a lead identity issue.

So now, each panelist will speak to something from among this set of topics. Linda, do you want to start us?

LK: The collaboration issue is certainly a critical question. But again, I think that the disability rights movement just by its nature is uniquely positioned to understand and draw upon such cross-references. The organizing principle of disability civil rights is that people with seemingly quite disparate different disabilities nevertheless have a common cause. That really is a remarkable idea. It's one of those ideas that seems commonplace now, but even as much as twenty years ago, it was a very dramatic idea. For example, think about my hearing impairment (which requires my accommodation of being seated on the right side of this panel, and some lip reading and various other personal tricks I use). What does that have to do with my colleague with her coffee cup, using a wheelchair for mobility in a public space? Or another colleague who needs an insulin injection that might be off cycle from the assigned trial schedule? Or the person with a mental health disability who may need also need a different schedule because of medication side effects? It takes some imagination to understand that those circumstances and

needs have something in common. And at this point, the disability community has a lot of practice with that.

But it also adds yet more complexity when the disability community is trying to manage all of disability complexity as well as adding in other things. This concept of dual diversity is very compelling to my office right now, though we certainly don't have it fully figured out. To one way of thinking, there's the ever-present dilemma of, "What's the lead?" Is someone a "person of color with a disability," or a "person with a disability of color"? Is someone a "woman with diabetes," or a "person with diabetes who's a woman"?

Alternatively, there's a question as to whether there should be a "lead" at all. I am profoundly committed to the principles of civil rights, having spent my career dedicated to its promises and possibilities. But I do think that as a broader progressive community, we need to consider whether perhaps the era of civil rights, of splintering us into our diversity, has now run its course. It's been a powerful vehicle for justice over the last fifty years, but I'm not sure it's going to carry us through the next stage of the journey. I think that's a question that we all need to think about. Maybe the time has come for us to fold all those identities back together so that we're really focused on advancing humanity and human rights and less intent on culling out and protecting specific diversity identities.⁸⁶

SG: Amanda, do you want to jump in?

⁸⁶ The perils and possibilities of American civil rights analysis is a theme that is explored, for example, in KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* (2006).

AG: Sure. I'm not shilling for the ACLU in giving this answer but I do think that we are an example of an organization that does a relatively high amount of cross-issue collaboration just because of being a multi-issue organization. Out of the fourteen issue-based projects at the ACLU right now,⁸⁷ most of them are based in New York and it's relatively easy for us to get together in person, or of course conference technology also works, and hash things through.

My favorite little example of that is an intake that we got about an incident in Tennessee where a principal of a public high school apparently just sort of reached her breaking point of personal frustration and called an assembly that was really a sermon. She decided to preach to the senior class, and to paraphrase roughly what she said to them, she said, "You all need to accept Jesus as your personal savior, and I'm particularly concerned about the girls who are having babies and the kids who think they're gay. None of that is acceptable and I won't have that kind of sin in my school."⁸⁸ So we ended up getting together a sort of strike force from different divisions of the organization—lawyers from the ACLU of Tennessee, the LGBT Project, Lenora's Women's Rights Project, and the Program on Freedom of Religion and Belief—and we collaborated on an epic demand letter about all the things that were wrong with

⁸⁷ *ACLU Centers*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/aclu-centers> (last visited Mar. 8 2014), *archived at* <http://perma.cc/AGN8-9GHE>.

⁸⁸ *See ACLU Responds to Reports of Proselytizing and Anti-LGBT Remarks by Principal at Tennessee High School*, AM. CIVIL LIBERTIES UNION (Mar. 1, 2012), <https://www.aclu.org/lgbt-rights/aclu-responds-reports-proselytizing-and-anti-lgbt-remarks-principal-tennessee-high>, *archived at* <http://perma.cc/8XS4-HTBR>.

that assembly. We sent it, we publicized it,⁸⁹ and within two hours, that principal was out of a job.⁹⁰

Of course, it's not always that smooth to agree on the right approach to a situation or to carry it out, but I do think that we have somewhat of a track record of effective cross-collaboration within the ACLU. We certainly could stand to do more of it. On the flip side, in some cases projects actually act as a check on one another. For example, we LGBT Project folks can sometimes get a little too enthusiastic about bullying and how we'd like to crack down on that problem in the public schools. There's another project that focuses on First Amendment issues and our colleagues there have been helpful in pointing out the civil liberties concerns around regulating student speech, particularly student speech that's not strictly in a school context. There are also some ACLUers working on the broader problem of the "school to prison pipeline" and the funneling of students, particularly students of color, into the criminal justice system,⁹¹ and they have provided very important feedback on some of the proposed strategies for regulating bullying, aiming to prevent strict and highly discretionary bullying laws from feeding more students into that pipeline. So it's a strength for us to be able to confer internally about what debates and cases we choose to take on and also to set out, as best we can, substantive

⁸⁹ *Id.*

⁹⁰ *Haywood Principal Resigns After Anti-gay Remarks*, LOCAL MEMPHIS (Mar. 1, 2012, 8:21 PM), <http://www.localmemphis.com/news/local/story/Haywood-Principal-Resigns-After-Anti-Gay-Remarks/d/story/I8uisJEyN0e2DfvDompXWQ>, archived at <http://perma.cc/V3M6-C9HX>.

⁹¹ *School-to-Prison Pipeline*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/school-prison-pipeline> (last visited Mar. 8, 2014), archived at <http://perma.cc/L298-HRXB>.

positions on legal issues that work for everyone, meaning they take into account all the competing civil rights and civil liberties interests that may be in play.

SG: I wonder, how many of us in law school even ever drafted a sample demand letter much less an epic demand letter? [Laughter.] Camille?

CH: Sure. I have a lot of thoughts. Infrastructure is definitely important. The fact that the ACLU has a number of different projects makes it more likely, or at least possible, that it will practice some type of cross-issue collaboration. I think that it gets harder when you have organizations that are more narrowly focused, under-resourced, and facing high caseloads. But in both cases, within and across organizations and issue groups, we need to develop a practice of listening to one another, of telling each other our theories of change. I have theories about racial equity but I may not talk about them with my colleague inside my office. I talk about them with the people I'm reaching out to externally. We can increase the effectiveness of our advocacy across issues by building in that time to have the conversations about how racial equity is achieved, how women's rights are advanced, and what we think about LGBT rights. We must also do this in a way that doesn't bring up the "oppression Olympics." That is, avoiding the conversation that sounds like, "No but you don't understand, I have it worse." "No, you don't understand, we're more oppressed." We really have to find a way to move through the anger, pain, and frustration of, frankly, how bad the law is right now and how things are not where we would like them to be. Instead we must come up with positive strategies and positive communications among ourselves. Cultivating a practice of sharing our equity frameworks is one approach. Another is practicing equitable relationships interpersonally and within organizations. We excel at righting

injustices on behalf of our clients, but I've been in social justice organizations and I've watched social justice organizations, and it's amazing—you may not be familiar with this—but sometimes nonprofits don't apply the same demands for justice and equity internally that they apply externally. [Laughter] I think this, too, gets in the way of the practice of a coherent anti-oppression framework that would support cross-issue partnerships within and across organizations.

SG: Lenora?

LL: I was going to tell how the ACLU has the multiple projects, but you've heard that already, so another recent example is even within the self-defined women's rights organizations, we don't always all work together. So last year, about a dozen of the national, state, and regional women's rights organizations got together. The Ford Foundation brought us together to talk about whether there were ways that we could collaborate more effectively. We began working together to think about the core issues on which we might collaborate. The top issue was closing the gender wage gap, including how, as I mentioned earlier, pregnancy discrimination continues to play into that. June 10th, 2013 was the fiftieth anniversary of the Equal Pay Act,⁹² and at the time, fifty years ago, women were earning fifty-nine cents to every dollar a man earned.⁹³ Today, on average,

⁹² Equal Pay Act of 1963, Pub L. No. 88-38, 77 Stat. 56 (codified at 29 U.S.C. § 206(d) (2012)).

⁹³ See U.S. CENSUS BUREAU, HISTORICAL INCOME TABLE P-38, ALL RACES: FULL-TIME, YEAR-ROUND WORKERS BY MEDIAN EARNINGS AND SEX: 1960 TO 2012, *archived at* <http://perma.cc/B3LZ-MZCV>.

women earn only seventy-seven cents per male dollar.⁹⁴ And for black and Latina women, those figures are worse than for white women.⁹⁵ So we've been discussing how best to finally close this gender wage gap. There is also a whole workers' rights movement that's out there, and when we're talking about equal employment opportunities and issues in the workforce, those silos shouldn't exist. Therefore, one of the first things that we've been doing is trying to reach across those self-defined differentiated categories and say we're all trying to reform things in the workplace, we need to work together to do that. So it is an ongoing struggle, but we're working on it.

CH: Can I actually just comment on something that Lenora just did, which is one of those great practices that helps with building bridges? Lenora just sang an inclusive song. We all need to include in our messages, whether it's a racial justice message or a women's rights message, an acknowledgement that our various aspects of identity impact the way we experience any particular oppression. We can focus on workers' rights or on women's rights or on rights for people of color but we are not doing our job well if we don't recognize and communicate clearly the intersectionality of the experience of oppression and the varied strategies and remedies required to enlist those affected and address their particularized needs. We need to practice

⁹⁴ CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, P60-245, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2012 11 (2013), *archived at* <http://perma.cc/J4P5-D8WL>.

⁹⁵ ARIANE HEGEWISCH & CLAUDIA WILLIAMS, INST. FOR WOMEN'S POLICY RESEARCH, FACT SHEET: THE GENDER WAGE GAP: 2012 2, 2 tbl.1 (2013), *archived at* <http://perma.cc/CSJ2-NG7P>.

communicating in such a way that people can recognize themselves in the advocacy that you're bringing forward—so it's worker's rights, it's women's rights, it's women of color. And all are essential.

NR: So, twenty years ago, when Suzanne was at Lambda, she called me to ask if MALDEF would sign onto an amicus brief—I believe it was the anti-gay constitutional amendment case in Colorado.⁹⁶ Though we accepted, MALDEF's work was very “silo-ed” during this time, and this type of discrimination case did not fall squarely into our program areas. We joined a number of amicus briefs in support of gay rights, but they were considered to fall under the “access to justice” catchall. I'm happy to report that today we have an attorney who focuses on the intersection between LGBT and Latino race discrimination.⁹⁷ I think that's a recognition of the diversity within our own communities, that clearly there's a need to look at the various identities our clients have. We all have multiple layers to our identities—we're women, we're disabled, we're lesbian, we're Latina. This new program is a recognition of those various layers in our identities.

⁹⁶ In 1992, Colorado passed a constitutional amendment, COLO. CONST. art. II, § 30b, that prevented protected status for LGBT persons, which the United States Supreme Court declared unconstitutional in *Romer v. Evans*, 517 U.S. 620, 635–36 (1996).

⁹⁷ One of this attorney's successful cases was *Peña v. Burger King Corp.*, No. 2:12cv 248 (E.D. Va. dismissed Nov. 9, 2012) (jointly agreed-upon dismissal), an employment discrimination case on behalf of an HIV-positive Latino, which ended in a favorable settlement for the plaintiff.

SG: In closing, we can see that law reform lawyering covers a vast territory, with challenging questions and interesting opportunities ranging from staffing and messaging to meeting and getting together, to being aware of how to highlight one aspect of a client's life while not disregarding the rest of the client's identity. In the academic world, we talk a lot about institutional design. The concept has some value for the ways we think about law reform too, about how we design ourselves institutionally. By this I mean not just the formal ways, although those are important—where the office is located, how we create communications pathways, and more—but also how we think, conceptually, about the work we do and the ways in which to bring about change most effectively. As we take many lessons from today's rich conversation and carry them forward, we are, at the same time, setting the groundwork for many more interesting conversations and much more law reform to come.