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Clinical Essay

WORKING FOR SOCIAL CHANGE AND PRESERVING CLIENT AUTONOMY: IS THERE A ROLE FOR "FACILITATIVE" LAWYERING?

RICHARD D. MARSICO*

Lawyers wishing to do social change work are placed in the difficult position of trying to provide the legal representation their clients seek while at the same time not undermining their clients' autonomy.1 This is a difficult position to be in. First, the risks to client autonomy inherent in any attorney-client relationship are exacerbated in social change lawyering, as the client's social subordination may simply replicate itself in the attorney-client relationship. Second, the consequences of subordination are worse in social change lawyering than in other contexts, as such subordination will defeat the social change undertaking.

Two models of lawyering, "client-centered lawyering" and the emerging "collaborative" model, offer much insight into the attorney-client relationship and suggest ways to preserve client autonomy.2 My experience at the New York Law School Civil Law Clinic in representing two Clinic clients involved in social change work leaves me not fully satisfied that either model is appropriate for all lawyers and clients involved in social change work. I suggest "facilitative" lawyering as another model. Facilitative lawyering contains elements of both collaborative and client-centered lawyering. However, it is somewhat less self-consciously political than full collaborative lawyering and seeks to preserve a more clearly defined role for attorneys as attorneys. Facilitative lawyering recognizes more of a risk to client auton-

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* Professor of Law, New York Law School. I wish to thank Tony Alfieri, Jean Marie Brescia, Carol Buckler, Larry Grosberg, Mariana Hogan, Sarah Ludwig, Michael Perlin and Robin Runstein for their thoughts on the issues raised in this Essay and their comments on earlier drafts.

1 By "social change," I mean a shift in political, social, or economic power to groups that have traditionally not enjoyed that power. Cf. Anthony V. Alfieri, Practicing Community, 107 Harv. L. Rev. 1747, 1748 n.3 (1994) [hereafter Alfieri, Community]. In the context of this Essay, where I discuss grassroots efforts to end bank redlining of low-income neighborhoods and to promote reinvestment, social change means redistributing wealth by decentralizing control over decisions about the allocation of economic resources.

2 For a discussion of these models, see text accompanying notes 38-40, 75-94 infra.
omy in social change lawyering than the client-centered model admits, and carves out an appropriately more limited role for attorneys. In addition, facilitative lawyering includes many of what might be considered more collaborative behaviors.

In Part I of this Essay, I describe how the Clinic began representing ARA, a community-based organization dedicated to fighting bank redlining in its community. With the advice and assistance of the Clinic, ARA, which was a relatively new organization at the time, pursued administrative litigation as the primary means for challenging redlining. In Part II, I describe a question one of ARA’s board members raised about the race of students assigned to represent it and about the Clinic’s status as an outsider to the community.

In Part III, I reflect on these two pictures of the Clinic’s relationship with ARA: on the one hand providing useful legal assistance, but on the other engendering ARA’s fears for its autonomy. I then examine how client autonomy is inherently threatened in any attorney-client relationship, and how that threat is enhanced in social change lawyering.

In Part IV of this Essay, I return once again to the Clinic’s representation of ARA, examining why ARA’s dependence on legal strategies emerged, even though I was aware of the risks to ARA’s autonomy and consciously tried to deal with the risks. In Part V, I consider how collaborative models of social change lawyering might view the Clinic’s representation of ARA, but conclude that a collaborative role for the Clinic would not have been consistent with ARA’s autonomy. Finally, in Part VI, I consider facilitative lawyering as an alternative model of social change lawyering, and examine the Clinic’s relationship with another client that I believe exemplifies this model.

I. THE CLINIC’S REPRESENTATION OF ARA IN ITS EFFORTS TO FIGHT REDLINING

A few years ago, the clinical program at New York Law School began to represent the Anti-Redlining Association (“ARA”), a community-based organization, in its efforts to fight bank redlining in its community. ARA was located in a neighborhood with a very low median income. Community residents were almost exclusively African-American and Latino. ARA’s office was in the heart of its community in a converted tenement. ARA employed only a few paid staff mem-

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3 I have changed the client’s name to protect its identity.
4 Redlining is a broad term that describes several banking practices, including: 1) refusing to lend to a community; 2) lending a disproportionately small amount of money to a community; or 3) lending at less favorable rates or terms to the residents of a community because of irrelevant or illegal factors such as the racial composition of the neighborhood.
bers. Its board members were volunteers. They all either lived or worked in the neighborhood, and represented a limited cross section of the area’s population: young, middle-aged and elderly; men and women; white, African-American, and Latino.

ARA certainly faced an uphill struggle in its attempt to end the redlining of its community. Most banks had already abandoned the neighborhood, leaving only a handful of branches for nearly three hundred thousand community residents in an area covering several square miles. Those bank branches that remained collected tens of millions of dollars of deposits from community residents but returned less than one percent to the neighborhood in the form of housing loans.

Despite the difficulty of its task, ARA had several sources of leverage in trying to force banks to change their policies. The first was community organizing. When ARA was founded, its primary anti-redlining activities included community organizing and direct action. Second, ARA had broad access to the print and electronic media, which portrayed it as a David fighting Goliath, and wanted to link ARA’s efforts with a populist, anti-bank sentiment that was prevalent at the time. Third, local politicians were favorably inclined towards ARA’s work and supported it when they could.

ARA gained additional leverage from two federal statutes. The first was the Community Reinvestment Act ("CRA"), which requires banks to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods.\(^5\) The CRA permits any member of the public to file with a bank’s federal regulator an administrative challenge to a bank merger application on the grounds that the bank is not meeting community credit needs.\(^6\) With the Clinic’s assistance, ARA mounted challenges to several bank mergers, which resulted in agreements with banks to make millions of dollars of loans in its community.\(^7\) Second, ARA used the Home Mortgage Disclosure Act ("HMDA"), which requires banks to disclose statistics about their home mortgage lending records.\(^8\) This data gives groups like ARA the opportunity to collect, analyze, and publicize evidence that


\(^6\) Banks are required to obtain federal regulatory approval prior to merging, branching, or engaging in several other miscellaneous activities. Id. The CRA does not explicitly grant a private cause of action and the courts have refused thus far to infer one. See, e.g., Harambee Uhuru School, Inc. v. Kemp, No. C2-90-949, 1992 U.S. Dist. LEXIS 15125 at *17 (S.D. Ohio Sept. 30, 1992).

\(^7\) Although unfavorable legal interpretations of the CRA by the federal regulators mean that challenges to bank mergers are rarely successful in preventing a merger, such challenges generally have resulted in negotiated lending agreements, as banks fear the negative publicity and regulatory delay associated with these challenges.

\(^8\) 12 U.S.C. §§ 2801-2810.
banks are redlining their communities. Again with the Clinic’s assistance, ARA used HMDA to gather evidence for use in its challenges and to issue reports publicizing the dismal state of lending in its community.

The Clinic started working with ARA when ARA was new, having been in existence for a little more than a year. At that time, ARA was still learning about community reinvestment and feeling out its strategy and approach. Eventually, with the Clinic’s advice, ARA came to use filing or threatening CRA challenges as its primary way of fighting redlining. The Clinic played a significant role in these challenges, including bringing to ARA’s attention opportunities to challenge different banks and helping it determine which banks to challenge.9 ARA was still involved in other non-legal approaches to fighting redlining, but such efforts were secondary to CRA challenges.

Eventually, through representing ARA in these challenges, the Clinic became so deeply involved with ARA that we mutually decided that the Clinic would provide representation to ARA on an ongoing basis, whether or not a CRA challenge was pending. Thereafter, a team of two Clinic students was assigned each semester to represent ARA, under the supervision of one Clinic professor (usually me). With this expanded role, the scope of the Clinic’s work broadened as well. CRA enforcement is an ongoing process that can be divided into five steps, and the Clinic assisted ARA in each of these steps.10 Thus, we helped ARA to: identify the credit needs of its community and develop a credit needs statement as a basis for determining whether banks were meeting those needs and to serve as a framework for negotiating with banks (Step One); identify banks to approach and gather information about their CRA records (Step Two); analyze the banks’ CRA records (Step Three); approach banks prior to a CRA challenge to discuss ways in which they could improve their records (Step Four); and file CRA challenges to bank merger applications (Step Five). ARA invited us to its board meetings, where we made presentations about the work we were doing, kept ARA apprised of relevant legal developments and the efforts of other anti-redlining groups, and otherwise generally participated in the discussions.

9 Selecting a bank to target for a CRA challenge is a significant strategy decision, and there are many options to pursue. These include challenging banks with branches in the relevant neighborhood, challenging high-profile banks, or challenging banks with particular practices, such as excluding minority neighborhoods from their lending territory.

10 See Richard Marsico, A Guide to Enforcing the Community Reinvestment Act, 20 FORDHAM Urb. L.J. 165 (1993). The federal regulators have proposed scrapping the current CRA regulatory regime and replacing it, and much of the article may have to be updated.
II. ARA’s Concerns About the Clinic’s Representation

ARA’s board met in the evenings at ARA’s office in the community. At one meeting, held nearly a year after the Clinic began representing ARA, approximately twelve people were present, all sitting around two long tables at the far end of ARA’s office in the converted tenement. Two Clinic students, a white male and an Asian-American male, and I (a white male) attended the meeting. The students made presentations about the status of negotiations with a bank and an upcoming meeting with another bank to monitor its progress at fulfilling a lending commitment. They also discussed their efforts to develop a credit needs statement for ARA’s community, which would be based in part on a credit needs questionnaire circulated to community residents, small businesses, churches, and non-profits. After the presentations were over, but before the meeting ended, I left to attend another meeting. The students stayed for the rest of the meeting.

As the meeting was about to end, an African-American board member turned to the two Clinic students and asked why the Clinic had not assigned African-American or Latino students to represent ARA. He wondered how outsiders could produce a community credit needs statement and said that people from the community often asked him why ARA did not have an attorney from the community. The students responded that they were not sure how students were assigned to cases and that they would speak to me about it.\(^\text{11}\)

The next day, we discussed the ARA board member’s questions with the entire Clinic class during the Clinic seminar.\(^\text{12}\) We identified several related concerns that might have led ARA’s board member to ask why we had not assigned more African-American or Latino students to represent ARA. He wondered how outsiders could produce a community credit needs statement and said that people from the community often asked him why ARA did not have an attorney from the community. The students responded that they were not sure how students were assigned to cases and that they would speak to me about it.\(^\text{11}\)

The next day, we discussed the ARA board member’s questions with the entire Clinic class during the Clinic seminar.\(^\text{12}\) We identified several related concerns that might have led ARA’s board member to ask why we had not assigned more African-American or Latino students to represent ARA. First, we thought that the board member, by raising the issue of the racial differences between Clinic students (and, implicitly, me) and the residents of ARA’s community, might have been suggesting that cultural differences created by race and ethnicity impeded the Clinic’s ability to provide adequate representation.

\(^{11}\) The Clinic was (and still is) a multi-subject civil law clinic. We do our best to assign students to work in the practice area of their choice. When this incident occurred, we had two different CRA clients. Overall, only a few African-American and Latino students had selected CRA as their practice area, and we had assigned one African-American student to represent ARA prior to this incident.

\(^{12}\) It is not unusual that such issues are discussed in law school clinics. See Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses, 45 Stan. L. Rev. 1807, 1812 (1993) (clinic students discuss whether or not an attorney of color has a particular advantage working in a community of the same color or ethnicity, and whether a white attorney could ever be effective and/or accepted in a community of color).
Second, in raising both the issues of the Clinic’s ability as an outsider to conduct a credit needs survey and the concerns of community residents at outside representation, we thought that the board member might not have been concerned with race in itself, but with the Clinic’s status as an outsider. He might have been saying that outsider representation threatened ARA’s ability to accomplish its objectives without depending on outsiders. In other words, he might have been articulating self-determination and autonomy as another of ARA’s goals. Many community organizations involved in CRA work share this goal. The CRA and HMDA emerged from a strong sense of the importance of community empowerment and self-determination. Some community organizers and commentators suggest that CRA is more important as a community empowerment and organizing tool than as a means for leveraging more bank loans. A related motive which did not occur to us, but which seems likely, was that the board member might have distrusted our motives, thinking we were just a few more people in a long line of outsiders looking to “help” his community; that we would do some work, gain some notoriety, and leave.

Finally, we wondered whether the board member was articulating a related “separatist” notion that a community that had been subordinated—would be better off if it helped itself, without assistance

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13 For example, when HMDA was passed, it was expected that HMDA data would “allow people to have a voice in what happens to their neighborhoods.” 121 Cong. Rec. 34,576 (1975) (statement of Rep. Stokes). “[C]ommunity groups, armed with the facts, can protect the integrity of their neighborhoods and their own vital interests.” S. Rep. No. 187, 94th Cong., 1st Sess. 4 (1975).

14 See, e.g., Anthony D. Taibi, Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice, 107 Harv. L. Rev. 1465, 1469, 1520, 1543 (1994) (suggesting that CRA strategies should be designed around community empowerment goals such as creating community-owned financial institutions, because “[w]orking class, ethnic, and minority communities must control their own destinies by wresting control of local finance away from non-local institutions”).

15 Cf. GERALD P. LÓPEZ, REBELLIous LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE 287 (1992) (describing the worries of Dan, an attorney working with a community-based organization, about what Etta, a leader of the organization, thought about him: “I wondered what Etta must think of me. Am I just another in a long line of white male, Jewish, lefty lawyers who’s made an appearance in a low-income, of-color East Bay community, apparently looking to ‘join the struggle?’ ”); Alferi, Community, supra note 1, at 1750 (describing why a community resident may have rejected the author’s offer to help: “He had good historical reason. I am a white, male lawyer—an outsider. . . . He has seen people like me come and go. Not surprisingly, he may distrust me; indeed, he seems to implicitly hold me responsible for the errors and ephemeral convictions of forgotten advocates.”).
from outsiders.\textsuperscript{16} Again, CRA work could be consistent with this philosophy.\textsuperscript{17}

During the seminar, the Clinic students recognized the importance of the board member's concerns and discussed them with the Clinic faculty very seriously. Although the board member did not explicitly ask us to assign students to ARA based on race, we considered whether we should do so. On the one hand, we felt that it was important from an academic perspective to recognize student practice area choices and assign students to cases on that basis alone, regardless of their race. One of the reasons for this was that we saw (and continue to see) the Clinic as an opportunity to allow students to work on cases in a subject matter of interest to them. On the other hand, we also recognized that differences between attorneys and clients do have an impact on the relationship, and could result in a less effective relationship. Nevertheless, we felt that we could try to overcome these differences. Ultimately, we decided that we should not assign students to represent ARA on the basis of their race, and that we should continue to respect student practice area selections. The class decided that I would call the Board member the next day and discuss his concerns.\textsuperscript{18}

The next day, I spoke to the ARA board member and told him we had thought about and discussed his concerns. I asked if he wanted to discuss his questions, and he said that it "was nothing, not important." I explained to him that we assigned students to cases based on their preferences. He was sympathetic to this policy, as earlier in his career he had been assigned to work in predominantly minority neighborhoods solely on the basis of his race, and he felt this had been detrimental to his career. I said that we planned to continue

\textsuperscript{16} See Martha Minow, Making all the Difference: Inclusion, Exclusion, and American Law 24-25 (1990) (discussing separatism as related to school desegregation).

\textsuperscript{17} See Taibi, supra note 14, at 1482-83 (suggesting that CRA efforts should support a localized, community-based mortgage lending process that embraces, rather than eschews, cultural differences).

\textsuperscript{18} This is a good point to note that my entire handling of this incident raises several questions about clinical teaching methodology. These questions bear on: the propriety of the Clinic's case assignment system; the wisdom of my leaving ARA's board meeting; whether clinic students can play a meaningful role in representation that is ongoing over several years; the process by which we reached the decision about how to respond to the client's request; and the decision that I would call the client to discuss his request as opposed to the myriad other ways we could have discussed the concerns with him. Another related issue is how to resolve tensions between client wishes and clinic teaching goals, and whether our resolution of the tension in this case was satisfactory. These questions are beyond the scope of this Essay.

This is also a good time to mention that Carol Buckler, who teaches the Clinic with me, noted that both in this Essay and in real life, Clinic students virtually vanish from the story at this point. This is probably indicative of the difficulties of ongoing representation in a clinic. Following our experience in this case, we have tried to deal with this problem. See text accompanying notes 112-13 infra.
to assign students to cases in this way, and that we would work to address the concerns raised by his questions.

On reflection, I wonder why I did not pursue the board member’s concerns and whether he really meant it when he said that they were “nothing.” I have since surmised that I did not pursue it because I did not want to have to confront such difficult questions, as I was afraid a confrontation could result in the Clinic losing a client that fought redlining, a fight that I felt was fundamental to a more just economic system. Similarly, the board member may have dropped the issue because he did not want to force it and risk severing ARA’s relationship with the Clinic.

III. THE PARADOX OF SOCIAL CHANGE LAWYERING

These two pictures of the Clinic’s relationship with ARA—providing important legal services but engendering fears of dependency on outsider attorneys—implicate a paradox that, for me, is one of the central problems inherent when outsider lawyers represent groups working for social change. On the one hand, client autonomy and self-determination are necessary conditions for social change. In fact, a person’s movement from subordinated to autonomous is social change. A lawyer may be very useful to a client’s efforts to gain greater autonomy. On the other hand, inherent in any attorney-client relationship is a substantial risk that the client will become too dependent on the lawyer. An attorney who represents a client who is fighting subordination risks subordinating the client once again by making the client dependent on the attorney. In the context of social change lawyering, such dependency would undermine client autonomy and subvert the process of social change. Resolving this paradox by defining a useful role for an attorney while also preserving client autonomy is one of the most difficult tasks for social change lawyers.

In analyzing this paradox in the context of preserving ARA’s autonomy, I suggest that autonomy has a two-part meaning. First, it

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20 Cf. Minow, supra note 16, at 47. As Minow suggests, it is difficult to acknowledge victimization without repeating the victimization in the process of acknowledging it.

21 See White, To Learn and Teach, supra note 19, at 724 & n.108, 736, 740.

22 See Ruth Buchanan & Louise G. Trubek, Resistance and Possibilities: A Critical and Practical Look at Public Interest Lawyering, 19 N.Y.U. Rev. L. & Soc. Change 687, 713 (1992) (“One of the paradoxes of critical lawyering is that it criticizes the lawyer/client hierarchy and the lawyer's claims to privileged knowledge, while maintaining that the lawyer has 'something to offer' disadvantaged groups.”).
Facilitative Lawyering

means ARA's right to make its own choices, without undue influence by others. This is a difficult task when the client is an individual; the difficulties are multiplied when the client is a group such as ARA. In this context, ARA's choice about how to fight redlining is not the only client choice at issue. ARA's choice to seek the assistance of an attorney is also a choice that should be recognized as autonomous: a choice to marshal certain (outsider attorney) resources to help solve a problem (redlining). Once this choice is made, moreover, ARA's autonomy becomes relational. ARA's autonomy, and that of its attorneys, must now be preserved within a relationship, and the extent that the special and particular identities of both parties—lawyer and client—are preserved is the touchstone for evaluating whether the attorney-client relationship is autonomous.

Second, autonomy means ARA's ability to accomplish its goals without depending on outsiders. If the client loses control over carrying out its decisions on its own, and becomes dependent on outsiders, "social change" is perhaps only illusory and temporary. It is contingent on an outsider who may not always be willing or available, and who may not have earned the trust of the community or understood its goals or values. In the instance of ARA, to the extent that

25 See Stephen Ellmann, Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups, 78 VA. L. Rev. 1103 (1992) [hereafter Ellmann, Client-Centeredness]. I am not as optimistic as Ellmann that the obstacles to client-centered representation in a group context can be overcome. In my experience in representing tenant associations, logistical problems and the press of everyday life too frequently interfere with each individual member's ability to participate sufficiently in the group to ensure that his or her autonomy is protected.
26 See id. at 1123. See also White, To Learn and Teach, supra note 19, at 736.
27 See MiNow, supra note 16, at 301; Ellmann, Client-Centeredness, supra note 25, at 1128 ("[t]he interactions between lawyer and client in some measure shape both parties"). My point about attorney autonomy potentially raises many issues. For example, is it a breach of attorney autonomy to require her to zealously represent a client with whom she disagrees? Such questions are beyond the scope of this Essay. For my purposes, autonomy for the lawyer means the opportunity to be retained to offer, and to be able to provide, services she is trained to provide.
28 Cf. id. at 1151 n.127 ("I just thought, if I looked tough and sounded tough and talked tough and could give a . . . zesty kind of a speech, they'd go away thinking, 'Damn! I'm glad that's our lawyer!' And in a way it was empowering to have a lawyer you felt was the equal of the other side's lawyer, but it would be better if they came from meetings thinking, 'Damn! We did that well ourselves!'") (quoting interview with Harriet Rabb by author).
29 See White, To Learn and Teach, supra note 19, at 736.
30 Cf. López, supra note 15, at 312-13 ("Only a fool could miss the strong self-determination themes that run throughout the East Bay's Latino, Asian American, and African American communities. . . . Of course, self-determination is never simple or absolute.

Spring 1995]
legal strategies controlled by the Clinic became central to accomplishing ARA's goal of increasing lending in the community, ARA's autonomy would be undercut.\textsuperscript{31} ARA would be left with a sense of powerlessness and dependence.\textsuperscript{32}

There is an internal tension in this description of autonomy that reflects the paradox of social change lawyering.\textsuperscript{33} On the one hand, autonomy requires that a lawyer respect the client's strategy decisions, including the client's decision to choose a lawyer and to define (within limits) the role the attorney will play. On the other hand, a lawyer is to respect and promote clients' ability to function without dependence on their lawyer.

Resolving this tension begins with recognizing that there is a threat to client autonomy inherent in any attorney-client relationship, whether it involves social change lawyering or not.\textsuperscript{34} Clients may surrender their power to attorneys due to attorneys' technical expertise, their privileged access to the legal system, or their familiarity and detachment in contrast to the clients' unfamiliarity and emotionalism.\textsuperscript{35} Human communication is imperfect, and clients' ability to communicate their concerns, goals, and objectives to attorneys may be further inhibited by their lack of trust in their attorneys, embarrassment at revealing unsavory or unflattering facts, or inability to recognize legally relevant facts—and by the attorneys' failure to listen.\textsuperscript{36} Finally,
although a client seeks counsel because she believes there is a legal solution to her problem, it may be that her non-legal concerns are critical to her choice of legal alternatives, and attorneys may be particularly prone to overlook these non-legal considerations.37

“Client-centered” lawyering techniques that attempt to eliminate these risks to client autonomy inherent in the attorney-client relationship cannot be completely successful.38 The most well-intentioned attorney who employs a client-centered approach by actively listening to the client, soliciting information about the client’s legal and non-legal concerns, and involving the client in identifying legal and non-legal alternatives and selecting the best solution, cannot help but influence the client’s decisions in subtle ways.39 These include making relevancy judgments about how much information to give the client, ordering the information in a way that ultimately influences the client’s choice, and choosing the phrasing and styling of alternatives.40

The risk to client autonomy inherent in the attorney-client relationship is exacerbated in social change lawyering. Difference in race, gender, ethnicity, social or economic background, knowledge, power, education, life experience, or sexual orientation—among other things—may accentuate the threat to client autonomy.41 These differences were complicated in the context of the ARA and the Clinic, where the difference was both between us and many of ARA’s board members, and between us and the community ARA represented. These differences, which are themselves a cause of social subordination, increase the chances that patterns of social subordination will simply replicate themselves in the attorney-client relationship in social change lawyering.42 These differences may also enhance a generalized lack of trust that may be present in all dealings between attorneys and

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37 See Ellmann, Client-Centeredness, supra note 25 at 1128 (“In fact, however, designing a method of interviewing and counseling individual clients that will infallibly ascertain their true wishes is beyond our grasp, and probably always will be.”).
38 See Southworth, supra note 36, at 216.
40 See Ellmann, supra note 16, at 9-10; Alfieri, Community, supra note 1, at 1749, 1752; White, To Learn and Teach, supra note 19, at 762 n.223.
41 See Minow, supra note 16, at 9-10; Alfieri, Community, supra note 1, at 1749, 1752; White, To Learn and Teach, supra note 19, at 762 n.223.
42 Stacy Brustin, Expanding Our Vision of Legal Services Representation—The Hermanas Unidas Project, J. Gender & L. 39, 43 (1993). See also López, supra note 15, at 48; White, To Learn and Teach, supra note 19, at 740-41.
Finally, the differences enhance the danger that the attorney will fail to listen to or understand the client’s concerns, both legal and non-legal.\textsuperscript{44}

If social subordination is replicated in the attorney-client relationship, this may lead social change attorneys to practice in a way that suppresses client autonomy.\textsuperscript{45} Lawyer pre-eminence and client dependency may become the prevailing norms in the relationship.\textsuperscript{46} As a result, the lawyer may discourage or ignore client efforts to share responsibility or solve problems\textsuperscript{47} and may ignore or suppress the client’s perspective on, and description of, her problem.\textsuperscript{48}

The social change attorney’s treatment of the client and suppression of the client’s voice may further lead the attorney to a narrow vision of solutions to legal problems, focusing primarily on litigation.\textsuperscript{49} Legal approaches can, in turn, antagonize clients, especially if lawyers use them to accentuate difference and promote hierarchy through modes of speech and dress, legalese, artificial formalities, and limiting the scope of the representation to “legal” tasks.\textsuperscript{50}

IV. ARA’S RELIANCE ON LEGAL STRATEGIES AND CLINIC EFFORTS TO BE COLLABORATIVE

The paradox of social change lawyering worked itself out in the Clinic’s representation of ARA such that litigation in the form of filing CRA challenges to bank merger applications became ARA’s primary mode of fighting redlining, and ARA relied heavily on the Clinic to decide which banks to target and to litigate these CRA challenges. I should note that a CRA challenge is different from affirmative litigation in the courts: it takes only one or two months; there are no plead-

\textsuperscript{43} See Lopez, supra note 15, at 37 (people “may not take lightly to questions or suggestions from outsiders”); Stephen Ellmann, Empathy and Approval, 43 Hastings L.J. 991, 995-96 (1992) [hereafter Ellmann, Empathy].

\textsuperscript{44} See Alfieri, Community, supra note 1, at 1752. See also Simon, supra note 40, at 221.


\textsuperscript{46} See Alfieri, Speaking Out, supra note 45, at 625-26; Brustin, supra note 42, at 56; Southworth, supra note 36, at 220 n.51; Lucie E. White, Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice, 1 Clin. L. Rev. 157 (1994) [hereafter White, Collaborative Lawyering].

\textsuperscript{47} See Alfieri, Community, supra note 1, at 1755 n.19; Southworth, supra note 36, at 216, 220 n.51.

\textsuperscript{48} See Alfieri, Reconstructive Poverty Law, supra note 31, at 2118-32; Southworth, supra note 36, at 216, 220 n.51.

\textsuperscript{49} See Lopez, supra note 15, at 61; Southworth, supra note 36, at 216.

\textsuperscript{50} See Lopez, supra note 15, at 1, 47, 110, 293-94; Alfieri, Community, supra note 1, at 1749; Southworth, supra note 36, at 220 n.51.
ings, discovery, or hearings; and non-legal leverage such as bad publicity or regulatory delay is very helpful to community groups while the law is never helpful. As a result, challenges generally result in banks’ willingness to negotiate lending agreements, albeit agreements that never quite satisfy community groups. Nevertheless, CRA challenges share many salient characteristics with judicial litigation, particularly the existence of (very elusive and unhelpful) legal standards, baffling and inaccessible procedures, an unfamiliar and remote forum (the decisionmaker is in Washington, D.C.) and a hostile, faceless, and nameless adjudicator (the federal bank regulatory agencies).

ARA’s emphasis on CRA challenges, with the Clinic playing a leading role, had several negative consequences for ARA. First, these challenges forced ARA to tailor its view about what was happening in its community to suit legal standards. For example, one board member was in the process of developing a critique of the traditional approach to CRA, asserting that the banks and regulators treated loans pursuant to CRA as a handout and, in turn, treated the communities that received them as dependent instead of self-determining. In his view, ARA and groups like it acted more like brokers, bringing markets with viable and profitable lending opportunities to the attention of banks, and banks should treat them like business partners. The board member asked us whether we could incorporate this type of argument in our CRA challenges and negotiations. We said that this argument would not carry any weight in a CRA challenge. The problem with our response is not so much whether we were right or wrong in our legal assessment, but that the board member felt constrained to express himself in a legal context through the filter of the attorneys.

This emphasis on challenges also diverted ARA’s energy from organizing and mobilizing. ARA’s paid staff was so frequently attending meetings about, and dealing with, CRA challenges that it hardly had the time to organize effectively. Similarly, CRA challenges depoliticized the process of social change by creating the impression that urban disinvestment was merely a violation of law and not the

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51 For more about the CRA, see Marsico, supra note 10.
53 The board member’s position had something of the flavor of Anthony Taibi’s vision of the CRA as a tool for developing community control of financial institutions. See note 14 supra.
54 See White, To Learn and Teach, supra note 19, at 742.
result of entrenched economic and institutional forces. This emphasis on legal efforts, in turn, may have accentuated ARA's sense—expressed by ARA's board member when he questioned our representation and then declined to press the issue—that ARA was dependent on legal strategies to effectuate change.

What troubles me about the emergence of ARA's dependence on legal strategies controlled by the Clinic is that I was familiar with the critique of social change lawyering and we consciously tried to prevent this from happening. In fact, the Clinic did much work that might be considered more collaborative. For example, we did not always exclude ARA's voice from CRA challenges to bank mergers; we made efforts to include it by translating ARA's voice into words that the formal legal system recognized. In one challenge, for example, ARA insisted on making an argument that one of the bank's business practices violated the CRA. The Clinic's legal research indicated that the relevant federal banking regulator had previously ruled that the practice was not a CRA violation. Nevertheless, ARA insisted that this argument be included in the brief. We hesitated, but after several discussions with ARA, constructed a novel and—to us—persuasive legal argument. Although the regulators rejected this argument and denied the challenge, the client's voice was heard, and the bank ultimately changed its practice.

We did more to try to work collaboratively with ARA. We tried to abandon professional-lawyer trappings, such as legalese and over-dressing. We almost always met with ARA at its office, not ours. We did our best not to control our meetings with ARA. We did work that might be viewed as "non-legal," including going with an ARA representative to each bank branch in its neighborhood to gather pamphlets and other information, and analyzing bank lending

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55 See Alfieri, Antinomies, supra note 32, at 665; Taibi, supra note 14, at 1468-69, 1513-14.
56 See Bachmann, Social Change, supra note 19, at 6.
57 See López, supra note 15, at 53.
59 See López, supra note 15, at 293-94.
60 Id. at 280; Buchanan & Trubek, supra note 22, at 714-15.
61 See López, supra note 15, at 311.
statistics in order to produce a lending report. We joined forces with other problem-solvers, including urban planners and organizers. We linked ARA with other anti-redlining groups on local, regional, and national levels, and worked in coalitions. We brought to ARA’s attention the effect that national and international trends in the banking industry and other developments such as NAFTA would have on community reinvestment. We included ARA members in fact investigation, affidavit drafting, and brainstorming sessions. We held a seminar for ARA board members in legal negotiating techniques and we consciously modeled and discussed negotiating behavior, emphasizing in particular the importance of preparation, follow-up, and precision. We spent a lot of time counseling ARA, and in particular discussing non-litigation alternatives such as bank boycotts and establishing community-controlled loan funds. In analyzing alternatives and predicting outcomes, we downplayed the importance of legal doctrine, which was not difficult to do in the CRA context, where the law was vague and unfavorable. We paid attention to ARA’s non-legal concerns. We employed counseling techniques designed to do our best to ensure that ARA’s decisions were their own and were satisfactory to group members. We made it clear that we supported and agreed with ARA’s objectives.

During the course of the Clinic’s representation of ARA, ARA lost its funding. As a result, ARA lost its paid staff and its office space, and was left only with its volunteer board members. As ARA’s financial crisis developed, I played a deeper and deeper role in ARA’s

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62 See White, Collaborative Lawyering, supra note 46, at 166 (“As the lawyer adopts this learning posture, she begins to establish a basic level of trust with the group, and to comprehend the unique tasks that the group needs her to perform. While some of these tasks evoke familiar lawyer roles, others disrupt our preconceptions about what lawyers do.”). Cf. López, supra note 15, at 287-89 (door-knocking); Brustin, supra note 42, at 42 (obtaining a work permit).
63 See Alfieri, Community, supra note 1, at 1757, 1763.
64 Id. at 1757.
65 See López, supra note 15, at 63-64.
66 Id. at 212-13.
67 Developing a community-controlled loan fund is one way for groups such as ARA to promote social change without dependence on outsiders. See note 14 supra.
68 See White, To Learn and Teach, supra note 19, at 740.
69 See Binder et al., supra note 24, at 17-19, 22-23; Southworth, supra note 36, at 214-15.
70 See Ellmann, Client-Centeredness, supra note 25, at 1128, 1153-54.
72 Cf. López, supra note 15, at 190-91 (describing an attorney’s attempts to learn about audiences other than a court that may be relevant to solving her client’s problem, including the police, city council and business community).
activities, including performing administrative tasks and attempting to mediate an ideological dispute among the board members.

In the end, however, ARA and the Clinic agreed that the Clinic should no longer represent ARA. Both ARA and I realized that the Clinic was too deeply involved in ARA's activities, and in order for ARA to re-emerge as an effective community-based organization, it had to do so on its own. ARA has yet to emerge as the anti-redlining force it once was.

V. A Collaborative Lawyering Critique of the Clinic's Representation

In representing ARA, the Clinic achieved good results, measured in legal terms. We brought several CRA challenges which resulted in agreements to lend several million dollars for affordable housing and small business in ARA's community. Nevertheless, I am bothered by many questions. Primarily, were these results gained at the expense of ARA's autonomy? Could ARA have pursued other strategies that would have been more effective in the long run in fighting redlining?

I also wonder why ARA's dependence on legal strategies developed even though we tried to avoid it. Did we not adequately bridge the cultural differences between us and ARA's community? Were those gaps too large to close? I think that the concerns of ARA's board member about the race of students assigned to represent it and our status as outsiders hold the key to answering these questions.

I would like to examine the board member's concerns by focusing more directly on the emerging "collaborative" model of lawyering as described in various works by Tony Alferi, Lucie White, and Gerald López. Although these works defy easy synthesis, they contain several common threads that form the heart of the model of collaborative lawyering. These include blurring, to the point of eliminating, the distinctions between lawyers and lay people and between legal and non-legal tasks; politicization of the client's efforts; and deep and intense involvement in the client's work. Collaborative lawyering models recognize that lawyers are generally outsiders to client communities and that this status interferes with client autonomy, and suggest that the way to deal with this problem is to eliminate those differences and become an insider.

My sense is that the collaborative lawyering analysis of the board member's remarks would be that he was not so much concerned with

73 See Simon, supra note 40, at 221.
74 See Alferi, works cited in notes 1, 31, 32 & 45 supra.
75 See White, works cited in notes 19, 46, 52 & 58 supra.
76 See López, supra note 15.
Facilitative Lawyering

race in itself, but with race as it was intertwined with the Clinic's status as an outsider, and as it affected our ability to become insiders. While the Clinic may have made piecemeal gestures to become an "insider" and work collaboratively with ARA, the collaborative model would suggest that we did not go far enough.

Ultimately, each commentator would have a somewhat different view of how a full collaboration with ARA would have looked. For Alfieri, it might have involved a highly political effort. We would have explicitly established the fostering of "individual and collective client acts of self-determination in order to broaden social and economic forms of democracy" as the goal of our representation. We would have focused our work around organizing, mobilizing, and education.

For White, our efforts might have included deep involvement in efforts to help ARA reflect on the interconnection of redlining, reinvestment, and the organization of the economic system; to develop a critique of the system; and to develop appropriate strategies and approaches. In effect, we would have helped ARA define its identity. White refers to this as lawyering in the "third dimension," raising and liberating ARA’s consciousness. We would have helped lead ARA to an understanding of the limits of CRA challenges and prompted ARA to develop alternatives or more creative litigation strategies.

For López, we would have taught self-help and lay lawyering, the work he describes as “most characteristic” of rebellious lawyering. According to López, teaching self-help and lay lawyering is most effective at empowering clients because it shows clients they can help themselves, even in contexts and fora that are traditionally considered legal. “Empowered clients can begin to speak in their own voice—and to solve their own problems—without relying exclusively on the advocacy of lawyers.”

According to López, the starting point for true collaboration on our part would have been to view lawyering as the art of changing things through persuasion, and to recognize not only that ARA did have this ability to persuade, but also that it was better at some forms of persuasion than the Clinic. We needed to “carry through system-

77 See Alfieri, Community, supra note 1, at 1762.
78 Alfieri, Reconstructive Poverty Law, supra note 31, at 665, 694-95.
79 White, Collaborative Lawyering, supra note 46, at 157-58; White, To Learn and Teach, supra note 19, at 761-62. See also Alfieri, Antinomies, supra note 32, at 697-701.
80 White, To Learn and Teach, supra note 19, at 742. See Buchanan & Trubek, supra note 22, at 691.
81 López, supra note 15, at 70.
82 Ancheta, supra note 58, at 1374, 1388.
83 López, supra note 15, at 39, 50. See Ancheta, supra note 58, at 1372.
... to regard subordinated people and their other allies as co-eminent problem-solvers: ... [to] learn to make space, in more than just [our] thoughts, for what they bring to the collaboration." Ultimately, we needed to learn "how to work with (not just on behalf of) ... low-income people, [and] people of color."8

According to López' analysis, effective collaboration would have begun with grounding our work in ARA’s community. López argues that “[r]adical lawyering somehow has to be anchored in the world we’re trying to help change. [It must be] built from the ground up.”86 López’ most effective social change lawyers “are deeply rooted in the communities in which they live and work.”87 In contrast, the Clinic was not rooted in ARA's community.88 I was not, for example, like Sophie (a fictional attorney who is quintessentially rebellious), who “lives in the neighborhood where she work[s],” which “appears to make all the difference in the world.”89 Thus, the Clinic did not “think like an insider in both the lay and legal worlds. In this sense ... [we were not] bicultural and bilingual.”90

As a consequence of the fact that the Clinic was not rooted in ARA's community, we did not get a “feel” for the problems in this community. Much of the grassroots work that López’ rebellious lawyers do helps them get a “feel” for the client’s situation in the client’s own terms—aiming to understand what the client thinks, feels, needs, and desires.91 To develop a feel, López suggests that an attorney

84 López, supra note 15, at 213.
85 See Alfieri, Community, supra note 1, at 1757 (citing López, supra note 15, at 37).
86 López, supra note 15, at 7, 38. Describing the efforts of one attorney who shows “rebellious” tendencies, López writes that “[l]ike the very best modern anthropologists and the most able streetwise activists, she senses the need to position and reposition herself constantly in an effort to understand Zalaipa [the community in which her client owns a business] ... [S]he realizes, too, that to study well what she hopes to help change, she needs to be connected to what’s happening ...” Id. at 212-13.
87 See Ancheta, supra note 58, at 1370 (describing López' "rebellious lawyers").
88 In fact, one student assigned to represent ARA had to be assigned to another case when she refused to go to ARA's neighborhood.
89 López, supra note 15, at 31. López goes on to observe (through the eyes of Catherine, a would-be rebellious lawyer searching for a role model), that “[g]etting stuck in the role of ‘permanent outsider’ is a real possibility here—this community has had more than its share of so-called friends flitting in and out trying to make changes.” Id. “Sophie works most regularly with people in her own community—individuals, groups, lay advocates, and professionals.” Id. at 33.
90 Id. at 44. López makes clear that “insider” status is not easily earned, through the example he gives of another lawyer, Amos. Amos was born and grew up in the neighborhood, but had been gone for several years, prompting his observation that he was no longer an insider, and needed “time and shared experience” to become an insider once again. Id. at 34, 37. As a consequence, Amos' activities included completing a survey of community needs, attending school board meetings, meeting with particularly effective teachers, and reading back issues of the local newspaper. Id. at 36.
91 Id. at 61. See also Buchanan & Trubek, supra note 22, at 691.
“draw on fairly universal experiences as subordinates.”

Getting a feel is a necessary precondition to becoming an insider, so as to “acquire fluency in discourses of difference and to construct client identity in terms of problem-solving.”

Had the Clinic become an insider and achieved a full collaborative relationship with ARA as described by Alfieri, López, or White, we might very well have satisfied the second aspect of autonomy that I suggested earlier. That is, this form of lawyering might have enabled ARA to accomplish its goals without dependence on outsiders. This form of lawyering might also have helped satisfy part of the first aspect of autonomy, allowing ARA to make decisions without undue influence from others.

Nevertheless, if the Clinic had been fully collaborative, I am not sure that we would have fully satisfied this first aspect of client autonomy, for part of this aspect of autonomy is ARA’s right to choose to retain an attorney to perform certain tasks. ARA did not explicitly ask the Clinic to be a collaborative lawyer and we never offered such an approach. ARA appeared to want the Clinic to provide legal assistance in the form of CRA challenges and to provide supplementary legal support, and that is what the Clinic did. A more collaborative approach would have been inconsistent with ARA’s apparent preference.

Here, perhaps, is where a traditional client-centered analysis would stop. However, the fact that ARA did not explicitly ask the Clinic to be more collaborative does not necessarily resolve the question of how the Clinic should have represented ARA. I suggested earlier that lawyers and clients do not always communicate effectively, and that this may be exacerbated in social change lawyering. From this perspective, ARA’s board member’s concerns about race and outsider status may have been a request for collaborative lawyering, a request I did not hear. But if ARA wanted me to be a fully collaborative lawyer, I was not the right lawyer for the job. The collaborative model requires an attorney with a high level of skill and even professional training at interpersonal relationships, with great sensitivity and perception, and with lots of time to devote to one client. I had neither the time, training, disposition, nor inclination to be a collaborative lawyer. I suspect that many attorneys share these feelings and

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92 López, supra note 15, at 61.
93 Alfieri, Community, supra note 1, at 1759 (referring to López, supra note 15, at 38, 61).
94 See text accompanying notes 28-32 supra.
95 See text accompanying notes 34-50 supra.
96 White, To Learn and Teach, supra note 19, at 740-41.
problems, and conclude that collaborative lawyering is not appropriate for them either.\footnote{Cf. Bachmann, \textit{Hope}, supra note 32, at 406 ("However, I would observe that some people—like myself, though I am not necessarily proud of this—make better lawyers than organizers.").}

VI. \textsc{Facilitative Lawyering for Social Change}

I return now to the paradox of social change lawyering. Although the collaborative model, if achieved, is designed to resolve the paradox by effectively eliminating the gap between outsider attorneys and clients, collaborative lawyering may not be appropriate in at least two circumstances: when the client does not want it and when the attorney is not in a position to provide it. But this leaves a difficult question. If collaborative lawyering does not work in all circumstances, is there another social change lawyering model that can protect client autonomy and maintain a role for attorneys?\footnote{Cf. \textit{id.} ("The final question to address is what an activist attorney or law student should do when faced with these findings. . . . [S]hould she ditch her law degree and go organizing? In many cases the answer should be 'yes.' "); Simon, \textit{supra} note 40, at 221 ("Such observations might lead some to conclude that lawyers like me are so ill-equipped to understand clients as socially distant as Mrs. Jones that it would be better if we didn't try."); White, \textit{To Learn and Teach}, \textit{supra} note 19, at 74 ("What might a white lawyer possibly do to help them? The question was not easy to answer.").}

I think there is an alternative role for lawyers to play, a role that preserves client autonomy and offers a useful role for attorneys. This role is as a facilitator-attorney, "more the oiler of the social change machine than its motor."\footnote{\textit{Bachmann, Social Change}, supra note 19, at 21. \textit{See also} Bachmann, \textit{Hope}, \textit{supra} note 32, at 406 ("[L]awyers do have a role to play in advancing social change organizations. . . . Their most meaningful contributions are to aid organizing efforts."); Brustin, \textit{supra} note 42, at 57 ("[t]he role of the lawyer in this grassroots process is to act more as a facilitator than as an adviser").} A facilitator-attorney recognizes that the client may simply want an attorney to perform tasks attorneys traditionally perform and to perform them without developing too much control over, or becoming too deeply involved in, the client's affairs. The goal of the facilitator-attorney is not to eliminate the distinctions between herself and the client and work fully collaboratively with the client, but to provide very specific legal assistance the client wants. While the role of the facilitator-attorney is to contribute important assistance, the assistance cannot be provided in a way that creates client dependency.

The facilitator-attorney recognizes that important differences may separate lawyers from clients in a social change setting and may impede the attorney's ability to understand and carry out the client's wishes. The attorney recognizes that there is a high risk that the client
will become dependent. Such an attorney will attempt to overcome these differences by using client-centered counseling techniques, paying careful attention to the client's non-legal concerns and attempting to meet them.\textsuperscript{100} In addition, the facilitative lawyer will employ many of the collaborative techniques described earlier.\textsuperscript{101} Nevertheless, the facilitative lawyer knows that these techniques will not close the gap between herself and her client completely, nor remove altogether the danger of client dependency. But rather than playing the role of organizer or consciousness-raiser, the facilitative lawyer steps back, does not become deeply involved in the client's full range of activities, and instead seeks to provide the technical legal advice and assistance the client seeks. The facilitative lawyer is more like a corporate counsel, performing important, supportive tasks, but leaving the client intact.

From this perspective, the Clinic's experience in representing ARA may be explained by suggesting that we did not find the correct attorney-client fit in time. ARA did not ask the Clinic to be a collaborator; if that was what it needed, the Clinic was not in a position to play that role. At the same time, the Clinic did not see then how a more modest, facilitative role would have reshaped our actions; if we had been aiming at such a role, perhaps we could have adjusted our work accordingly. Earlier, I described the five-step CRA enforcement process.\textsuperscript{102} The first three steps are essentially planning and analysis (non-litigation) steps. The fourth and fifth steps are essentially litigation efforts, and involve executing the plan developed in the first three steps. The Clinic was simultaneously involved in all five steps; such involvement is more appropriate for a collaborator. Instead, in a facilitative role, we could have helped ARA understand the first three steps by, for example, providing it with CRA training. Or we could have waited to represent ARA until it completed the first three steps, and provided assistance with implementing the fourth and fifth steps.\textsuperscript{103}

We need to know more, however, about the functions that facilitative lawyers can play. In her article in the inaugural issue of the Clinical Law Review, Lucie White calls for more practical investiga-

\textsuperscript{100} See text accompanying notes 38-40 supra.
\textsuperscript{101} See text accompanying notes 57-72 supra.
\textsuperscript{102} See text accompanying note 10 supra.
\textsuperscript{103} We have recognized the lack of assistance for community groups seeking to learn more about community reinvestment and, as a consequence, have founded the Community Reinvestment Clearinghouse. Housed at New York Law School, the Clearinghouse does not offer legal representation to community groups. Rather, it provides information to community groups about community reinvestment, is developing a resource library, and offers training, materials, and other forms of technical assistance.
tion into models of social change lawyering and describes her own efforts to do such investigation.104 The results of her work so far appear to recognize a role for facilitative lawyering in social change work. In her field experiment in collaborative lawyering, she has identified groups that can use a facilitator. Her students, for example, have identified "[g]rassroots self-help initiatives . . . [that] espouse a self-help methodology . . . These initiatives challenge professionals to reconceptualize their own roles. They demand that outside professionals respect the expertise that their members have acquired, and understand their own skills as supplementing, rather than replacing, the know-how of group participants."105 Steve Bachmann, in writing about his work representing ACORN, an organization seeking social change through grassroots mobilization, has described a role for facilitative lawyering as well, involving corporate and tax work, First Amendment expertise, and criminal defense work to support ACORN's organizing efforts.106

Tasks that facilitator-lawyers can perform include work that is supportive of, but not directly involved in, the work the client is seeking to accomplish. For example, for a client that is seeking to change government policy through organized protest, a facilitator-attorney can bail clients out of jail following acts of civil disobedience.107 A client wishing to develop low-income housing can use a facilitative attorney to interpret regulations108 or to do the necessary legal work to structure the project.109 Non-legal facilitative tasks include mediating client disputes or serving as a "fund-broker."110

In the Clinic, we have had the opportunity to represent another client fighting redlining—a community-based organization like ARA—a client that has wanted us to play a facilitative role. The client, which I will refer to as "CBO," has developed a strategy to fight redlining that primarily involves active engagement with banks through low-intensity yet continuous pressure on them to improve their lending records, community organizing and education, and linking reinvestment with broader economic issues. CBO also is willing to consider legal approaches such as a CRA challenge, but only if these methods will support and be consistent with its overall strategy. During the course of our representation, CBO has carefully and jealously guarded its decisionmaking and its implementing of strategy, preserv-

104 See White, Collaborative Lawyering, supra note 46.
105 See id. at 165–66.
106 See Bachmann, Hope, supra note 32, at 406.
107 See Bachmann, Social Change, supra note 19, at 24.
108 See White, Collaborative Lawyering, supra note 46, at 166.
110 See White, Collaborative Lawyering, supra note 46, at 166.
ing for itself any work that it could do on its own. While CBO has taken advantage of the legal services the Clinic has provided, CBO has used our efforts to support and facilitate its broader non-legal approach. When CBO uses the Clinic to pursue a legal strategy such as a CRA challenge, the legal approach is pursued in the context of an overall non-legal effort, such as heightening the level of its active engagement with banks. This has generally meant threatening but not filing a CRA challenge, and reaching a lending agreement for less money than if we had filed a challenge.

When the Clinic began to represent CBO, CBO was very advanced in its thinking about anti-redlining strategy. I have already discussed the five-step CRA enforcement process, comprised of determining community credit needs; gathering information about bank lending records; evaluating the lending record of banks; attempting to reach a lending agreement with a bank; and enforcing the CRA through the legal process. CBO had completed the first three steps of the process before it approached the Clinic for legal assistance. One key to its ability to do this was that CBO had the help of an experienced organizer. With his assistance, the group learned about the CRA and HMDA on its own, analyzed the housing needs of its community, prepared charts and maps analyzing the lending records of local banks, held a community forum with the banks to announce the results and to make a reinvestment proposal to the banks, developed its own lending programs, and targeted one bank (which I will refer to as "ABC Bank"), with a particularly poor community lending record, for further discussions.

The Clinic agreed to represent CBO in its efforts to convince ABC Bank to change its policy. ABC Bank, although it had a branch in CBO's neighborhood with tens of millions of dollars of deposits, had a policy of not making home mortgage loans. Clinic students conducted fact investigation and legal research to determine if ABC Bank's policy could be challenged under the CRA. The students searched relevant corporate and banking records and arcane regulatory interpretations. They found that ABC Bank was a subsidiary of a bank holding company, that another bank subsidiary of the holding company made home mortgage loans, and that ABC Bank actually claimed in certain regulatory submissions that it made home mortgage loans through the other subsidiary. In its public pronouncements and

111 See text accompanying note 10 supra.
112 I note the return of students to the picture. After the Clinic's experience with ARA, we undertook to modify our representation goals in CRA cases, in part to reflect our understanding of the services the Clinic could offer and in part to ensure a larger role for students in our CRA cases.
in its meetings with CBO, however, ABC Bank insisted that it did not make home mortgage loans.

The students counseled CBO about their findings and indicated that ABC Bank might be violating the CRA. CBO presented these findings to ABC Bank at a meeting the students attended, but at which the students did not play a large role. After this meeting, CBO and ABC Bank had several discussions without including the Clinic; in fact we did not even know about the discussions until later.

A few months after we began to represent CBO, ABC Bank published a newspaper notice stating that it had filed an application with its regulator that was covered by the CRA. We notified CBO that it had an opportunity to file a challenge to the application with ABC Bank’s regulator on the grounds that ABC Bank’s policy regarding home mortgage loans violated the CRA. CBO immediately invited ABC to resume negotiations, and asked us to assist. The Clinic prepared a comprehensive draft lending proposal for CBO to submit to ABC Bank, but CBO rejected most of it, preferring to abide by the more limited terms it had offered to banks at the community forum it had held. Eventually, negotiations reached a deadline: CBO had to reach an agreement or file a challenge. ABC Bank had made a “final offer” that the Clinic felt was inadequate, and we suggested to CBO that it could get more if it filed a challenge. CBO, however, rejected this advice. While it recognized that it could get more if it filed a challenge, it was satisfied with accepting the offer because filing a challenge would have threatened many of CBO’s non-legal concerns. Ultimately, CBO signed the agreement and the Clinic has helped it monitor ABC Bank’s progress in meeting the agreement’s terms.

As with ARA, the Clinic has begun to represent CBO on an ongoing basis. We continue many of the types of collaborative activities that we were involved in with ARA.113 For example, Clinic students attend CBO’s board meetings, do legal and factual research, and provide ongoing advice. We also attempt to abandon professional lawyer styles, do non-legal legwork, link CBO with other local and national advocates, and help CBO broaden its CRA efforts to include other local housing problems. In contrast to our work with ARA, however, this work is supplementary to CBO’s efforts and strategy. CBO could pursue this work without the Clinic’s help; the Clinic seeks to enable CBO to be more effective by providing the specific legal assistance it asks us to supply. The Clinic has not become nearly as deeply involved with CBO’s activities, and CBO has continued to emphasize non-legal approaches to fighting redlining.

113 See text accompanying notes 57-72 supra.
Facilitative Lawyering

The Clinic's work with CBO suggests several conditions that make it possible to work as a facilitative lawyer. First, before CBO retained us, it had already been working with an organizer. This organizer was playing the role of a collaborator particularly akin to White's consciousness-raiser. Second, with the help of the organizer, CBO had already done a tremendous amount of fact investigation and analysis on its own. It had completed the first three steps of the CRA enforcement process. Third, CBO had targeted banks and identified issues that were important to it. Fourth, CBO did not see legal alternatives as the primary means for accomplishing its goals. Fifth, CBO is involved in many other activities besides CRA. As a result, it would be very difficult for the Clinic to become too deeply involved in its activities.

Conclusion

Our work as facilitative lawyers has been promising. We do not yet know with certainty, however, how well facilitative lawyering for social change succeeds in both assisting clients against their adversaries and shielding them from their lawyers. What concrete gains do facilitative lawyers achieve, compared to more collaborative attorneys? How satisfying a role is facilitation, over the long haul, for lawyers who hope to contribute to social change? How quickly does facilitation shade into collaboration, or into domination? Can a long-term facilitative relationship with clients eventually turn an outsider into an insider? As the Clinic's representation of CBO and other clients continues, I am sure I will learn more about the answers to these questions. I hope this Essay will help other clinicians and lawyers to formulate their own answers as well.

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114 See text accompanying notes 79-80 supra.