We Have the Power to Make Change: The Role of Community Lawyering in Challenging Anti-Asian Harassment at South Philadelphia High School

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INTRODUCTION

The events leading up to the South Philadelphia High School (“SPHS”) Anti-Harassment Campaign—where several students of different races were assaulted, racial epithets were used, physical and emotional scars were created, and the consequences were met with complete denial from school administrators—hearken us back to a time period many Americans thought was long over. During the Civil Rights Era, African American children struggled to secure a basic right to education and faced resistance at all levels of government and society. However, these events took place in the United States of the 21st century, and Asian immigrant students of Vietnamese and Chinese descent were the victims, not only of peer-on-peer harassment, but of a school system that deliberately turned a blind eye to the harassment taking place. What followed was a momentous grassroots campaign that drew national attention and galvanized a community. While there are many facets of this case that deserve

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exploration, this Article will limit its focus to the role and importance of “community lawyering” in empowering Asian immigrant youth and the broader community.

This Article will explore the inner workings and philosophical differences of a community lawyering approach using the SPHS Anti-Harassment Campaign as a case study. Unfortunately, much of modern American legal education does not emphasize or teach enough about the underlying values and methods to community legal representation. However, literature from a community lawyering perspective certainly exists.²

Since a “community lawyering” approach³ is fairly new, numerous questions remain. For instance, does a lawyer with a progressive political perspective necessarily mean that she or he is committed to the values underlying community lawyering? Not at all. There are many progressive lawyers who engage in practices counter to the core values of community lawyering. We also cannot assume that all lawyers working for the public interest utilize a community lawyering approach. Thus, if we cannot make such a broad assumption regarding public interest lawyers, it necessarily follows that lawyers working for the private sector are even less likely to utilize this approach due to the law firm’s obligation to paying clients and its hierarchical nature.⁴ At its core, the problem stems from the fact that few law schools teach community lawyering as an alternate approach to traditional lawyering.⁵

Through the case below, one that involves an episode of virulent anti-Asian violence in a high school setting, we explore the complexities that a community lawyering approach brings and the value that it lends in a case of such importance. Given the national coverage of the case, any lead

². Public interest law provides for the public good in a legal context. See infra, notes 95–99.
³. This article is not intended to be the definitive piece on defining what “community lawyering” is. Community lawyering is an evolving concept and practice. The purpose of this article is to highlight, through a case study, several concepts that we feel are inherent in the practice of community lawyering. As noted in the article, the ideas embodied in community lawyering have been named and defined in many different ways within the rubric of “public interest” lawyering (see Part III for further discussion). If one asks practitioners today, one will find no universal definition. This article is praxis at work, which requires episodes of practice, reflection, questions, debate, and reformulation. We are wary of providing a static definition of community lawyering when we are still exploring this new method.
⁵. See Gerard P. Lopez, Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Education, 91 W. VA. L. REV. 305, 358–86 (1989). However, this trend is definitely changing for the better. For instance, many law schools now offer clinics and courses that teach about law and organizing. See Michael Grinthal, Power With: Practice Models For Social Justice Lawyering, 15 U. PA. J.L. & SOC. CHANGE 25 n.4 (2011). At minimum, we hope that law students, by learning and practicing alongside community based organizations engaged in basic democratic organizing strategies, will begin to understand and be exposed to a social justice minded public interest law practice.
attorney could have been easily catapulted further into the national limelight as a civil rights heavyweight. This is the stuff that public interest law students dream about since it involves high profile “sexy” civil rights work. Thus, it is to any lead attorney’s credit that she or he is able to “unlearn” his or her traditional expert role, and relearn a different role as an expert who is a part of the community.

Part II recounts the facts of the case from the time the major incident occurred on December 3, 2009 to the announcement of the agreement reached by the U.S. Department of Justice. In particular, this Part is written from the perspective of Cecilia Chen, the lawyer on the case, along with insights provided by students and community advocates loyal to one side. Although there were many facets and nuances to the inner workings of the campaign, the account here is seen and recorded through the lens of the lawyer utilizing the community lawyering perspective. Part III examines the facts and history of the case through the lens of a community lawyering model. Where applicable, comments comparing and contrasting the methods of traditional lawyers with the community lawyering approach will be examined.

I. SPHS ANTI-HARASSMENT CAMPAIGN

A. Anti-Asian and Anti-Immigrant Harassment Prior to December 3, 2009

Anti-Asian and anti-immigrant violence was endemic in Philadelphia for many years with little or no institutional response from the school district. This was no different at SPHS. Just one year before, in October 2008, five Asian students were attacked by as many as thirty non-Asian students outside a subway station, one block from the school. Two days later, nearly seventy Asian students stayed away from school for fear of their safety. Following this incident, the Asian American Legal Defense and Education Fund (“AALDEF”) documented twenty-six separate incidents of physical violence towards Asian immigrant youth during the 2008–2009 academic year.

In the months following, Chinese immigrant students, working closely
with community advocates, sought to address the harassment at SPHS. Students presented a petition to the school principal and demanded improvements to school safety, documented incidents of school violence, and meetings with school and district officials. Although community advocates and students attended numerous meetings with school and district officials, including Chief Safety Officer James Golden and Regional Superintendent Michael Silverman, little was done to improve the racial climate at SPHS.

Although the assaults of December 3, 2009 and the subsequent student boycott garnered national attention, as evidenced by their actions the year before, the boycott was not the first time that Asian immigrant students at SPHS stood up to protest bias-based harassment at their school.

B. The December 3, 2009 Assaults at SPHS

On Thursday, December 3, 2009, Asian students were assaulted throughout the day inside and outside of the school building. Starting at 8:45 a.m., a Vietnamese student was attacked inside a classroom by a group of ten to eleven non-Asian students. Later that morning, teachers reported that groups of students were going door-to-door looking for Asian students to target. By mid-morning, a group of thirty to forty students had burst into a hallway while school staff frantically moved Asian students into classrooms. At lunchtime, security footage documented sixty to seventy students surging forward to attack a small group of Asian students. Dozens of students surrounded and attacked Asian students in the school cafeteria and outside the lunchroom while other students appeared to cheer as school personnel largely stood by. School police also detained three to five students who had dragged an Asian girl down the stairwell by her hair.

12. Organizations that helped address harassment issues at SPHS in the 2008-2009 academic year included AALDEF, Asian Americans United, Philadelphia Chinatown Development Corporation, Victim/Witness Services of South Philadelphia and SEAMAAC.

13. Meeting notes on file with AALDEF. The installation of security cameras throughout the school was the only substantive change implemented by the School District. Other suggestions made by students and advocates included the hiring of Mandarin-speaking security guards, and the implementation of anti-harassment and discrimination trainings for students and staff.
15. Id.
16. Id. at 10.
17. Id. at 12.
18. Id. at 12–13.
19. Id. at 15.
As a result of the attacks, students suffered black eyes and serious bruising to their arms, legs, and torsos.\textsuperscript{20} One Chinese student suffered a broken nose.\textsuperscript{21} Despite the students’ injuries, school officials did not call 911 but instead tried to force the students to leave the building before their parents arrived.\textsuperscript{22} Fearing for their safety, students contacted community advocates from the Philadelphia Chinatown Development Corporation (“PCDC”) and the Victim/Witness Services of South Philadelphia (“V/WSSP”).\textsuperscript{23} The advocates instructed the students to remain inside the school while they contacted 911; they also immediately went to the school themselves.\textsuperscript{24} When the medics arrived, several hours after the assaults, the advocates accompanied the students and their parents to the hospital.\textsuperscript{25}

In a separate incident that took place after school, school staff dismissed student safety concerns when walking home, and insisted that they immediately depart school grounds.\textsuperscript{26} SPHS Principal LaGreta Brown walked ten Vietnamese boys and girls toward large masses of students that school officials later acknowledged were larger and rowdier than usual.\textsuperscript{27} The Vietnamese students were subsequently chased and assaulted by twenty to forty students within view of the principal, as more than one hundred onlookers surrounded them.\textsuperscript{28} By the end of the day, thirteen Asian students had been sent to the hospital, more than two dozen had been assaulted, and numerous others traumatized by the attacks. Throughout the day, reports showed that school officials, including the principal, had been aware of the assaults on the Asian youth, yet failed to act.\textsuperscript{29} Students repeatedly articulated fear and concern for their safety but school personnel insisted that they proceed normally through their day—ignoring their pleas for protection and forcing them into locations where they were eventually

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\textsuperscript{20} Id. at 13; Letter from Cecilia Chen, Staff Attorney, Asian American Legal Defense and Education Fund, to Amy Berman, Educational Opportunities Section, Civil Rights Division, U.S. Department of Justice (Jan. 19, 2010) (on file with AALDEF).\\
\textsuperscript{21} Giles, supra note 14, at 13.\\
\textsuperscript{22} Letter from Cecilia Chen, supra note 20.\\
\textsuperscript{23} Giles, supra note 14, at 27. PCDC is a non-profit organization serving to preserve, protect, and promote Chinatown as a viable ethnic, residential, and business community. PCDC was only involved in the early stages of the SPHS campaign. Although PCDC youth organizer Xu Lin remained involved in an individual capacity throughout, PCDC itself was not a part of the SPHS campaign. V/WSSP is a non-profit organization that offers direct services and support to crime victims, witnesses, and their families in South Philadelphia. V/WSSP was an active member of the coalition, supporting the SPHS students throughout the campaign.\\
\textsuperscript{24} Letter from Cecilia Chen, supra note 20.\\
\textsuperscript{25} Id.\\
\textsuperscript{26} Giles, supra note 14, at 21. In the interviews conducted by AALDEF, Vietnamese students stated that they identified a large group of non-Asian students standing around the school and told the principal that they were afraid. To this, she responded, “If you are afraid, then I will walk with you” and led them directly towards the hostile crowd of students where the Vietnamese students were subsequently chased and attacked.\\
\textsuperscript{27} Id. at 21–22.\\
\textsuperscript{28} Id. at 23–24.\\
\textsuperscript{29} Id. at 8, 17–18.
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assaulted. Immediately following the assaults, school and district officials sought to minimize the gravity of the situation and the seriousness of the attacks. Chief Safety Officer Golden told reporters that “a minor incident occurred on Thursday at the school, with no injuries or arrests.”

Regional Superintendent Silverman denied that the Asian students were targeted based on their race, stating that “there was a fight in the community that spilled into the school—that doesn’t make it racial,” even though he had been meeting directly with advocates for the past year about the anti-Asian/anti-immigrant harassment problems. Finally, in a letter sent home to parents on December 4, 2009, Principal Brown disclosed that “an incident occurred at dismissal, outside of SPHS” but failed to report the numerous assaults that occurred inside the school during school hours.

C. Student Boycott: December 4, 2009 to December 15, 2009

1. The Students Decide to Boycott

By Friday, December 4, 2009, news of the assaults had spread and many Asian students chose not to attend school. Throughout the day, Asian community advocates rallied to gather information about the December 3rd assaults from students and school district officials. Community advocates quickly discovered that the school district’s version of events differed greatly from the students’ accounts.

In the late afternoon, school and district officials met with Asian immigrant students and community advocates in Philadelphia Chinatown. School and district officials refused to acknowledge that the assaults were racially motivated and made repeated attempts to assure students that it was safe to return to school. Principal Brown stated that the school had completed its investigation into the December 3rd assaults—less than one day after the assaults occurred. However, when students challenged Principal Brown’s statement, asserting that none of the student victims had been interviewed or even contacted by the school, Regional Superintendent Silverman rescinded the principal’s statement and noted that the investigation was still ongoing. Students left the meeting feeling


33. Letter from Cecilia Chen, Staff Attorney, Asian American Legal Defense and Education Fund, to Tamara Kassabian, Educational Opportunities Section, Civil Rights Division, U.S. Department of Justice (April 5, 2010) (on file with AALDEF).

34. Id.
discouraged by the district’s apparent indifference to their concerns.

On Sunday, December 6, 2009, students and advocates met to discuss their options. Advocates’ concerns grew when talk over the Internet invoked some less than savory responses—revenge, for example, was proposed. Some advocates felt that quick, reactive responses could potentially descend into dismissible and stereotypical Asian-Black tensions. As a result, the advocates worked with students to diffuse the anger and to work towards a solution. Asian Americans United\(^{35}\) (‘AAU’) led a discussion about what they felt were the core problems, such as the school officials’ failure to respond to the students’ concerns about racial harassment. Students and advocates reviewed past actions (such as the October 8, 2008 strategy where students stayed out of school) and analyzed their effectiveness. Community organizers believed that the group needed to develop a framework to clarify the school’s administrative neglect and to create discussion groups on how to plan for a more powerful and impactful student response.

Helen Gym,\(^{36}\) a board member and community activist from AAU, spoke with students about how boycotts worked, why it could be a more powerful tool this time around, and how this boycott will be different from the one that took place a year earlier. There was discussion about what would be necessary to make a boycott successful. For example, students had to meet at a centralized location and could not stay at home; there had to be a significant number of Asian English Language Learner (‘ELL’) youth in the boycott, which required the participation of both Chinese and Vietnamese students; and publicity through statements, press conferences, and public appearances like the December 9th Philadelphia School Reform Commission (‘SRC’) meeting were necessary because boycotts were not meant to be silent. There was also discussion about who was the subject of the boycott and what the messages would be.

The students agreed that it was not safe to return to school, and that the past practice of simply staying away from school was not a strong enough response. Students and advocates decided to begin a formal boycott that brought attention to the school district’s refusal to address longstanding concerns about anti-Asian/anti-immigrant harassment. Following the meeting, the students issued a public statement announcing:

It is our opinion that South Philadelphia High School is still not a safe

\(^{35}\) Founded in 1985, Asian Americans United’s (AAU) mission is to build leadership in Asian American communities, to build neighborhoods and unite against oppression. AAU has worked in Philadelphia’s Asian American communities and in broader multiracial coalitions regarding quality education, youth leadership, anti-Asian violence, immigrant rights, and folk arts and cultural maintenance. Since its founding, AAU has worked closely with students, parents, and community members to fight for quality education opportunities for Asian American and immigrant youth.

\(^{36}\) Helen Gym is a board member of AAU, and founder of Parents United for Public Education in Philadelphia, PA. Gym is a community activist who had worked and organized many community events in response to struggles in Philadelphia.
place for us. Because we are Asian immigrants, we are targeted. We have been working with the school a long time, but still the school has failed to provide a concrete plan to address our safety inside and outside the school building.

Because of that we will not return to South Philadelphia High School this week. Instead, we are going to meet in our community to figure out some real solutions of our own. Dozens of students have already committed to meeting during school hours. We ask the police and school district to recognize what we’re doing and respect our ability to travel between 9 a.m. and 3 p.m.

We invite concerned students from all races to contact us if you want to join.

On Sunday evening, AAU asked Boat People SOS (“BPSOS”) to help channel the Vietnamese students’ energies towards the boycott and invited them to the boycott location in Chinatown. Because there had been little involvement by Vietnamese students in earlier efforts to address harassment, organizers from BPSOS were hesitant to bring Vietnamese students into an action that might be dominated by the Chinese community. However, recognizing the urgency of the issue and Chinatown’s proximity to public transportation, BPSOS organizers decided to reach out to Vietnamese students by informing them about the boycott. On Monday morning, December 7, BPSOS organizers and Vietnamese students met in South Philadelphia and traveled as a group to join the other boycotting students in Chinatown.

2. The Boycott Takes Shape

For eight days, over fifty Asian students—all immigrant students part of the school’s English for Speakers of Other Languages (ESOL) program—refused to attend school. Instead, these courageous students met daily with local Asian American community advocates to document their experiences at the school and discuss solutions to address the unsafe environment. It was, in their words, an effort to get “a real education about how to ensure our safety.”


38. BPSOS is a national Vietnamese American community organization with the mission to empower and organize Vietnamese individuals and communities in their pursuit of liberty and dignity. BPSOS-Delaware Valley was an active member of the coalition supporting the students throughout the campaign.

39. Although the boycott was formerly announced on December 6, 2009, student and community advocates considered December 4, 2009 to be the unofficial start of the boycott. This was the date that a large number of students collectively decided to remain home from school.

Meeting daily at an undisclosed location from 8 a.m. to 4 p.m., students sat down with community advocates to understand what had happened at SPHS and discussed solutions to address the problem. Students engaged in power mapping exercises. They analyzed the causes and effects of racism and began to build leadership and organizing skills. For many, this was their first foray into political activism and community organizing. Community advocates, who had years of youth organizing and leadership experience, helped to guide the diverse group of Chinese, Vietnamese, and Cambodian students. Focus groups were led in three languages: Mandarin, Vietnamese and English; community advocates assisted with translation. For example, when a Chinese student spoke in Mandarin, her statement was translated into English and Vietnamese for the rest of the group. While this proved to be a time-consuming process, students and community advocates were committed to ensuring that all students, regardless of their fluency in English, were able to understand and participate in the group discussions and decision-making.

Community advocates often arrived before 8 a.m. and left long after night fell each day. Each evening, community advocates and a core group of students stayed late to review the day’s activities and to plan for the next day’s agenda. On one occasion, AAU allowed a pre-scheduled board meeting to be used as a boycott-planning meeting. Community advocates bought breakfast and drinks for the students using their own money. Local Asian restaurants donated food for lunch and provided meeting spaces for the boycotting students. As the boycott drew more media attention, the students also began to receive donations from individual supporters. Donations were used to buy subway tokens to help students travel to the meeting sites and purchase supplies for the boycott.

3. Community March to the School Reform Commission

On December 9, 2009, the boycotting students and their supporters carried signs reading “Stop School Violence!,” “We want an education in a safe school!,” “It’s not a question of who beat whom, but who let it happen,” and “Grown ups let us down!” in a peaceful march from Philadelphia Chinatown to the School District headquarters. More than a dozen students and advocates testified before the Student Reform Commission (“SRC”), asking the SRC and the school district to take swift steps to ensure the safety of all of its students. That day, in a joint statement presented to the SRC, the boycotting students wrote:

We are targeted because we are Asian immigrants. Every day we face

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taunts and violence. It hurts when we are attacked by other students. It hurts even more when school staff ignore, deny or cover up the racial attacks against us.

Most of the students at South Philadelphia High School—Asian, African American, Latino and white—are just like us. They are trying to get an education in a school where they do not feel safe or respected. We are calling on the adults in the school and in the School District to take responsibility for the unsafe environment of South Philadelphia High School that makes it hard for us to learn there.42

In response to the students’ statements, the SRC offered a hasty apology at the end of the meeting, after most of the boycotting students had left the room.

At the meeting, Superintendent Arlene Ackerman announced that the school district would conduct an independent investigation into the December 3rd assaults.43 Retired U.S. District Court Judge James T. Giles was later hired to conduct the investigation. To the surprise of many in the room, Superintendent Ackerman publicly stated that the December 3rd assaults were sparked by an attack on a disabled African American boy by Asian students a day before.44 To many Asian community advocates, Superintendent Ackerman’s remarks were merely deflecting blame from the school district by pointing the finger at the Asian student victims and inflaming racial tensions.45

Following the protest at the SRC, on December 11, 2009, Superintendent Ackerman held a press conference at SPHS. Surrounded by around fifty students, Superintendent Ackerman claimed that these students were “the real faces of South Philadelphia High School.”46 However, none of the students from the boycott were contacted or represented at the press conference. Superintendent Ackerman also suggested that the attacks had been “sensationalized by the media” and “urged the [Asian] community to

42. South Philadelphia High School Boycotting Students, supra note 40.
45. For the School Superintendent to utter these racially charged allegations without the benefit of any proper investigation and supporting evidence is, at best, a poor excuse to deflect blame during damage control and, at worst, an incitement to riot. Nonetheless, the community activists and the Asian students displayed tremendous grace and poise under the situation in not being baited and provoked into an all out racial conflict between African American and Asian American students. It is to the credit of the community activists and the Asian students involved in the organizing of this case that the blame and responsibility remained focused squarely on the adult school administrators and their failure to provided fundamental constitutional rights. Throughout this whole ordeal the students displayed that they were far more adult and responsible than the ones that were entrusted with the duty to provide for their safety.
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stop assigning blame and move forward.” At another press conference that afternoon, boycotting students again reiterated their concerns about returning to school and the school district’s long-standing indifference to anti-Asian harassment. AALDEF also announced its intention to file an administrative complaint with the United States Department of Justice (“DOJ”).

4. The Boycott Ends but the Struggle Continues

On December 15, 2009, the students suspended their boycott after Superintendent Ackerman finally agreed to meet with the boycotting students, their parents, and community advocates in Philadelphia’s Chinatown. A few days prior, Superintendent Ackerman had rejected the students’ demands to meet in a neutral location. She firmly declared that she would have “private conversations with the students and their families” but that she “[did] not intend to have conversations with community leaders.” At the meeting, the students, supported by community advocates, held a pointed exchange with the Superintendent and other school officials about the school’s refusal to address the anti-Asian and anti-immigrant violence at the school and the lack of a system to respond appropriately to the escalating violence against Asian immigrant students.

Following their decision to suspend the boycott and return to school, the students issued a public statement:

Through our trials and struggles, we pushed the school to hear us. We have made change by standing together. We are proud of what we have done. If something happens again after all this, we know that we have strong wills and we will stand together again.

We have came [sic] back to stand with more students. We want to start a dialogue with other student organizations. We will continue to work with the community organizations. The struggle will go on until all the demands are met. We won’t give up. We ask everyone to continue to pay attention to what’s going on at South Philadelphia High School. We hope that school can change their attitude for the benefit of all students. We thank our supporters. Without the support of everyone we could not go this far. We are excited for the future. We now believe in hope and change like President Obama.

We want a safe school for everyone. We want everyone to have a good education. This is not the end, but just the beginning of the fight for better futures and better educations for all races of students.

D. December 2009 to January 2010: The Legal Case Takes Shape

47. Id.
48. Id.
49. Id.
Alongside Community Organizing

In the days and weeks following the assaults, Chen and community advocates engaged in intensive fact gathering. With the assistance of community advocates who acted as interpreters, Chen interviewed students who were physically assaulted on December 3rd. Chen also began to compile a history of the anti-Asian harassment at SPHS and the community groups’ efforts to address their concerns with the school district. In total, AALDEF and community advocates had documented and reported twenty-six separate incidents of harassment to the school district since 2008.\footnote{Incident reports on file with AALDEF.}

Community advocates also gathered numerous communications with the school district predating December 2009.\footnote{Communications on file with AALDEF.}

On January 19, 2010, AALDEF, on behalf of Asian students and their parents at SPHS, filed an administrative complaint with the DOJ. The complaint charged the school district and SPHS with discrimination against Asian students on the basis of their race and national origin in violation of the Equal Protection Clause of the 14th Amendment.\footnote{Press Release, Asian American Legal Defense and Education Fund, AALDEF Files Civil Rights Complaint Against Philadelphia School District (Jan. 19, 2010), available at http://aaunited.org/campaigns/sphs/sphs-statements/.} Based on the investigation conducted by Chen and community groups, the complaint detailed the December 3rd assaults and highlighted the history of anti-Asian and anti-immigrant harassment at SPHS. The complaint alleged that: “The District’s and School’s deliberate indifference to the discriminatory hostile environment that exists for Asian students and intentional disregard for the welfare of Asian students constitute unlawful discrimination.”\footnote{Letter from Cecilia Chen, supra note 20.}

This deliberate indifference deprived Asian students of an equal opportunity to an education. AALDEF urged the DOJ to “investigat[e] and initiate prosecution to deter future discriminatory conduct” by the school and district.\footnote{Id.}

Meanwhile, challenges continued to arise in the aftermath of the student boycott. In January, the Philadelphia Human Relations Commission (“PHRC”) invited Asian community advocates to attend a special meeting about the December 3rd assaults. Advocates agreed to attend the meeting with the understanding that their “input will help the Commission focus attention on those issues important to the Asian community as they seek to craft a response that will address those issues.”\footnote{Letter from Ellen Somekawa, Executive Director, Asian Americans United, et al., to Stephen Glassman, Chair, Pennsylvania Human Relations Commission (Jan. 21, 2010) (on file with AALDEF).} However, Superintendent Ackerman and Principal Brown arrived at the meeting with a group of student ambassadors from SPHS, none of whom included the student
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The meeting was quickly dominated by Superintendent Ackerman and Principal Brown who urged the PHRC “not to look at this as just a racial issue” and also characterized the English for Speakers of Other Languages (“ESOL”) program at SPHS as “segregationist.” Superintendent Ackerman also alleged for the first time that the December 3rd assaults were “gang related,” a comment later established to be unsubstantiated but served to scapegoat the Asian immigrant student victims. Asian community advocates were not allowed to present their perspectives until the end of the meeting—two and a half hours later.

Although Chen, community advocates, and students continued to meet and strategize on a daily basis, patience was wearing thin at the school district. Superintendent Ackerman was “frustrated by the attention the [December 3rd assaults] had received” and said, “[The SPHS incident] is taking up a lot of my time.”

E. February 2010 to March 2010: Release of Judge Giles’ Report and Confronting the SRC Again

On February 23, 2010, retired federal district court Judge James Giles released the report of his investigation. District officials called the report “thorough,” “comprehensive,” and “fair.” However, community advocates and students were disappointed by the report’s findings and recommendations. Most importantly, the report failed to find any wrongdoing or missteps on the part of the school administrators and staff. Advocates and students also criticized the report’s extremely limited scope, which failed to include the extensive history of anti-Asian and anti-immigrant violence at SPHS. Students criticized the investigation and disputed Giles’ description of the December 3rd events, pointing out

57. Id.
58. Id. Ironically, the ESOL program at SPHS was established following a community campaign and lawsuit by the Asian American community to ensure that English Language Learner students received appropriate services.
59. Kristen A. Graham, No Consensus on Prevention at South Phila. High Meeting, PHILA. INQUIRER, Jan. 6, 2010. The school district’s investigation, conducted by Judge Giles, was unable to conclude that the December 3rd assaults were gang-related. A Vietnamese student was subject to disciplinary action for his alleged gang involvement in connection with the December 3rd assaults. These gang allegations against the student were later rescinded by the school district but only after the student had been suspended and subject to an involuntary transfer to another high school. See Isaiah Thompson, The Fall Guy, PHILA. CITY PAPER, Mar. 17, 2010, available at http://archives.citypaper.net/articles/2010/03/18/south-philadelphia-high-school-racial-violence; Jeff Gammage, District Clears S. Phila. Student of Gang Charge.
60. Id.
63. Id.
inaccuracies with Giles’ findings from their own experiences. On March 17, 2010, students and advocates testified again before the SRC. Eight students spoke out about the Giles report and urged the SRC to take further action to address anti-Asian violence at SPHS. Community advocates criticized the school district’s efforts to escape accountability. However, the school district continued to insist that the students move forward even though it had failed to implement any appropriate procedures to assist students with their trauma, and to prevent further anti-Asian and anti-immigrant violence at SPHS. Many students urged the SRC not to ignore what had happened on December 3rd but to learn from it. One student stated:

I and many, perhaps all, of my friends feel so disappointed. People tell us to disregard the past, and “move forward”. But what people forgot is that we already did it. We did disregard the past and try to “move forward” once in 2008. But we were being let down. How could these adults who we count on and rely on for our safety, ignore our feelings? It’s not only about the physical problem that we had by violence, it’s about fear; the fear of being isolated and ignored, the fear of not knowing when is my turn to be attacked. Even if we “move forward,” but with the same adults in charge using the same strategies as before, it’s just like we will turn back the clock and redo everything exactly the way it was.

By March, the DOJ’s investigation was in full swing. While the details and internal discussions were unknown to Chen, community advocates and the students, DOJ attorneys had already conducted in-depth interviews with over fifteen students, community advocates, and numerous SPHS teachers. In addition, Chen and community advocates provided DOJ attorneys with extensive documentation of the December 3rd assaults, the student boycott, and the events in the months immediately following the boycott.

F. April 2010 to May 2010: Exploring an Alternate Legal Route through the Pennsylvania Human Relations Commission (PHRC)

In order to distinguish the coalition, community advocates named themselves the SPHS Asian Student Advocates (“SASA”). SASA included AAU, BPSOS, V/WSSP, AALDEF and community members who

65. Gym, supra note 62.
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participated in their individual capacity.

Although DOJ representatives assured SASA that the investigation was progressing, Chen and community advocates often felt unsure of where the DOJ’s investigation would ultimately lead. Additionally, given the limited community involvement in the DOJ’s process, SASA worried that students and the community would have a limited role, if any, in crafting a solution. Thus, SASA took another look at the PHRC’s complaint process.

Although SASA considered filing complaints with the PHRC soon after December 3rd, students and community members initially decided to move forward with filing a complaint to the DOJ. A closer look at the PHRC’s complaint process revealed that the PHRC offered students and community advocates a vital piece that was missing from the DOJ’s process—a key role in crafting the resolution. Beginning in April to early June, Chen filed civil rights complaints with the PHRC on behalf of three organizations and five individual students. The complaints alleged that the school district’s racially discriminatory practices led it to ignore the racial harassment of Asian students at SPHS when it was notified.

In May, SASA also began a campaign to garner local and national support to encourage the DOJ to take legal action against the school district. On the local front, SASA created an information sheet to update allies about the current status of the campaign. SASA also created a myth-buster sheet to correct the misinformation created and fostered by the school district about the December 3rd assaults. SASA held community meetings to update allies about the campaign and to encourage allies to write letters of support to the DOJ. On the national front, SASA reached out to national networks and elected officials to endorse support for the legal action taken against the school district.

On May 13, 2010, over five months after the assaults, Principal Brown resigned as principal of SPHS. Despite months of strong criticism over

69. The PHRC enforces Pennsylvania laws that prohibit discrimination in education, employment housing, commercial property and public accommodations. Pennsylvania Human Relations Act, 43 PA. CONS. STAT. § 951 et seq. The PHRC offers a process through which discrimination complaints, filed by the public, are investigated. If there is probable cause that discrimination occurred, the problem would be resolved through a conciliation agreement or public hearing. See Pennsylvania Human Relations Commission, Complaint Process, available at http://www.portal.state.pa.us/portal/server.pt/community/file_a_complaint/18976/complaint_process/698150 (last visited Jan. 16, 2012).

70. The organizational complainants were AAU, BPSOS and V/WSSP.


74. Kristen A. Graham & Jeff Gammage, South Phila High Principal Resigns, PHILA. INQUIRER (May 13, 2010).
her handling of the December 3rd assaults, she was forced to resign after the Philadelphia Inquirer revealed that she failed to renew her state certification after it had expired.\(^{75}\)

G. June 2010 to August 2010: Community Groups Enter Into Settlement Talks But With One Caveat

In mid-June, the PHRC invited SASA and the school district to participate in a fact-finding conference to resolve the civil rights complaints. Prior to the conference, SASA decided that any resolution must be preceded by the school district’s acknowledgment of the prevalence of anti-Asian harassment at SPHS and other schools in the district. SASA developed four points upon which the school district would have to agree before negotiations could proceed:

1. The events of December 3, 2009 were a direct example of anti-Asian and anti-immigrant harassment at SPHS;
2. Denouncement of racial and ethnic intimidation at schools in any form;
3. Commitment to working cooperatively to seek solutions with SASA moving forward; and
4. Commitment to correctly identifying, investigating, and addressing incidents of harassment.

At the fact-finding conference, SASA remained firm that it would not engage in any settlement talks until the school district acknowledged the problem of anti-Asian and anti-immigrant harassment at SPHS. As a result, the school district and SASA agreed to submit draft language for what was to become the preamble to the PHRC agreement. In the months following, SASA, the school district, and the PHRC exchanged several drafts of the preamble. SASA continued to push back against attempts to dilute the message of the preamble by advocating strong language addressing the role of race and ethnicity in the December 3rd assaults and the responsibility of the school district to prevent, stop, and address bias-based harassment.

1. Students Become Teachers and Begin to Share Their Experiences and Knowledge with Other Communities

Throughout the summer, the students were invited to present their experiences at numerous conferences and speaking events. For example, in June, the Organization for Chinese Americans (“OCA”) invited the students to present at their national conference held in Houston, Texas. OCA covered the transportation and room costs for the students in attendance. In July, several students, SASA members, and Chen traveled to Boston to speak at an event sponsored by the Institute for Asian American Studies at the University of Massachusetts Boston, and other local Boston...
community-based organizations. Students also spoke in Washington D.C. at a briefing hosted by the Coalition for Asian Pacific American Congressmen (“CAPAC”). For many students, these speaking engagements offered their first opportunity to visit cities and meet Asian American communities and activists outside of Philadelphia.

2. **DOJ Finds Merit in AALDEF’s Complaint but the Campaign Continues**

At the end of August, the Philadelphia Inquirer reported that, seven months after the December 3rd assaults, the DOJ had found merit in AALDEF’s complaint. In a letter to the school district, the DOJ advised the school district to settle the matter rather than engage in a prolonged court battle.

Several days later, SASA and the students, now officially named the Asian Student Association of Philadelphia (“ASAP”), held a press conference applauding the DOJ’s finding. In its press statement, SASA reminded the public that:

The focus of our complaint was not about problematic young people but about a School District that had failed to do everything in its power to ensure a safe and welcoming environment for learning no matter the race, national origin or language of its students. In the end, no student should go to school in fear of being targeted because of his or her race, ethnicity or native language. The Justice Department’s decision to pursue this matter with the School District sends a strong message that all students, regardless of who they are, are entitled to have an education in a safe school.

Later that afternoon, ASAP and SASA held a workshop for new immigrant students attending SPHS. ASAP and SASA relayed the history of the December 3rd assaults and the students’ subsequent struggles to improve SPHS to a group of three dozen incoming Chinese, Vietnamese, Burmese and Nepalese freshmen. Chen provided a know-your-rights training on bias-based harassment. New students were also given a

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77. *Id.*
80. *Id.*
translated pocket-sized brochure containing information on harassment, language access rights, school discipline rights, as well as the contact information of community advocates. New SPHS principal, Otis Hackney, attended the last part of the workshop, and met with many of the new students for the first time.  

H. September 2010 to November 2010: DOJ and PHRC Move Forward Against the School District but at a Cost  

The DOJ’s finding immediately changed the playing field for SASA and the students. There was no longer any uncertainty over whether the DOJ would be taking action against the school district. While rejoicing in their victory, SASA and the students were still unsure of what the future would hold for them, and what a resolution to the case would look like. Although cognizant of the fact that the DOJ process allowed for little community input, SASA and the students hoped to have some voice in crafting a settlement agreement or other resolution. In early September, a unique opportunity arose for SASA and the students.  

Soon after information about the DOJ’s finding of merit was revealed, the PHRC contacted Chen. They were eager to move forward with settlement discussions with the school district. While SASA was developing a draft settlement proposal for the PHRC, new concerns began to arise regarding the simultaneous PHRC and DOJ processes—as the two processes could potentially allow the school district to leverage the two agencies against each other. A signed state-level agreement with the PHRC would give the school district substantial power to weaken or completely avoid a similar agreement with the federal government. Chen, SASA, and ASAP were now caught in a balancing act between pushing forward with the PHRC, while also ensuring that the PHRC’s actions did not weaken the DOJ’s position. The resolution, developed by Chen, PHRC, and the DOJ, proposed a unique partnership between the DOJ and the PHRC so that two separate but substantively identical agreements would be entered at the federal and state level simultaneously. Based on Chen’s knowledge, there has never been such a partnership between the DOJ and a state agency.  

For all parties, this arrangement waded into new territory. All parties were required to consent and give up some rights in the process. Unfortunately, SASA and ASAP were required to forfeit the most. Under the proposed DOJ and PHRC joint process, SASA and ASAP would present their proposed settlement agreement. However, the DOJ and PHRC would make the final determination of which pieces to include in the settlement agreement. Additionally, all negotiations with the school district would occur between the DOJ and PHRC—SASA and ASAP would have no place at the negotiating table. Although SASA and ASAP would lack

82. Id.
these rights in an ordinary DOJ negotiation, they were entitled to these rights in the PHRC’s process.

As Chen wrestled with how to advise SASA and ASAP, she also pushed to ensure their continued involvement with the joint DOJ and PHRC process. Although SASA and ASAP could not be at the negotiating table, Chen advocated for the disclosure of key points, as well as additional opportunities for SASA and ASAP to offer input beyond the initial draft.

When SASA and ASAP finally met to discuss the proposed joint DOJ and PHRC process, Chen presented the pros and the cons of the joint and separate options. SASA and ASAP shared serious concerns about the loss of community voice and control in the joint process. However, SASA worried about the coalition’s capacity for a prolonged legal battle. SASA and ASAP ultimately agreed to consent to the joint process—viewing it as the lesser of two evils. Nevertheless, the discussion renewed the coalition’s commitment to community organizing and reminded the coalition that the law was only one tool in creating change.

From that point on, the joint process moved very quickly. SASA attended the first settlement conference meeting with the DOJ; the PHRC and the school district also presented their demands to all of the interested parties. The meeting lasted approximately six hours. However, from that point on, SASA and ASAP were no longer included in negotiations with the school district.

Over the next two months, SASA and ASAP reviewed two drafts of the proposed settlement agreement and offered comments. Advocates’ and students’ key concerns centered on the lack of community monitoring and the lack of access to information following the settlement. Chen pushed, unsuccessfully, for SASA to be included in the monitoring reports required by the agreement. Additionally, the proposed agreement excluded the community’s innovative demands, such as race and ethnic studies and a comprehensive crisis response plan. Key provisions of the settlement agreement—such as anti-harassment, due process, and language access policies—while important, were well-established, basic provisions that were difficult for the school district to dispute.

During this time, ASAP continued to meet regularly and presented at several conferences throughout the East Coast including the 2010 New York City Asian American Student Conference speaking about the December 3rd assaults, the boycott, and the students’ emergence as leaders and organizers.

I. December 2010

In December, the DOJ and PHRC presented SASA and ASAP with a final version of the settlement agreement for their approval. As complainants with the PHRC, community groups and students were required to approve the state-level settlement before it could be ratified by
the PHRC. Chen organized meetings with SASA and ASAP to review the proposed agreement in detail. Chen explained the proposal by removing much of the legalese and rendering the substance more accessible to the non-attorney community advocates. To help the students, many of whom were immigrants and still learning English, understand the agreement, Chen further simplified the language and highlighted the key provisions. At her meetings with SASA and ASAP, Chen went through the thirty three-page agreement, explaining each section, its meaning and implications.

SASA and ASAP expressed universal frustration with the language and provisions of the agreement, which were perceived to be watered down. Advocates and students also shared serious concerns that there was no provision for community-based monitoring of the agreement. But they all agreed that there was nothing that would stop approval of the agreement. Nevertheless, to allow SASA to express their concerns directly to the DOJ and the PHRC, Chen arranged a conference call between the three groups.

1. December 3, 2009 Remembered

On December 3, 2010, ASAP, in collaboration with the SASA, organized a rally in front of SPHS to commemorate December 3rd. Rather than focus on the victimization of Asian immigrant students, students emphasized December 3rd’s significance as a catalyst for change, youth organizing, and community empowerment. ASAP invited the Philadelphia Student Union, a local youth organizing group with a citywide campaign for nonviolent schools, to support the event. The same students who had been sent to the hospital exactly one year before now stood before school officials, fellow students, and community allies as youth leaders advocating for fundamental changes to their school. Student leader Duong-Nghe Ly told over one hundred supporters: “History has shown us the importance of memory. We remember Dec. 3 because we refuse to be viewed as invisible and helpless.”

For solidarity, ASAP designed and distributed powder blue bracelets with the slogan, “We have the power to make change” to fellow students and allies. The accompanying flyer asked supporters to:

WEAR THIS BRACELET if you believe that STUDENTS have the POWER to END VIOLENCE and MAKE CHANGE

One year ago on December 3rd, two dozen Asian immigrant students were attacked in school. We remember that day, but we will not let it define us.

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We have the power to make change.
Violence affects us all. The December 3rd attacks mobilized students to demand changes that would make Southern safer and better for all students.
We use that day as a motivation to change our schools. We speak out against violence and bias in our schools and fight for the rights of all students to a good education in safe schools. We join students from across Philadelphia who are organizing for this right in their schools. We call upon our teachers and principals, school staff and district leaders to hear student voices and work with us.
WEAR THIS BRACELET on Dec 3 to take a stand for non-violent schools.

As a final act in commemoration, students and allies tied blue ribbons around the gates of the school.

2. Victory! and a Renewed Commitment to Continue the Work

On December 15, 2010, exactly one year after the students ended their boycott, the school district officially agreed to settle with the DOJ and PHRC in regards to the pending civil rights complaints. In a special meeting, the PHRC unanimously ratified the settlement agreement. That same day, the DOJ filed the complaint and settlement agreement in federal district court.

Assistant Attorney General for the Civil Rights Division Thomas E. Perez “applaud[ed] . . . the courageous actions of the students, parents and community leaders who came forward to call attention to the pervasive harassment.” Under the terms of the two and one-half year agreement the school district agreed to develop and implement a comprehensive plan for preventing and addressing bias-based harassment; conduct trainings for faculty, students and staff on discrimination and harassment; hire a consultant to review the school district’s policies and procedures concerning harassment; educate students and staff on multiculturalism and diversity; provide translation and interpretation services to immigrant students and their families; and ensure the due process rights of students in disciplinary proceedings.

Above all, community groups and students celebrated the preambles to the DOJ and PHRC settlements. In the district court complaint, the DOJ alleged:

The United States brings this civil action pursuant to Title IV of the Civil Rights Acts of 1964, 42 U.S.C. § 2000c-6 and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States to remedy and enjoin [the School District of Philadelphia’s and the School Reform Commission’s] unlawful discrimination against Asian students based on race, color and/or national origin at South Philadelphia High School in the School District of Philadelphia.\(^90\)

For over a year, students and community advocates sought acknowledgment that the school district’s refusal to address the severe harassment of Asian immigrant students at SPHS was rooted in discrimination. The finding of discrimination by the federal agency was vindication for students and community advocates.

Additionally, the PHRC’s lengthy preamble gave SASA and ASAP comprehensive acknowledgment of the errors and wrongs perpetuated by the school district. The preamble was a key demand won by community advocates and students at the beginning of the PHRC settlement process. Moreover, students and advocates pushed for strong language and provisions addressing each of the issues that the school district had hitherto been unwilling to even acknowledge, such as the role of race and ethnicity in the December 3rd assaults, the history of anti-Asian and anti-immigrant harassment at SPHS, and the scapegoating of student victims by the school district.\(^91\) Although the school district did not admit legal liability, community advocates and students felt that the preamble encompassed their grievances and, at least in writing, promulgated the school district’s commitment to addressing bias-based harassment in the future.

The DOJ and PHRC settlement agreements represented a tremendous victory for students and community advocates. For over a year, they had coalesced, organized and fought against a school district that was both resistant to change and hostile to their goals. The win, however, was bittersweet: “For all the wonderful students that we’ve worked with who stood up around the issue, we’ve lost dozens more,” said Helen Gym from AAU. “Kids who just dropped out, kids who just gave up, kids who are lost. You know this is some small consolation, but . . . we lost a generation of kids.”\(^92\) For the students, this victory was just the beginning: “We have the power to change; we can do something,” said Wei Chen. “It’s not only


adults who can do something, we can do something. I trust this."  

III. ANALYSIS OF COMMUNITY LAWYERING AT WORK

A. An Introduction into Community Lawyering

We prefer to call the type of lawyering that we do “community lawyering.” The term is informed and modified by the quality of interaction we have with individual clients and, mainly, the group we represent. This is praxis that is built upon with each episode of legal representation and subsequent reflection. While the phrase seems simple enough to understand, the nuance in the interpretation can be deceptive. For instance, many public interest lawyers think they are practicing community lawyering simply by virtue of the client group and/or if they are paid by the government. Obviously by this definition, many lawyers can claim to be practicing “community lawyering.” Our definition of community lawyering has much less to do with whom one represents and much more with the way that one practices and approaches the representation. It is this process, way, or “tao”, that determines and transforms the approach and manner of the lawyer’s conduct towards the community into a higher and more socially responsible realm of lawyering.

Community lawyering can be categorized under the general rubric of public interest lawyering. There is a dizzying array of terms for various forms of public interest lawyering. They range from “rebellious lawyering,” to “cause lawyering,” to “political lawyering,” to “critical lawyering,” or “revolutionary lawyering.”

The above list is certainly not meant to be an exhaustive exploration. Although there are many variations of public interest lawyering, one
common thread is the goal of social justice, as well as an exploration into a new process that is not traditional or conventional. Additionally, there is also the element of working with a broader community, as opposed to working with a single client. Therefore, the element of community organizing, or working with community organizations to organize a campaign or struggle, is crucial.¹⁰⁰

When Ron Chisom,¹⁰¹ a veteran community organizer and trainer, was interviewed about the role of lawyers in community organizing, he said: “Lawyers have killed off more groups by helping them than ever would have died if the lawyers had never showed up.”¹⁰² Chisom made this comment within the context of a traditional lawyer coming into the scene of a community struggle. These lawyers are rarely there at the beginning of any community struggle. They come into the scene when the community realizes that one part of the struggle potentially entails a legal strategy; thus, the participation of the lawyer is solicited. Such reflection from an experienced organizer informs us that there is something inherently disempowering about what traditional and conventional lawyers do with community groups. Chisom’s quote implies that the lawyer comes into a community struggle where consensus and group building is the norm, and where each person usually has an equal voice. Yet the lawyer turns this process upside down; all of a sudden, the situation is completely transformed into a discussion over legal maneuvers. Because the lawyer believes that the law is the most powerful vehicle, everything else and everyone else is secondary to the law and the lawyer. The democratic consensus of the grassroots process that was in place is substituted with the opinion of the lawyer who is now in control. In the end, the voices of community members in the struggle are silenced. Because they are not trained in the law, from the perspective of the lawyer, they have nothing to contribute to the legal process.

Thus far we have not laid out a clear definition of community lawyering. Our intent is not to provide the definitive and absolute meaning of community lawyering because we believe it continues to evolve, transform, and grow. More importantly, it is crucial to understand and distinguish the nuances in our methodology of providing legal services to the community. What follows in the discussion below is a detailed explanation and review of our community lawyering methodology at work in this case. Certainly it would be easier to have a cogent and concise description of community lawyering, but such general definitions would be

¹⁰². Quigley, supra note 100, at 457.
meaningless without the contextual facts, the goals we were striving for, and our reactions against traditional and conventional lawyering at each stage. It is through this detailed analysis that one begins to slowly tease out the qualities or the “tao”\(^{103}\) of community lawyering.

1. The Tao of Community Lawyering

At the core of community lawyering is the emphasis on the empowerment of the community. Community empowerment means, with some exceptions, that the lawyer would not be in the limelight, or have plenary power and control over the case. Thus this is lawyering through a democratic consensus community building model. What does that mean? As the analysis below will reveal, particular methods that are sacrosanct to traditional lawyers are countered and challenged by community lawyering. In fact, the role and notion of the lawyer is challenged.

Another tenet of community lawyering is that the process is equally, if not more, important than the end result in the case. Winning is not everything since the grassroots struggles of disenfranchised communities are often multifaceted and lengthy. A single victory rarely symbolizes the end, but rather it represents a small step forward in a broader struggle for social justice. Community organizing, with community lawyering as one complementary tool, is about working on small incremental changes on structural inequality battles.\(^ {104}\) It is often process centric within a grassroots consensus building framework. For that reason the process is sacred since we are always working towards a longer and larger goal of community empowerment. Community lawyering challenges the lawyer and activist clients to engage equally and collaboratively in accordance to their skills and abilities of contribution. Community lawyering seeks to engage its clients and stake holders (such as the community activist and organizers in this case) in the day-to-day implementation of legal advocacy.

For the above to happen, major as well as everyday decisions normally assigned to the lawyer, by default or conventionality, are shared with activist clients and stake holders. There is inherently a democratic bent to the operation as well, with an emphasis on the community members learning and exercising their individual and collective voices. Both elements ultimately lead to, in the long run, a different legacy within the community that is elevated beyond the immediate confines and issues of

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103. The use of the word “tao” or “dao” here is associated with that of “method.” While “method” is overly simplistic, “tao” is suggestive of a philosophical underpinning to the approach, as well as a balance of how we conduct our lawyering.

104. While we certainly do not have the space here to define what “community organizing” means, we would note that similar to our concept of community lawyering it has a social justice and transformative goal for the community. See Generally KRISTINA SMOCK, DEMOCRACY IN ACTION: COMMUNITY ORGANIZING AND URBAN CHANGE (Columbia University Press, 2004). See also Lowe Brugge ET AL., “Grassroots Organizing in Boston Chinatown: A Comparison with CDC-style Organizing,” in ACTING CIVICALLY 44–71 (Susan Ostrander and Kent Portney eds., 2007).
the case. In the long term, community members would learn and become empowered to work on other future struggles to the benefit of the community.

The core value of community lawyering is that the lawyer is unselfish and patient. She or he needs to “unlearn” the role of self-importance associated with lawyers, which is emphasized in law school and by pop culture/mass media notions of lawyers as individual change agents. The lawyer needs to learn how to work collaboratively with the community and client group. In essence, the lawyer becomes one with the community and the client group.

B. Understanding the Lawyers’ Entry

In order to understand how community lawyering played a crucial role in the SPHS campaign, one must first consider how the lawyers came to be involved in the case. Their backgrounds and previous experiences provided the basis for the praxis of community lawyering to occur.

1. AALDEF’s Entry into the Case

While AALDEF’s entry into the South Philadelphia High School case was unique in many ways, the case was neither AALDEF’s initial foray into bias-based harassment in Philadelphia schools nor its first collaboration with community groups in Philadelphia. Over the years, attorneys from AALDEF worked with community-based organizations, such as Asian Americans United, on human trafficking, land use, and immigration cases affecting individuals and communities in Philadelphia.

For over a year before the December 3rd assaults occurred, AALDEF worked with a small group of community-based organizations and students to address anti-Asian and anti-immigrant harassment in Philadelphia public schools, including South Philadelphia High School. Since the fall of 2008, AALDEF and its allies documented numerous incidents of harassment, conducted know-your-rights trainings for students, and advocated for tangible policy changes with school and district officials. However, students’ and community groups’ efforts to ensure substantive changes to anti-harassment policies were met with empty promises by school and district officials.

The implications of AALDEF’s involvement over the years, within a community lawyering lens, can be good and bad. The positive element is the institutional commitment by a legal organization that is not based in the


106. See Lai & Leong, supra note 94, at 120 (where co-author Lai pointed out her violations of two basic tenets of community lawyering when (1) she assumed the organizer role, leading the Support Committee when a lawyer should not organize, let alone lead, a campaign or chair, and (2) she spoke to the community and press on behalf of the defendants, thus violating another rule of community lawyering: never do for people or the community what they can do for themselves).
client group’s city. Most community organizations have difficulty securing legal representation locally due to scarce legal resources, thus, AALDEF’s assistance is highly valued. The more challenging element is that within a smaller public interest law office setting, lawyers come and go. As a result, depending upon the type of training and exposure new attorneys have to the practice of community lawyering, the client group may suffer from the learning curve associated with a new lawyer. Additionally, a new lawyer requires the establishment of a new relationship and the re-building of trust and confidence.

2. **Co-Author Chen’s Entry into the Case**

This Section will discuss Chen’s entry into the case as well as the initial challenges, barriers, and difficulties she faced.

At the time of the December 3rd assaults, Chen’s engagement in Philadelphia education issues and relationships with community-based organizations was just beginning. Although AALDEF advocated against bias-based harassment in Philadelphia schools for some years, Chen’s participation was minimal. Before the student boycott, Chen visited Philadelphia only a handful of times—attending a meeting with then Regional Superintendent Silverman and leading a know-your-rights training on harassment for Chinese immigrant youth in collaboration with the Philadelphia Chinatown Development Corporation (“PCDC”). Her relationships with community-based organizations like AAU, VWSSP, and PCDC were in their fledgling stages. BPSOS, who was later to become a lead organization in the campaign, was not yet involved in anti-harassment work.

As already recounted, on Thursday, December 3rd, 2009, over a dozen Asian immigrant students were attacked and assaulted inside and outside of South Philadelphia High School. After school district officials dismissed the students’ concerns at a meeting the day after the attacks, the students began their historic boycott. Chen traveled to Philadelphia to meet with the students on the second day of the boycott. By then, there were more than fifty students participating in the boycott, meeting at an undisclosed location. When Chen arrived in Philadelphia, she met student leaders and community organizers who were already strategizing and marshalling their resources. By the end of the day, Chen had rescheduled all of her meetings so that she could come to Philadelphia daily\(^\text{107}\) to support the students for as

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\(^{107}\) By train, it would take Chen 1.5 hours one-way to get from New York City to Philadelphia. Obviously, this was not an optimal way to represent any client. Nonetheless, AALDEF did not have the luxury of choosing the conditions to which they could accept cases. For similar organizations, case acceptance would be determined under similar criteria: (1) Is the need out there and is it a significant impact case? (2) Is the need not being met locally? (3) How much inconvenience would be created for staff to meet this need? Balancing these criteria have become the norm for organizations similar to AALDEF that conduct legal outreach to communities that have a growing API population and are in need of legal assistance, but due to linguistic and/or cultural barriers, services are not available locally.
long as they decided to boycott.

Noteworthy here is the fact that a major decision that would ultimately impact the tone of the case—the boycott—had already been decided by the students and the community organizers. Due to the exigent nature of the case, Chen was not consulted on this decision. In any other traditional lawyering context, it would be unheard of for such a major decision to be made without the advice and assistance from legal counsel. This initial event set the tone of the lawyering relationship.

By virtue of the fact that such a major decision was made without Chen implied that her clients and the community organizers did not view a lawyer as being a factor at the time. As discussed, AALDEF and Chen already had a role previous to December 3rd, but this decision also called into question whether a formal attorney/client relationship existed. For her clients, have they ever hired a lawyer before? What did it mean to have a lawyer? For Chen, it might have been equally ambiguous because her previous role was related to a group, but not individual representation. This was a new territory for both, and time was needed for both sides to develop clarity towards their new roles and expectations.

3. Co-Author Leong’s Entry into the Case

Having explored the settings, difficulties, barriers, and challenges that Chen experienced initially upon her entry, this Section will discuss the participation and role of co-author Leong in the case. Leong has a background in providing legal services to the indigent Asian population in the Greater Boston area. As such, he was familiar with both the Chinese and Vietnamese communities. He also has experience in providing legal advice and representation to victims of anti-Asian violence. Lastly, he is an advocate and scholar of the community lawyering model for addressing community struggles.

More experienced, senior attorneys frequently mentor new attorneys at the law firm level, where resources are plentiful. However, within a legal services setting or a non-profit and smaller legal office such as AALDEF, it is often difficult to receive outright supervision since senior attorneys are often overwhelmed with heavier case loads and are attempting to provide supervision to a number of different younger attorneys. Since Chen knew

108. He was the Supervising Attorney of the Asian Outreach Unit at Greater Boston Legal Services from 1986 to 1990.

109. See Lai, supra note 94. In 2009, he was the legal counsel for thirteen victims of an anti-Asian bias hate incident at Tufts University and successfully negotiated an agreement where the perpetrator admitted to his actions. See Ben Gittleson, Freshman admits to racial incident with KSA members, THE TUFTS DAILY, Apr. 27, 2009, http://www.tuftsdaily.com/freshman-admits-to-racial-incident-with-ksa-members-1.1734525?firstComment=80. Aside from assisting individual victims, Leong also participated in the strategizing and prosecution of several hate crime cases at the district attorney and the attorney general level within Massachusetts.

110. See Lai, supra note 94.
Leong previously and was aware of his involvement in addressing anti-Asian violence issues, Leong was called upon to act as a mentor to Chen on this case.

As a younger attorney, this was also Chen’s initial foray and opportunity to engage the praxis of community lawyering with Leong, who practiced and wrote about the same. Leong’s involvement on this case was also a continuation of the relationship that he previously established with various members of the Philadelphia Chinatown community. During his sabbatical, he met and interviewed many of the Chinese community members about an earlier land struggle that the Philadelphia Chinese community waged against the proposed sports stadium in Chinatown. Shortly thereafter, in yet another land struggle, he provided, from a distance in Boston, legal and technical support against a proposed casino located in Philadelphia Chinatown.  

With his strong relationships with organizers in the Philadelphia Asian American community, Leong helped to stabilize, build, and enhance the trust between the community clients in this case and Chen, the formal attorney of record. One central tenet to community lawyering is that the lawyer is there for the “long haul.” It is not about the lawyer grabbing the “spotlight” when the case is “hot” in order to propel herself or himself towards a more prominent and lucrative position, never to be heard from again by the community. A community lawyer is a resource to his or her community whenever there is a need. As Leong demonstrated in this case, one can serve in this capacity even from a distance as long as there is an established level of trust between the client and lawyer.

Upon entry, Leong participated in regular telephone conferences with Chen in developing legal strategies, reviewing and editing of documents such as formal complaints, and serving as a resource for ideas on how to approach the case through a community lawyering model. At times he would participate on phone conferences involving a number of community organizers. On one occasion, he traveled to Philadelphia to conduct a basic training on civil rights/hate crime for the youth victims on the case.

C. Laying the Foundation

1. Understanding Chen’s Role as the Attorney

Although Chen was physically in Philadelphia and present during the boycott, she still struggled with what her role as a lawyer should be. The organizing and media campaigns were already underway. With the support of community organizers, the students had already issued a formal
statement announcing their intention to boycott SPHS and had spoken to local Philadelphia reporters about their experiences on December 3, 2009. Plans to march to the December 9th SRC meeting were also moving forward. Moreover, students were engrossed in getting a “real education,” engaging in a hands-on experience that required them to assess their situation and formulate demands to submit to the School District at the SRC meeting. For Chen, the question was: What should her role be as an attorney, and how could the law support the students’ campaign against harassment?

Chen was faced with the dilemma of what she thought she should do as an attorney and what she felt she should do as an ally in the campaign. Ultimately, these two positions were not mutually exclusive; however, they required a re-imagining of the attorney’s role. As an attorney, Chen felt that she should gather victim and witness statements by speaking to students individually. She also felt the urgency of speaking with students and community groups about possible legal action, such as in filing a private lawsuit or complaints with the Departments of Education or Justice. However, Chen also did not want to supplant the students’ and community organizers’ processes. Chen recognized that she could not push the process in which the students were engaged; instead she sought to understand why the December 3rd assaults had happened and how the power structures in their community led to their marginalization as Asian immigrant students. Like the community organizers, Chen also realized that this moment was an opportunity for youth empowerment—a chance for students to become leaders and change agents. Chen recognized that forcing the dialogue towards a traditional legal strategy would actually be disempowering to students and might alienate community groups invested in empowering the SPHS students. This meant that Chen must have patience. She must give the students the time and space to analyze and understand the situation so that when they discussed legal strategy as a group, she would be doing the legal analysis with the students, not for them.

By contrast, a traditional lawyer would come into the case under different circumstances. His entry is marked by his appearance, usually in a suit and armed with professional paraphernalia such as a briefcase with a laptop or legal-sized pads. After a grand introduction where he is spotlighted, the traditional lawyer would take control of the agenda and strategy of the case.

The patience exhibited by Chen is inherent and required in a community-centered representation where the voices of the students are encouraged and their input is sought. The clients are the ones setting the agenda with the lawyer acting merely as a consultant so as to not stymie

We have the power to make change.

2. Understanding Who the Decision Maker is in the Attorney-Client Relationship

Within a traditional attorney-client relationship, it is the client who usually comes into the lawyer’s office to explain the problem. The lawyer then assesses the situation, and explains relevant legal information and the legal process to take on the case. Through that process of consultation, a decision is made. Thus, within the traditional attorney-client relationship, the client decides the goal, but the attorney decides how to achieve that goal. Oftentimes, clients are not part of the decision-making and strategizing process.\textsuperscript{113} Even more common under the traditional impact litigation model is that attorneys will pre-determine the goal and then handpick suitable clients who can successfully fulfill the role of “the plaintiff.” In contrast, under the community lawyering model, the clients remain the active decision makers throughout the entire process.\textsuperscript{114} For lawyers and law students trained as conventional lawyers, they may be surprised that the client has such a power as to seemingly dictate legal strategy. Nonetheless, these lawyers must learn that legal methods involved in any case exist alongside the overall strategy of the whole case, which involve many non-legal forums of advocacy. The legal method or strategy is not stronger or weaker within this framework of multi-forum advocacy, but is simply one method out of many that may be used by the client.

From the beginning and throughout the entire SPHS Anti-Harassment Campaign, the students were the decision makers. The initial days of the boycott were essential, giving students the time and space to analyze the situation, place their experiences into a broader context and to develop solutions to improve their school. The experience of community organizers provided support for the students’ goals, but did not control or determine them. At the end of each discussion, the question always came back to: “What do the students want to do?” Sometimes these discussions took hours because the students had differing opinions and the discussion occurred across three languages.

As attorneys, we are often taught that we know what is best, especially when it comes to the law. After all, that is our area of expertise. In fact, in most cases where it is a law-centric solution, the client, a layperson, will look to the lawyer to help in the decision-making process. Clients may say, “I don’t know; you are the one trained in the law so you know better. Why don’t you decide for me?” But what happens when the legal outcome is no

\textsuperscript{113} Id. Alfieri argues that traditional lawyering silences clients’ voices. See also Richard D. Marsico, Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering? 1 CLINICAL L. REV. 639, 649–50 (1995) (agreeing with Alfieri’s point and suggests that traditional lawyering encourages dependency on lawyers.)

\textsuperscript{114} See Lai, supra note 94, at 26.
longer the only focus, or when the law becomes only a small piece of a greater whole?

In the above scenario, the client is practically reduced to a listener and active only in giving authority to the lawyer to decide. In a community lawyering setting, the lawyer must resist the temptation of this traditional power and control by giving the reins back to the client by saying, “Yes, I am trained in the law, but my job is to give you the legal information, not to choose for you. Moreover, there are others here in this case, like the community organizers, who might be in a position to offer advice on non-legal options to pursue. Why don’t we have a group discussion and then collectively decide?”

Saying something such as the above transfers power and control back to the client. It also transfers power and control back to the community organizers and the larger group as well, thereby emphasizing a democratic decision-making process. It redistributes power and control in a case that calls for multi-forum advocacy where the law is only one forum of many available. In this case, the forums included public spaces, such as political and governmental forums (city, state, and federal), the school committee, human rights commission, the press, the parents, and the other students in the school. While the lawyer might be knowledgeable in education law, civil rights, criminal law, and other aspects of the legal case, she or he might not be trained in how to address the many non-legal aspects of the case, such as: How do we deal with the press? How do we mobilize impacted students so they can join the boycott and movement? How do we inform parents that going to school might not be the best and safest thing to do? How do we employ a multi-forum strategy beyond and complementary to the legal strategy? These and many other non-legal questions can be discussed and decided by those not trained in the law.

3. Being Comfortable with the Non-Traditional Lawyering Role

From the beginning of the campaign, Chen’s role was not that of the traditional lawyer. While she did bring her lawyering abilities to the coalition, she was not “the lawyer” but rather a member of the coalition. Being a member of the coalition meant supporting the day-to-day workings of the coalition even if those tasks were not “legal.” For example, before the SRC meeting in March 2010, although Chen was not speaking at the meeting, she arrived in Philadelphia early to help prepare for the meeting—brainstorming slogans, making signs, and picking up lunch for the coalition members who were working on their statements. Occasionally Ellen

115. See id. at 27.
116. See Quigley, supra note 100, at 460. In Quigley’s interview with yet another organizer, Wade Rathke said:

I remember a top lawyer who worked with us in the early days of the ACORN organization who used to take new volunteer lawyers, and the first thing he would make them do, for as
Somekawa from AAU joked about the irony that the lawyer was taking orders and delivering lunch to everyone. Inherent in Somekawa’s joke is the notion that it is the lawyer that usually gives the orders to everyone else. One cannot understate the importance of Chen coming in as an outsider and attorney, and doing these “non-legal” things—this solidified trust and grounded the relationship between Chen and the coalition.

D. Understanding and Acknowledging Limits of the Law and the Lawyer

1. Knowing when to step up—AALDEF’s role at the December SRC

Although ensuring that the community’s voice remains at the forefront is a key principal of community lawyering, Chen also learned that sometimes the lawyer could be the best person to speak in order to further the campaign’s goals. While the students and community members were always the public face of the campaign, there were moments where the coalition decided that a lawyer’s voice could provide added weight to the discussion. For example, at the December 9th SRC meeting, advocates decided that Chen, as the representative from AALDEF, should speak last on behalf of the SPHS contingent. Speakers from SPHS included several boycotting students and adult advocates from community organizations.

When Chen was asked to be the last speaker in the lineup, she was hesitant to acquiesce because she felt that a student should be the final speaker, letting the student voice come through even at the end. However, Gym and Somekawa reasoned that, while they agreed with Chen’s concerns, as an organizing strategy, the SRC would pay attention to a lawyer and the accompanying threat of possible legal action. Chen’s statement at the end would be the finishing touch to a damning lineup of student experiences and community outcry. In particular, Gym and Somekawa believed that AALDEF’s expertise in bias-based harassment and its involvement in the Lafayette High School case would alarm SRC long as a month, was make them run the mimeograph machine and put out mailings. He would take them door to door canvassing and train them like organizers. He believed that unless lawyers for organizations understood that there is different training to work with organizations than the training they had in law school, then there would always be problems. Lawyers have to be able to understand that organizing an issue is a process where an individual problem changes and becomes a political issue.

117. Ellen Somekawa is the Executive Director of AAU and a longtime community organizer in Philadelphia, PA. She worked on campaigns such as pushing the justice system to respond to a racially motivated murder; mobilizing community opposition to the closure of a library serving an Asian and African American neighborhood; halting the proposed stadium construction that threatened to close off the only side of Chinatown not already blocked off by corporate development; and most recently, the campaign to create a public institution in Chinatown.


119. For many years, Asian immigrant students from Lafayette High School, located in Bensonhurst, Brooklyn, faced severe and brutal harassment. Following an investigation, a federal complaint filed by DOJ alleged that the high school and school district, New York City Schools, “deliberately ignored” severe and pervasive peer-on-peer harassment against Asian student and failed to
members and force them to take the students’ demands seriously.

During her statement to the SRC, Chen emphasized the prevalence of anti-Asian and anti-immigrant harassment at schools across the county and the legal responsibility of the schools to proactively address and prevent harassment. She also drew parallels between the bias-based harassment at SPHS and Lafayette High School. In denouncing the School District’s failure to address harassment, Chen said, “The civil rights violations against Asian students did not begin last Thursday. They began months ago, years ago, decades ago—for as long as the Philadelphia School District stood by and allowed students to be intimidated, harassed and assaulted because of their race or where they come from.”

As the advocates had anticipated, the commissioners listened intently to Chen’s statement. While they had sat silently during the preceding statements, the commissioners asked Chen numerous questions about the Lafayette High School case and its outcome. Chen responded that the case resulted in the DOJ filing a lawsuit against New York City schools for failing to address the harassment of Asian immigrant students. This subsequently led to a court-enforced consent decree mandating a broad array of changes to the school. As Gym and Somekawa had predicted, the commissioners, alerted to the possibility of legal action by the presence of a lawyer and the involvement of a national legal civil rights organization, were beginning to consider the possible consequences of the School District’s actions or inactions. While Chen’s initial approach was seemingly an unselfish attempt to boost the voice of the students, that route might have minimized the leverage that the students had in the case rather than maximizing the perceived threat of any potential legal action that accompanies a lawyer.

2. **Deferring to community expertise**

This instance above also provides a good example of the need for lawyers to recognize and defer to the community’s expertise. Prior to December 3rd, Chen’s work in Philadelphia was limited. She had no knowledge of the political workings of institutions in Philadelphia and

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120. The parallels between the two cases are difficult to miss. In both cases, the victims were Asian immigrant students, the harassment was extremely violent, often resulting in physical injuries, and the schools received repeated notice of the harassment but failed to take any action.

limited knowledge of the Asian American community’s political place within the city. However, community advocates, such as AAU, had decades of experience organizing and advocating on issues impacting the Asian American community in Philadelphia. In urging Chen to speak last at the SRC meeting, Gym and Somekawa were not asking “the lawyer” to speak for the community. Instead, Gym and Somekawa were making a strategic decision, based on their knowledge of Philadelphia politics, to leverage Chen’s position as the lawyer. By refusing to speak last, Chen would have been placing her judgment above theirs. In fact, to do so would have been contrary to the principles of community lawyering. It would have implied that Chen knew more about the political landscape than Gym and Somekawa, two long time, experienced community organizers, simply because she was the attorney. By agreeing to speak last, Chen implicitly acknowledged the community’s expertise in judging what would be most effective in getting the students’ message across to the SRC.

3 Acknowledging the Limits of Your Knowledge

Before Chen’s entry into the case, she had limited experience with anti-harassment and discrimination laws. While at AALDEF and from her previous experience interning for the U.S. Department of Education Office for Civil Rights (“OCR”), she became familiar with civil rights provisions such as Title VI and the Equal Protection Clause; however, she had never developed a case on her own. Although she was the lead attorney in the case, she also recognized the limits of her knowledge and sought advice from other experienced attorneys throughout the case. As a result, from the beginning moments of the case, she utilized her network and the resources at her disposal to gather more information and to obtain a better understanding of the law. For example, in exploring different legal strategies, Chen sought the advice of other education attorneys at the Education Law Center in Philadelphia, LatinoJustice, and NAACP Legal Defense Fund. Chen consulted with education and civil rights attorneys who, from their wealth of experience, could explain the difference between the DOJ complaint and the OCR complaint, and the possible impact of each. Moreover, throughout the case, Chen consulted regularly with Leong, whose community lawyering expertise helped to ground and direct Chen’s work. Chen also regularly consulted with experienced attorneys from the Education Law Center in Philadelphia, whose expertise in education law and longtime work with the Philadelphia school district provided a wealth of history and guidance.

Chen’s willingness to acknowledge the limits of her knowledge meant that she was not afraid to ask questions and that she was not afraid to admit to herself, and to the coalition, when she did not always know the answer. In doing so, Chen built trust with the coalition by acknowledging that “the lawyer” did not always have all the answers.
Part and parcel of what new attorneys go through is an initial lack of self-confidence, and the process of gaining new experiences. For lawyers who usually work in settings where supervision and training is scarce due to limited resources, it is essential to rely upon a network of more experienced attorneys. There may not always be the luxury of just relying on one person, but as Chen’s experiences suggest, it was drawing on a host of people who were willing to take time to provide background assistance for the cause. This is extremely important in the arena of community lawyering, where informal coalitions and mentoring takes place constantly and without fanfare or official recognition. However, this is only possible if the lead attorney mentee takes the first step in recognizing his or her limitations and begins to ask for help. This may not be true for all new attorneys, since there will be many who are shy or reticent to acknowledge their inexperience, or simply lack knowledge within a given area of the law. These are the attorneys that need to learn to acquire the courage to say, “I don’t know; please help me.”

Had Chen not disclosed her level of inexperience or lack of local knowledge, the community organizers would not have been able to introduce and refer her to local sources within Philadelphia. In fact, community advocates in Philadelphia played a crucial role in connecting Chen to well-respected local education attorneys who were familiar with the Philadelphia school system and well-versed in state and federal law. Chen’s willingness to admit the limits of her knowledge meant that community groups, like AAU, with a long history of education advocacy, could direct Chen to more experienced attorneys for advice openly and without undermining any trust with Chen.

E. Ensuring Process Brings Power Back to Community

1. Power of Community Voice

Media played a key role in the campaign strategy of the students and SASA. From the beginning, Chen was conscious of the importance of putting the students’ and community’s voices at the forefront of the campaign. Her role was to support the students’ efforts, not overshadow them by taking the spotlight and making “the lawyer” the spokesperson for the community. By contrast, in a conventional legal case, one would often see the attorney in front of the microphone, with the client, if present at all, usually quietly behind or to the side of the lawyer. It is precisely these moments, where the mass media is involved, that the community lawyer needs to remind himself or herself that this is not a time for self-aggrandizement but an opportunity to empower the community.\(^{122}\)

122. See Quigley, supra note 100, at 462–63. In Quigley’s interview with yet a third organizer, Barbara Major comments:

Another problem is when the lawyer comes in and just takes over and becomes the leader and
WE HAVE THE POWER TO MAKE CHANGE

Throughout the campaign, a cogent and well-organized media strategy pushed the voices of the students and the views of the community advocates to the forefront of the news and commentary. Gym’s expertise in media and journalism helped to craft the powerful media strategy that highlighted the students’ experiences and focused the media on the emerging youth leaders. Beginning with Wei Chen’s call for students to boycott SPHS on December 6, 2009, students were the established spokespersons for their cause. At the SRC meeting on December 9, 2009, students spoke directly about their experiences of December 3rd and presented their findings directly to the SRC. At subsequent press conferences and public events, students held center stage, speaking candidly about their demands and encouraging others to speak out against bias-based harassment. In feature pieces by CNN and the Associated Press, students such as Duong Nghe Ly, Bach Tông, and Wei Chen allowed the media to catch a glimpse into their lives, their hopes, and their dreams. The strength and eloquence of the students was such that even Tom Perez (the Assistant U.S. Attorney General) noted their leadership in his press statement announcing the settlement agreement between the DOJ and the School District. As a result, one of the most enduring pieces of the campaign is the voice of the student, clear and confident, speaking not only as youth but a leader of tomorrow.

Adult advocates added another layer to the community voices. Gym’s blog entries for the Philadelphia Public School Notebook complemented the students’ voices, adding depth to the discussion by providing the background and history of bias-based harassment and advocates’ efforts to address the problem. Immediately following the December 3rd assaults, Gym’s blog entries provided the public with critical analyses as the campaign unfolded, and more importantly, her blog entries provided a space for the voices and perspectives of the community advocates, undiluted by mainstream media. For example, Gym’s blog entry, following the release of the Giles Report, laid out an in-depth critique of the report. In her introduction, Gym wrote:

Yet nearly three months after the Dec. 3 violence, we have a report that – while providing some insight – mostly sets us right back where we were before: with glaring discrepancies between accounts of student victims

the spokesperson and it disempowers the community. The lawyer becomes the one everyone wants to interview and everybody wants to talk to. Then the media and the powerful don’t ever talk directly to the people any more. The community’s struggle becomes the lawyer’s struggle and not the people’s struggle.

125. See Gym, supra note 62.
and witnesses and findings that appear to absolve the District of any accountability. The investigation was based on interviews with only a fraction of student victims and witnesses and contains innuendos and reliance on rumors that serve only to distract from the main question: could the school/District have done anything differently to avoid or minimize the attacks?\footnote{Id.}

Gym’s blog entries and the students’ willingness to speak publicly provided the voice for the campaign. And more aptly, the voice of the campaign came not from the attorney but from the community and, most importantly, the students themselves. Therefore, as long as the spokesperson is not giving away any strategic secrets, he or she should be either a community organizer or community member. This process takes time because the spokesperson needs to be trained so that only the appropriate content will be communicated to the press. Yet, given the length of some community struggles it is time well spent to involve these students to speak for themselves. Bringing the students to the forefront of the struggle where they are their own spokespersons, and having them see veteran community advocates in action is fulfilling yet another mission: the birth and growth of a new generation of activists.

2. \textit{Recognizing that sometimes the goal is not “legal”}

Lawyers are often taught in law school and in litigation practice about the remedies available for clients. These can range from monetary damages and injunctive relief to, less commonly, institutional policy changes. However, community lawyering often requires lawyers to think outside of the traditional legal box and recognize that the community’s goal may not be a traditional legal remedy.\footnote{See Lai, supra note 94, at 26.} However, these goals are no less valid than a prayer for a preliminary injunction.\footnote{For a treatise exploration into the limitations of the legal system, see GERALD ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (Univ. of Chicago Press 1991).}

For example, Chen pushed for the PHRC negotiations to begin with the development of the preamble. PHRC attorneys urged the coalition to start at another place—to obtain agreements on other policy matters before tackling the touchy and non-substantive issue of the preamble. However, the coalition was adamant that before any policy discussions took place, they wanted to secure the school district’s agreement to include a preamble in the PHRC settlement agreement. As a result, Chen remained firm, arguing that the preamble was the necessary starting point because the parties could not truly address the problem without first accurately naming it. Thus any proposed resolution or reconciliation ought to be predicated on an agreement as to how and why the negotiations were necessary in the first place. The students, their parents, and the community groups were
fighting at the onset against allegations by the school district that the December 3, 2009 assaults were caused by Asian students pertaining to an incident that happened one day before and that the assaults were gang-related. To address these and other fabricated and blatantly inflammatory insinuations that placed the blame on the Asian students, SASA and the students demanded public recognition that the students were not the ones at fault. Although the coalition’s demand to start with the preamble was not a legal remedy, it was crucial in providing closure for students and SASA. Therefore, the preamble was no less important to the coalition than the school district’s agreement to provide anti-harassment trainings to students, teachers and staff.

The preamble to the PHRC settlement agreement was a tremendous victory for the community—representing an acknowledgment by the school district of the problem. Although the preamble contained no admissions of liability by the school district, its significance to the community went beyond traditional legal remedies. In the preamble, community advocates and students saw a glimpse of the justice they had been seeking for a year. The following provisions were of particular importance to community advocates and students:

WHEREAS, Respondent, having teaching and learning as its primary goals, agrees that the celebration of diversity of all differences ought to be promoted, and that intolerance and hate ought to be condemned, therefore, consistent with Policy 102 and Policy 248 of Respondent, denounces anti-Asian/anti-immigrant harassment and all forms of racial and ethnic intimidation at its schools, and agrees to affirmatively seek to stop and prevent such intimidation; and

WHEREAS, Respondent acknowledges that the reported instances of harassment of Asian immigrant students based on their race and national origin were a serious problem at South Philadelphia High School that the parties are addressing in partnership with the PHRC through this Agreement; and

WHEREAS, Respondent acknowledges that the implementation of its actions, policies and goals to prevent and address racial harassment at South Philadelphia High School at various times over the course of the past two years has failed to meet Respondent’s expectations and the expectations of the Complainants and the Asian community; and

WHEREAS, Respondent acknowledges that on December 3, 2009,

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129. Adopted in 2004, Policy 102 mandates that the “policy of the School District is to foster knowledge about and respect for those of all races, ethnic groups, social classes, genders, religions, disabilities, sexual orientations (perceived or known) and gender identities (perceived or known).” School District of Philadelphia, Multiracial-Multicultural-Gender Education, Policy 102 (adopted Aug. 18, 2004), available at http://www.phila.k12.pa.us/offices/administration/policies/102.html.

numerous Asian immigrant students were assaulted by their peers, due in part to their race and national origin, throughout the day inside and outside South Philadelphia High School and Respondent considers even one incident of harassment to be a serious occurrence that deserves an immediate and appropriate remedial response; and
WHEREAS, Respondent acknowledges that the assaults on December 3, 2009 are an example of the harassment of Asian immigrant students at South Philadelphia High School based, in part, on their race and national origin and may reflect an anti-Asian/anti-immigrant bias by some students; and
WHEREAS, Respondent acknowledges that victims of racial and ethnic harassment and intimidation ought not be punished for being victims of such intimidation and ought not be portrayed as perpetrators or gang members bearing equal guilt with their attackers.

3. Respecting Community’s Goals: the Decision to File the DOJ Complaint and Later, the PHRC Complaint

From the early days of the boycott, the group’s legal strategy hinged on filing a complaint with the DOJ and pushing the DOJ to file a lawsuit against the school district for civil rights violations. This goal was later enhanced by filing complaints with the PHRC. However, Chen and the coalition did not decide to file a complaint with the DOJ overnight. Instead, it was the result of lengthy discussions between Chen, students, and community advocates about what would be the strongest vehicle for change while recognizing the rights and privacy of the students involved. From the beginning, the coalition explored three legal options: private lawsuits by individual students or a class, an administrative complaint to OCR, or an administrative complaint to the DOJ.

The most obvious option was to file individually with the possibility of class certification. Several considerations supported filing private lawsuits. With the well-documented history of indifference by school and district officials, the lawsuits would have been filed under the plethora of civil rights laws. Private lawsuits would also ensure that control over legal strategy and decision-making would remain firmly rooted in the hands of the community. As plaintiffs, the students would necessarily be entitled to participate in all aspects of the legal process and would have the final say in any proposed settlement or decision-making.

On the other hand, private lawsuits carried the likelihood of being extremely time-consuming, with the possibility of dragging on for years. SASA raised concerns about organizational capacity to sustain a drawn-out legal battle. More importantly, adult advocates and students were concerned about privacy issues for the named plaintiffs. Parents were already expressing concern about the students’ involvement in public

demonstrations and voiced fears of retaliation by the school district. Since the students were still minors, any private lawsuits would have required the parents’ participation to sue on behalf of their child. Without parental support for the private lawsuits, the coalition would have risked alienating a crucial ally and key stakeholder. Despite the benefits of filing a private lawsuit, the coalition was unwilling to disregard the wishes of parents, recognizing that to move forward with private lawsuits without the parents’ support would have been disrespectful and ultimately disempowering and divisive to the community, which included students and their parents.\textsuperscript{132}

An administrative complaint to the OCR was another option explored by the coalition. Filed under Title VI of the Civil Rights Act of 1964,\textsuperscript{133} the coalition would have to show that the harassment created a racially hostile environment that limited students’ ability to participate and benefit from an educational program or activity.\textsuperscript{134} Unlike the more difficult burden under the Equal Protection Clause, as will be discussed later, a violation of Title VI requires a showing that the peer-on-peer harassment was sufficiently severe, persistent or pervasive to create a racially hostile environment, and that the school received notice of the harassment but failed to appropriately address the harassment.\textsuperscript{135} The coalition felt confident that they could meet this burden and successfully file a complaint. However, discussions with allies experienced in education law raised concerns about the remedy for an OCR complaint. While the OCR has the power to withhold federal funds from local educational agencies that do not comply with civil rights laws, it rarely exercises this power. Instead, the agency frequently seeks a voluntary resolution agreement by working together with noncompliant school districts or resolving complaints before the investigation is completed through an early complaint resolution process.\textsuperscript{136} This was a far cry from the public finding of wrongdoing for which the coalition was seeking. Additionally, an open investigation by the OCR under Title VI may have precluded an investigation by the DOJ.

Although the DOJ also has the authority to enforce Title VI, it may only do so after a referral from another government agency, such as the OCR.\textsuperscript{137} Thus, the DOJ would only become involved in the Title VI

\textsuperscript{132} Although some of the students were still minors and were precluded from filing suit without their parents’ consent, other students were 18 years old and could join as plaintiff without such consent.

\textsuperscript{133} Title VI of the Civil Rights Acts of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. 42 U.S.C. § 2000d. OCR enforces Title VI as it applies to state and local educational agencies. Office for Civil Rights, U.S. Department of Education, About OCR, \textit{available at} http://www2.ed.gov/about/offices/list/ocr/aboutocr.html (last viewed Jan. 16, 2012).

\textsuperscript{134} OCR GUIDANCE TO TITLE VI, FED. REG., Vol. 59, No. 47 (March 10, 1994).

\textsuperscript{135} Id.

\textsuperscript{136} OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, OCR COMPLAINT PROCESSING PROCEDURES (Jan. 16, 2012), \textit{available at} http://www2.ed.gov/about/offices/list/ocr/complaints-how.html.

\textsuperscript{137} United States Attorney Manual, Section 8-2.224, \textit{available at}
complaint if the OCR was unsuccessful in obtaining compliance. The coalition did not feel that the remedies offered by the OCR were sufficient for their goals. Including a Title VI violation in the DOJ complaint only to have it punt to the OCR would be counterproductive to their goals.

The final option was to file an administrative complaint with the Educational Opportunities Section of the Civil Rights Division of the DOJ. This option also had its concerns. DOJ was known to be notoriously opaque in its processes and the coalition was concerned about the level of community involvement in a DOJ investigation. In education cases, DOJ’s enforcement authority comes from Title IV of the Civil Rights Act of 1964. Through Title IV, DOJ may initiate litigation to address violations of the Equal Protection Clause. Because the coalition filed its complaint alleging violations of the Equal Protection Clause, the coalition needed to provide evidence of discriminatory intent, an exceptionally high burden to meet.

Despite the seemingly uphill battle to launch a successful DOJ complaint, filing a complaint with the DOJ offered a strong incentive: the possibility of a federal lawsuit filed against the school district. Inherent in the filing of a lawsuit by the DOJ would be a determination that the school district had violated the civil rights of the Asian immigrant students. The school district had taken numerous steps to deflect responsibility by minimizing the violence, blaming community groups for creating an “agenda,” while lauding the actions of the SPHS principal who had stood by and watched the violence unfurl. The refusal of the school district to acknowledge its failure in addressing the bias-based harassment indicated their unwillingness to change and take crucial steps to improve the safety of the school. A lawsuit by the DOJ for civil rights violations offered validation to students and community advocates who, for years, spoke out and asked the school district to take anti-Asian and anti-immigrant harassment seriously.


138. Based on prior experiences working with the DOJ, community advocates learned that the DOJ’s investigatory and decision-making processes were far from transparent. In past cases, community stakeholders received little or no updates from the DOJ staff and were often in the dark about their case’s status. When the DOJ did take action, community stakeholders had little or no voice in the legal strategy or remedy and, sometimes, did not learn about the DOJ’s action until it was made public.

139. Title IV of the Civil Rights Acts of 1964 prohibits discrimination on the basis race, color and/or national origin in public schools, which deprives individuals of equal protection of the laws. 42 U.S.C. § 2000c. Under Title IV, the Attorney General is authorized to pursue litigation to address discrimination and desegregation in public schools. The Equal Opportunities Section is also responsible for enforcing the Equal Educational Opportunities Act of 1974 (20 U.S.C. § 1701 et seq.).

140. The “intent doctrine,” requiring plaintiffs to show discriminatory intent in anti-discrimination suits brought under the Equal Protection Clause of the Fourteenth Amendment, was first established by the U.S. Supreme Court in Washington v. Davis, 426 U.S. 229 (1976). See also Section VIII, What Constitutes Discriminatory Conduct (Jan. 16, 2012), http://www.justice.gov/crt/grants_statutes/legal man.php#VIII.
Ultimately, some may wonder why the coalition decided to file complaints with the DOJ when they could have easily shown a violation of Title VI and filed an OCR complaint. What is important to understand is that the legal strategy was just one piece of a broader campaign rooted in organizing. The threat of a lawsuit by the DOJ, along with the accompanying publicity, was seen as a much stronger hammer than what the OCR could offer. The DOJ complaint provided the leverage that was needed for the students and community groups to push their demands. However, this action was never intended to be the focal point of the campaign. At the heart of the campaign was community organizing and youth empowerment. The process by which the coalition achieved its goals was just as important as the outcome.

The coalition did not expect a DOJ lawsuit to be the ultimate solution to the problem of bias-based harassment in Philadelphia schools. In fact, the coalition anticipated that, once the DOJ filed a lawsuit, the community would be cut off from having a place at the table during any subsequent negotiations between the DOJ and the school district. What the coalition saw in a DOJ lawsuit was the potential for greater leverage to push for fundamental changes in how the school district addressed bias-based harassment.

Admittedly, it was easy for the coalition to place their hopes on the DOJ lawsuit. Months of waiting for the DOJ to conclude its investigation occasionally led to moments of dejection among the advocates and students. However, these moments were quickly overcome as the group reflected on its goals and what a DOJ lawsuit actually signified in the context of the broader campaign. As Somekawa reminded the group, “organizing is the key.”

There is a stark difference between the deliberation of the legal strategies and the decision to boycott. At the beginning, Chen, as the lawyer, was not a factor in the students’ decision to boycott. Here, she was a team member that provided valuable legal information to the community. She provided the information in a manner that the students and community advocates could understand. Then, collectively, they proceeded to evaluate the strengths and weaknesses of each option before making a decision.

4. Filing the Supplemental PHRC Complaint

Filing the complaint with the PHRC, which came several months after the initial DOJ complaint, offered a complementary alternative to the DOJ’s process. While the DOJ had substantial clout as a federal agency, this method minimized community involvement. Moreover, under the DOJ, while the coalition may have the opportunity to offer recommendations for any solution, it was by no means a decision maker in the final resolution.

On the other hand, under the PHRC’s process, the students and community groups were parties to the complaint. The PHRC’s role was to
act as a neutral, fact-finding body or a third-party mediator. As a result, the PHRC offered community advocates and students one key advantage over the DOJ: the opportunity to be at the table as a party to the legal action. As parties to the complaint, the students and community groups had the right to full participation in the process and the power to agree to or refuse to any resolution. For example, the community groups and students exercised this right in their first meeting with the PHRC and school district by insisting that the school district agree to and draft a preamble to the PHRC settlement agreement. Although pressed by the PHRC and the school district to begin negotiating the “substantive” pieces of the settlement agreement, community advocates remained firm, and leveraged their powers to push the school district to agree to the preamble before any negotiations began.

When the DOJ and the PHRC decided to create the joint resolution process, community groups and students guardedly agreed because it meant forfeiting some of their negotiating rights as PHRC complainants. However, although community advocates and students lost ground in the PHRC process, they gained footing in the DOJ process. While the PHRC process allowed for full participation by the complainants, the DOJ’s process provided for none. As a result, although community advocates and students gave up some of their rights in the PHRC process, the joint process gave them access, albeit limited, to the joint negotiations taking place—something to which they would not have been privy if the DOJ had proceeded alone.

In the end, the community groups and students received more and less from the PHRC process. Without the PHRC process and its safeguards for complainants’ rights, it is unlikely that the DOJ would have shared drafts of the settlement agreement with the community. Also, it is likely that the swiftness of the PHRC’s process forced the DOJ into action quicker than it may have done without the competing state process. Although the community gave up much of its voice in the PHRC process to support the joint DOJ and PHRC venture, this decision ultimately rested with the community. Although the decision was a difficult one, it was theirs to make. Collectively they decided that identical federal and state settlement agreements would be a victory. The key here is that the decision-making power remained rooted with the community client group. Chen had developed enough trust with the client group and community activists to know that they were capable of making an intelligent decision. This is unlike most traditional lawyering scenarios that would have the lawyer choosing the forum for the client.

5. **Flexibility is Required to “Meet The Community Where It Is”**

Chen’s ability to work so effectively in a coalition with community groups and students was due in large part to her flexibility throughout the
For the first eight months of the campaign, the coalition operated in “crisis mode,” addressing urgent and oftentimes unexpected issues as they arose. This constant uncertainty required flexibility from both students and adults.

During the boycott, Chen recognized that the coalition had more important and urgent issues to address aside from deciding what legal steps to take. For example, the most common question facing students at the end of each day was: “Are we going to end the boycott and go back to school?” Faced with pressures from parents and threats from the school district, students struggled daily to decide whether their demands had been sufficiently met to warrant ending the boycott. For the adult advocates, they had to decide how to utilize the students’ time effectively and productively to learn about social justice and community empowerment.

For all of the advocates as well as Chen, the campaign extended beyond business hours. Chen and advocates participated in telephone conference calls late at night—sometimes these calls would even extend into the weekends and during the holidays. It was not uncommon for the advocates to begin a conference call at 10 p.m. after everyone had returned home from the boycott. It was also not uncommon for calls to be organized at the spur of the moment. For all of the advocates, including Chen, the campaign soon merged into their personal lives—occupying much of their free time. For the students and the community advocates, they were working on a twenty-four hour basis.

Because Chen did not live in Philadelphia, this degree of involvement required additional sacrifices. Chen traveled to Philadelphia every day during the boycott, and then several times a week in the following months. She was also always available by phone, taking the time to participate in strategic conference calls or just acting as a sounding board for a fellow advocate. Chen’s trips to Philadelphia established trust and confidence with students and community groups through valuable face time and in-person meetings.

While this degree of participation seems extreme, it was necessary. It was important for Chen to engage to the same degree as the other community advocates. Chen was not just the lawyer working on the case; she was a member of the coalition. As a member of the coalition, and thus a member of this community, a community lawyer must be willing to meet the community where it is—she or he must match the community’s sense of urgency and acknowledge that everyone involved must make personal sacrifices.

Chen’s position as the lawyer did not place her on a different plane from the other community advocates; she also did not get any special privileges to disengage when it was convenient for her. Even before her

\[141\] See Lai, supra note 94, at 33.
entry, community advocates were devoting hours of their free time to the campaign. Chen understood that to be an effective and respectful ally, she needed to meet the community where they were and be willing to engage in a level that corresponded to their own efforts.

F. Creating a Meaningful Process

1. Dealing with Language Access

In the legal representation of a linguistic minority client group, the need to effectively address linguistic barriers is paramount because of the fundamental importance of facilitating communication between the lawyer and the client group. The conventional notion is that having a client who does not speak English creates a tremendous barrier. When one walks into a litigation setting, one can feel the collective patience of all participants being tested since the interpretation process means, at a minimum, doubling the time. Because Chen did not speak Vietnamese or Mandarin, she needed interpreters to communicate with many of the student victims. This created several hurdles throughout the campaign, some practical and some relational. First and foremost, it was more difficult for Chen to build relationships with the students. In addition to being seen as “the attorney,” the language difference created another barrier to building trust.

On a practical level, the language barrier required Chen to be flexible. During the boycott, there were several Vietnamese-speaking organizers from V/WSSP and BPSOS. However, there was only one Mandarin-speaking organizer, Xu Lin. While Chen could interview individual Vietnamese students when the larger group met, Chen could not do this with Chinese students. As a result, Chen waited until the end of the day when Lin was available, after the students had left, to interview the Chinese students. Throughout the case, the organizers (who were not obligated or paid to interpret) tirelessly offered their language skills. To be respectful of their time and the added demands that interpreting placed on their schedules, Chen coordinated her meetings with students based on the organizers’ availabilities. Sometimes this meant that Chen did not meet with a student and his family until after business hours because the organizer needed to be in her office.

In a traditional private firm setting, interpreters would be hired by the law office and/or staffed by the law office personnel. Interpreters are expensive and do not have much flexibility in their hours, unless such is reflected in higher rates for unconventional hours. Furthermore, unlike the community volunteers offering their services, private interpreters have no personal or community stake in the outcome of the case. In contrast, here,

Chen was not only receiving linguistic assistance. The volunteers also provided their assistance as cultural interpreters that understood the nuance in the choice of the language used as well as being able to evaluate the immediate message within a framework that considers the totality of the circumstances as it relates to the struggle.  

2. **Openness to community involvement throughout the legal process**

One of the key pieces in the SPHS case was the persistent involvement by students and SASA in the legal process. While community lawyering encourages an open process in which the community stakeholders are fully engaged and have a full say in the legal strategy, this principle also requires active participation by community members. In order to facilitate this participation, Chen tried to make the legal process and documents readily accessible for students and community advocates. At the weekly SASA meetings, Chen gave updates on the complaints filed with the DOJ and the PHRC. Chen also met with students to explain the legal process of the DOJ and PHRC complaints, and to address the differences between the two agencies.

In drafting the DOJ and PHRC complaints and supporting documents, Chen sought input from SASA members. All SASA members were given an opportunity to edit and comment on the legal documents before they were submitted. After receiving everyone’s comments, Chen would synthesize the edits into a new draft. Sometimes documents, such as the DOJ complaint, required several rounds of edits to ensure that everyone was comfortable with the content and language of the filings. Occasionally, there were disagreements on the language or content; however, these disagreements were always resolved through discussion of both sides’ concerns. Chen never exercised any power as the lawyer to make a unilateral decision; all decisions were made in conjunction with community groups and students.

When the DOJ and the PHRC presented their first draft of the settlement agreement, Chen felt it was important for SASA and the students to review and, more importantly, understand the proposed settlement agreement. In order to assist SASA members and students in understanding the proposed agreement, which was replete with legalese, Chen rewrote key parts of the agreement in laymen’s terms. In doing so, Chen sought to ensure that community groups and students were able to fully participate in proposing changes to the agreement. The above demonstrates yet another element that practitioners of community lawyering have to “unlearn” because law schools educate lawyers to talk, write, and communicate via legalese. Communicating through legalese may be appropriate for a law office setting, but within a community setting it is

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crucial to communicate in plain language to facilitate the community’s understanding.\textsuperscript{144}

3. Making Sure the Process Includes the Community

Although negotiations are traditionally a back-and-forth procedure between lawyers, Chen pushed to ensure that the coalition was offered a full role throughout the DOJ and PHRC processes. Although sometimes urged by the DOJ and the PHRC to act on behalf of the coalition, Chen advocated and succeeded in ensuring the opportunity for full participation by the coalition. As a result, rather than having meetings with just the attorneys, Chen ensured that coalition members were able to attend and participate as well. Chen also ensured that community advocates and students were able to review and offer comments on every version of the settlement agreement, and that the coalition could communicate directly with the DOJ and PHRC attorneys when the need arose.

Although the DOJ and the PHRC often urged Chen to act unilaterally in the interest of expediency, Chen remained steadfast in making sure that the coalition was fully appraised and had the opportunity to participate in the process. This was more time consuming, but Chen recognized that a settlement agreement would be less meaningful if the community was disempowered in the process. A settlement agreement crafted by lawyers was the opposite of community empowerment. Here, Chen was mindful that the process was just as important as the final outcome.

4. Fostering the relationship between the DOJ and the PHRC

In working closely with the DOJ and the PHRC, one of Chen’s responsibilities was to help the coalition navigate the processes and politics embedded in these agencies and ensure that community advocates and students were able to engage, to the fullest degree, with representatives from both agencies. To that extent, while Chen remained the attorney of record and primary contact for the coalition, Chen tried to keep communication open between the coalition and the government agencies. These efforts often required Chen to balance the wants of the coalition while also realizing the limitations of the DOJ and PHRC attorneys. Rather than utilizing a single method throughout the case, Chen tried to use her judgment, in consultation with the coalition, as to how the relationships with the DOJ and the PHRC should be fostered. For example, Chen and the coalition periodically sought additional information or updates from the attorneys during the DOJ’s investigation. In some cases, Chen spoke with the attorney individually, raising the questions and concerns regarding the coalition. In other cases, Chen and the coalition felt that the coalition, as a whole, needed to speak with the DOJ attorney—even if it was just to hear

\textsuperscript{144} See id. at 25.
from her personally that the investigation was still ongoing. In these cases, Chen would organize a conference call in which coalition members could participate and raise their concerns directly with the DOJ attorneys.

There were several benefits to utilizing this flexible approach. First, it helped to build a trusting relationship with the DOJ attorneys. The DOJ attorneys were not overwhelmed by constant communication from the coalition, and, as a result, were probably more apt to listen closely to the coalition’s concerns when they were raised. Second, and more importantly, it gave community groups direct access to the DOJ attorneys. Under more traditional lawyering models, Chen, as the attorney, would have been the sole contact for the DOJ attorneys and would have decided what information to share with the DOJ. Here, community groups were able to speak directly with and question the DOJ attorneys, share their concerns and fears about the ongoing investigation, and stress the importance of the DOJ’s investigation. This helped community groups build trust directly with the DOJ attorneys and also helped them to better understand the constraints under which the DOJ attorneys were working with. In the end, this balanced approach allowed the DOJ attorneys to also understand that there were real people behind the coalition as opposed to seeing only one voice represent many.

G. Keeping Community Empowerment the Focus

At the heart of community lawyering is the goal of community empowerment. Community lawyering and organizing share this principle at their core. Community empowerment was a focal point throughout the SPHS campaign. Organizers were acutely aware of this and constantly reflected on whether the actions and decisions taken would empower or disempower the community and its students. However, as noted above, empowerment often comes, not through a lengthy court decision, but through an open process and collective decision-making. Nevertheless, this focus on community empowerment did not come without challenges.

1. Youth Empowerment

As discussed above, the true driving force behind the SPHS campaign were the students themselves. From the beginning of the campaign, students organized meetings and rallies, spoke publicly about their experiences and demands, and led the decision-making process. Students formed their own organization, Asian Student Association of Philadelphia (ASAP). While adult community organizers worked closely with students throughout the campaign, the students were the ultimate decision makers. As a result, formerly disempowered, voiceless students became leaders of their peers and of their communities.

While students engaged in the nuts and bolts of community organizing, they also began to think critically about social justice, systems
of power, and the community’s ability to push for change. They connected with non-Asian youth allies, such as the Philadelphia Students Union, to become a part of a broader, cross-racial youth empowerment movement in Philadelphia. By the time the DOJ and PHRC settlement agreements were finalized, the students had become articulate and thoughtful leaders. For example, when Chen informed students that she was leaving AALDEF to move to California, one student reflected that “now we will have to build trust with someone else.”\(^{145}\) The depth of understanding underlying this statement illustrated to Chen that the students had grown to become strong, thoughtful leaders.

Throughout the campaign, community advocates struggled with how to empower Asian immigrant youth without incriminating African American youth. Early on, the public latched onto, and the media highlighted the case as an example of “Black on Asian violence.” To counter this story arc popularized by mainstream media and conservatives,\(^{146}\) community organizations walked a fine line—advocating for the rights of Asian students while not criminalizing African American youth. As evidenced in the first discussion with youth about the boycott, community groups, like AAU, were acutely aware of the racial dynamics between Asian victims and African American perpetrators, that it would be a major issue in the case. They were proactive in seeking to ensure that the framework moving forward accurately placed the fault with the school district, and that it did not further inflame racial tensions. As a result, talking points among the students and community advocates focused on highlighting the failure of the school district to respond appropriately. For example, protest signs from the December 9 march to the SRC aptly stated, “It’s not a question of who beat whom, but who let it happen” and “Grown-ups let us down.”

2. Parent Empowerment

While youth empowerment remained the focus for adult organizers, this goal often came into direct conflict with parents and their traditional education values, particularly during the boycott. Many parents were afraid of retaliation by the school district or that their children would fall behind by missing school. Many of these Asian parents also believed in not “rocking the boat” and did not see any benefit to boycotting the school. While students and community organizers believed that leadership development and social justice curriculum were valuable knowledge, this curriculum fell well outside the boundaries of traditional education.

\(^{145}\) Conversation with Asian Student Association of Philadelphia member in Philadelphia, PA (Dec. 15, 2010).

In some ways, although the campaign empowered youth, it disempowered parents. Although some parents objected, many students still participated in the boycott. Some students blatantly disobeyed their parents by participating without their parents’ knowledge. While this deception was not condoned by the adult organizers, it demonstrated a troubling disconnect, highlighting the relationship gap between the campaign and the parents.

Parental empowerment and involvement remained a challenge throughout the duration of the campaign. Although Chen and the organizers were acutely aware that parents were an integral but missing piece of the campaign, they were never able to engage parents to the same degree as the students. Chen and the organizers made efforts to inform parents about the campaign, holding informational meetings in community spaces and sending translated updates with students. Some of the organizers spent hours calling and speaking with parents throughout the campaign. However, while some parents were supportive of their children’s efforts to change the school, a broader parent-led movement never materialized.

Part of the challenge stemmed from the fact that the coalition did not focus on parents until later in the process. From the boycott through the first eight months of the campaign, Chen and the organizers were in crisis mode, responding to new issues more often than proactively implementing plans. Although parental engagement was raised in the first few days of the campaign, it quickly fell to the bottom of the priority list as new crises emerged. Consequently, by the time Chen and organizers were able to prioritize parental engagement, the campaign was in full swing and the parents had already been relegated to the sidelines as mere observers of their childrens’ campaign.

3. **Overall Community Empowerment**

While the campaign made tremendous strides in youth empowerment and faced challenges with parent empowerment, the campaign led to several key gains towards community empowerment. First, the campaign bridged ethnic communities and took on a pan-Asian focus. Prior to the boycott, virtually all of the advocacy and youth organizing to address harassment at SPHS focused primarily on Chinese immigrant students. PCDC hosted a teen club and worked closely with many Chinese students at SPHS. Likewise, the October 2008 activities involved primarily Chinese immigrant students. As a result, although Asian students of many different ethnicities were affected, previous efforts to address harassment issues were primarily Chinese-centric and Chinese-led.

The December 3rd assaults and subsequent campaign shifted the issue to a pan-Asian focus. Although Vietnamese and Chinese students were assaulted on December 3, the initial organizing involved primarily Chinese students. However, organizers from AAU recognized early on that for the
boycott to be successful, Chinese and Vietnamese students would have to participate. Initial outreach by AAU to the Vietnamese community was met with some hesitancy because the issue, particularly with the boycott located in Chinatown, was seen as Chinese-centric. Nevertheless, rather than working within their own ethnic communities, the Chinese and Vietnamese students joined forces. Vietnamese and non-Asian community organizations began to work closely with Chinatown-based organizations to support the students’ goals. These joint efforts required flexibility and patience from all. For example, language differences between students were bridged by multi-lingual interpretation into English, Mandarin, and Vietnamese. Organizations immediately found themselves working closely with and needing to trust new allies because this campaign represented a completely new collaboration. Here, students and adults recognized their power in numbers and the importance of working together.

Second, the campaign strengthened relationships between the youth, community-organizations and the community as a whole. For over a year, youth and adults worked closely in a concerted organizing campaign. Although adults provided support and guidance, the ideas and decisions of the youth were respected by the adults. Adults worked to empower the youth, and the youth built trust with community-based organizations. Moreover, the campaign led to the creation of a strong relationship between SASA and ASAP. This coalition became the grounding point for adults and youth alike, a place where allies could be found and where relationships were solidly built on trust and respect. The DOJ and PHRC settlement agreements did not mean the end of the coalition or its efforts. Rather, the campaign was the catalyst for the formation of the coalition whose efforts to achieve educational equity would continue even after the settlements went into effect.

Third, the campaign sought to broaden the benefits of its victory to include non-Asian groups as well. Recognizing that bias-based harassment does not affect only Asian students, the coalition tried to use the DOJ agreement to raise awareness about how bias-based harassment impacts many different students including Sikh, Muslim, LGBT, and African immigrant students among others. Looking outside of the Asian American community, the coalition explored how the victory could benefit others by broadening its impact to other schools and raising more awareness about harassment and the schools’ responsibilities.


In order to push forward the campaign and to bring more attention to the DOJ complaint, community advocates sought to utilize all resources, local and national, that could provide assistance on the case. During this arduous ordeal we reached out to our nationally elected politicians of Asian
Pacific American descent. By doing so, advocates hoped that national APA-elected officials would publicize the need to address bias-based harassment in public schools. However, we found that rather than helping to empower the youth and community, this process was, in a way, disempowering to the community.

The conventional notion is that with elected officials in the U.S. Congress, various special interest groups would be served. For Asian Americans, it is no different. Many Asian American politicians conduct campaign fundraising events outside of their geographically represented area and contributors donate from all over the country with the assumption that Asian American elected officials will then be able to further our collective agenda. This model of empowerment is a top-down approach where D.C. serves to speak for the local grassroots issues and concerns.

When members of our team contacted the head member of one Asian American congressional organization, we believed that this strategy would be useful in securing the rights of the students. At minimum we expected these politicians to be able to make a few telephone calls to various government officials to alert them that the Asian American community is watching. Yet this politician stalled. He even suggested that he could not do anything for us because he was not formally representing the district where the students resided, and that it would infringe upon the powers of the elected officials within Philadelphia and Pennsylvania. So despite the fact that this Asian American elected representative had a background in education prior to his election, and purported on his official website that one agenda task of his was to further the public education interest of Asian American students, he failed to publicly act on behalf of our students.

In another instance, advocates secured the opportunity to brief members of the CAPAC on the issue of bias-based harassment. Members of SASA and ASAP traveled to Washington D.C. to speak about the SPHS Anti-Harassment Campaign on Capitol Hill. However, to their disappointment, the briefing was poorly attended and had little engagement from the audience. In contrast, when students and advocates presented in Boston a few weeks earlier, the audience was filled with local community members, advocates, and students who asked numerous questions and were extremely engaged, excited and supportive of the SPHS campaign. Members from SASA and ASAP left Washington feeling dejected and under the impression that the bias-based harassment of students was of little concern to APA elected officials. The impression on the student speaker was striking; while he felt supported and empowered by the local APA community in Boston, he felt disappointed by the national APA elected officials.

This briefing, held on July 26, 2010, also included the Sikh Coalition, longtime advocates against bias-based harassment.
We never knew why our national Asian American elected officials never came to our assistance or why they showed such little support for the SPHS students. Perhaps they did not want to offend their colleagues or they simply shied away from a controversial case. Yet, if they had taken the time to examine our overall strategy, which was not to position and inflame this case as a racial conflict, they would have better understood our approach. Perhaps even bringing the African American congressional members in to initiate a regional or national dialogue on black/Asian racial relations would have improved this strategy. Although this case impacted the lives of Asian American youth, their calls for assistance were largely ignored. If elected officials from our own communities do not have the courage to stand up during controversies to represent the interest of Asian Americans, when will they? This was certainly a lesson that we learned.

CONCLUSION

From the beginning of this Article we stressed the importance of the process in community lawyering. For the co-authors, it is the process that defines community lawyering. In essence, a good community lawyer is one that is constantly in the background but not invisible. She or he is a supporting cast member to the production, one that is not more important but just as important as the others. There is no more appropriate and fitting way to conclude this case study of the community lawyer’s role than to end with two public statements issued at the time of the DOJ agreement. Juxtaposed against the dominant popular culture and traditional belief that the lawyer will “save the day,” the below statements are not made by lawyers. Yet, the foundation and supporting work that the lawyers did behind each statement is inherent. These two statements below demonstrate the empowerment process from the beginning to the “end” of this case. This is the power of community lawyering at work.

On December 15, 2010, following the ratification of the DOJ and PHRC settlement agreement by the SRC, in a public statement, the students reminded the School District and the nation:

We are here today to emphasize that this agreement did not come into existence by itself. We the students and the community advocates went to the Dept. of Justice and PHRC in order to ensure that the changes at our school lasted for students beyond just us. We did not want money or lawsuits. What we wanted was a clear statement that what had been happening at our school was wrong in the eyes of the federal government. This action shows that the U.S., our country, believes that every child has a right to a safe school, which is protected by the U.S. Constitution and upheld by the courts.

As much as this past year was hard on all of us, there were times when we felt lifted up by people all across the city and this nation. People who sent us letters of support, community allies who worked with us and taught us how to use our voices and build new relationships, other students across
the city who supported us. Today we are no longer the students of the South Philadelphia High School boycott. We are the Asian Student Association of Philadelphia.

We will always remember December 3, but we refuse to be defined by that day. A year ago we came to you as victims. Today we come to you as youth activists, as organizers and leaders who have shown the power to make change.

On behalf of SASA, Helen Gym commented:

These agreements demonstrate that the violence at South Philadelphia High School was racial. It wasn’t about gangs or retaliation, violent homes or adolescent differences. The focus of our complaint was never about problematic young people but about a School District that had failed to do everything in its power to ensure a safe and welcoming environment for learning. As appalling as the December attacks on Asian immigrant youth were, it was the egregious conduct of school and district officials in the months leading up to that day and the months since that warranted federal intervention. We celebrate the lasting gains of these agreements; we hope also that they are welcomed with a measure of abiding humility and deep sorrow for the lack of action which required it.

Today, a year after a historic boycott brought attention to this issue, we look back on an incredible year of transformation, on a level that is rare in situations such as this. Above all, we are inspired by the courage and faith of the Asian immigrant youth of South Philadelphia High School. It is their voices that have transformed a school and city, inspired other students, and created a partnership that lives up to the best of this nation’s ideals.  
