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In the Margins: How Mainstream Legal Advocacy Strategies Fail to Fully Assist Asian American, Native Hawaiian, and Pacific Islander LGBT Youth

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In the Margins: How Mainstream Legal Advocacy Strategies Fail to Fully Assist Asian American, Native Hawaiian, and Pacific Islander LGBT Youth

Roel Mangiliman[†] and Myron Dean Quon^{††}

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INTRODUCTION: CHARLENE NGUON

In many ways, Charlene Nguon was the ideal student. She received straight-A's, the praise of her teachers, and was an active participant in extracurricular activities. At the start of her junior year of high school, Charlene had two main goals: first, to maintain her high grades and second, to join the National Honor Society. Simply put, Charlene planned for college and was well on her way.

However, just a few months removed, her plans fell apart at the seams. Although Charlene was indeed invited to join NHS, her invitation was subsequently revoked during that same academic year. During this time, Charlene found herself at the center of a school controversy, which eventually led to her school suspension and forced transfer to another high school. This drastic change of fortunes completely altered Charlene's outlook on life; the once-overachieving high school student became depressed and even contemplated suicide.¹

This downward spiral of events began in 2005 when Santiago High School suspended sixteen-year-old Charlene for the on-campus display of affection² towards her girlfriend, Trang Nguyen.³ According to Charlene, she was unfairly targeted for punishment based on her sexual orientation. Although she was formally suspended for showing affection towards her girlfriend, her gender-conforming classmates were frequently allowed to hold hands and kiss without any type of formal or informal reprimand. Charlene described such acts as commonplace behavior at her high school. Her peers further suggested that they did not have any problem with her and Trang's affection. Nevertheless, school administrators repeatedly singled them out for punishment.

Santiago High School's principal, John Wolf, was authorized by school policy to disclose the reasons behind Charlene's suspension to her parents.⁴ In a meeting with Charlene's mother, Wolf shared that Charlene was suspended for "kissing another girl," thus revealing Charlene's sexual orientation without her notice or consent. This obtrusive revelation caused Charlene great anguish and strained her relationship with her family. Immediately thereafter, she became depressed and suicidal, which contributed to her subsequent poor academic performance. Because of her

1. See generally *Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1199 (C.D. Cal. 2007); ACLU LGBT Project, *Change Your School: Charlene Nguon*, YOUTUBE (Mar. 6, 2008), <http://www.youtube.com/watch?v=Ohgwu-8AIVs>.

2. *Nguon*, 517 F. Supp. 2d at 1183-85 (explaining Charlene was disciplined for occasionally French kissing, making out with, and groping another student).

3. *Nguon v. Wolf - Case Profile*, ACLU (Sept. 25, 2007), <http://www.aclu.org/lgbt-rights/nguon-v-wolf-case-profile>.

4. *Nguon*, 517 F. Supp. 2d at 1197 ("Each school district is authorized to establish a policy that permits school officials to conduct a meeting with the parent or guardian of a suspended pupil to discuss the causes, the duration, the school policy involved, and other matters pertinent to the suspension") (emphasis added).

drop in grades, Charlene's offer for admission to the University of California, Santa Barbara was withdrawn.⁵

Represented by the American Civil Liberties Union (ACLU), Charlene later sued the school district based on claims of sexual orientation discrimination, and for violating her right to privacy regarding her sexual orientation. The pleas were not well taken, as the court found for the school on all claims.⁶ With respect to the allegations of prohibited discrimination, the trial court ruled that there was inconclusive evidence to establish that the administrators singled out Charlene and Trang among non-lesbian couples.⁷ As to the privacy claim, the court held that the school justifiably disclosed her orientation, due to the overriding state interest of providing Charlene's parents with a "meaningful opportunity to discuss and challenge the allegations of misconduct."⁸ Ultimately, Charlene was left without any legal recourse or financial compensation.⁹ What remained, however, were the derailment of Charlene's college-track plans and the fresh cuts on her arms—self-inflicted wounds from her battle with depression and suicide.¹⁰

Charlene's tragic experience provides a compelling case study for broader sociological and legal comment. Several studies have framed depression and suicide as endemic to Charlene's community.¹¹ As a self-identified lesbian, Cambodian-American, and teenager, Charlene is one of countless Asian American, Native Hawaiian, and Pacific Islander lesbian, gay, bisexual, or transgender (APA LGBT)¹² youth who have struggled or currently struggle with mental health and well-being issues. According to a study by the National Center for Health Statistics, Asian American girls ages fifteen to twenty-four commit suicide at a rate higher than any other racial group.¹³ Another study reports that lesbian, gay, or bisexual youth are two to three times more likely to commit suicide than their non-gay peers.¹⁴

5. *Id.* at 1180.

6. *Id.* at 1198.

7. *Id.* at 1187–88.

8. *Id.* at 1194.

9. *See id.* at 1198 (finding for the defendant on all claims).

10. *Id.* at 1199.

11. *See, e.g.,* JEI AFRICA & MAJOSE CARRASCO, NAT'L ALLIANCE FOR MENTAL ILLNESS, ASIAN-AMERICAN AND PACIFIC ISLANDER MENTAL HEALTH REPORT FROM A NAMI LISTENING SESSION (Feb. 2011), available at http://www.nami.org/Template.cfm?Section=Multicultural_Support1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=115281; NICO SIFRA QUINTANA ET AL., ON THE STREETS: THE FEDERAL RESPONSE TO GAY AND TRANSGENDER HOMELESS YOUTH (2010), available at <http://www.americanprogress.org/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>; *Statistics*, YOUTH PRIDE, INC., <http://www.youthprideri.org/Resources/Statistics/tabid/227/Default.aspx> (last visited Oct. 11, 2011).

12. For the purposes of this Article, APA stands for "Asian Pacific American." This term describes the social group that encompasses Asian American, Native Hawaiian, and Pacific Islander racial and ethnic groups. LGBT stands for lesbian, gay, bisexual, and transgender.

13. AFRICA & CARRASCO, *supra* note 11, at 6.

14. *Statistics*, *supra* note 11 (citing Rotheram study). Also consider how LGBT youth are more at risk for suicide when homeless: "Sixty-two percent of gay and transgender homeless youth attempt suicide compared to 29 percent of their heterosexual homeless peers." QUINTANA ET AL., *supra* note 11.

Taken together, these reports suggest an alarming pattern. While these studies do not directly collect data or provide analysis concerning APA LGBT youth in particular (devoid of APA male youth studies), their limited findings concerning ethnicity, sexual orientation, and their disparate impact on certain individuals convey amplified suicidal-risk factors for those living at this intersection.¹⁵

Despite the potential vulnerabilities of APA LGBT youth, the failings of the judicial system to assist an APA LGBT youth like Charlene is not an isolated incident.¹⁶ While Charlene's case was tried in court, many APA LGBT youth are not able to get that far with the judicial system. Through examining empirical data, as well as legal scholarship, it appears that neither substantive law nor mainstream legal strategies fully respond to the legal needs of many APA LGBT youth. This inadequacy is clearly seen through the lens of Charlene's unsuccessful lawsuit. More interestingly, this shortfall is further evidenced by the absolute lack of legal scholarship devoted to analyzing the needs of the APA LGBT community.¹⁷ A critical analysis will reveal that APA LGBT youth have a profoundly tenuous relationship with the law.¹⁸

This Article will discuss and critique this tenuous relationship between the law and APA LGBT youth. APA LGBT youth stand as a compelling example of a vulnerable community—one that faces exposure to racism, homophobia, and mental health battles—that, for unknown reasons,¹⁹ are markedly disassociated from using the courts. This Article traces this estrangement to a slew of practical barriers that make legal relief improbable for an APA LGBT. Such obstacles range from the tremendous difficulty in contacting a lawyer, to an inadequate body of substantive legal protection. As a result, unless steps are taken to address this problem, APA

Further, "given that between 1.6 million and 2 million youth experience homelessness each year, and gay and transgender youth make up about 20 percent of these youths, it is estimated that there are about 320,000 to 400,000 gay and transgender youth who experience homelessness at some point each year." *Id.* at 6.

15. For further discussion, see Section II.B, *infra*.

16. While this Article does not assert that courts must redress emotional strife, the tremendous vulnerabilities suggested by suicide statistics pertaining to APA LGBT youth, as well as other sources of hardship such as racism and homophobia, should urge lawyers to reflect on their relationship with this community.

17. A thorough literature review seeking research on the intersection of APA and LGBT issues reveals no such work. Such legal scholarship is critical to ensuring that mainstream jurisprudence can be a tool for advancing APA LGBT interests.

18. While a tenuous relationship might apply to the APA LGBT community at large, this Article focuses more narrowly on APA LGBT youth. This community has unique responsibilities and vulnerabilities during their adolescent age including duties to family and complex identity development (both discussed in Part IV, *infra*), which make their use of the law especially unlikely.

19. Given the dearth of available information on APA LGBT youth, this Article is the first legal publication to explore the relationship of APA LGBT youth community and the law, and attempts to account for why no legal scholarship or popular legal decisions have been associated with this community.

LGBT youth community will remain largely excluded from the possibility of legal justice.

Asian American, Native Hawaiian, and Pacific Islander lesbian, gay, bisexual, and transgender youth, herein shortened to APA LGBT youth, are a group virtually absent in jurisprudential archives and sociological research. Therefore, to begin discussing this community, Part II of this Article will synthesize data to provide a portrait of the group, noting baseline demographics and issues surrounding ethnicity, gender, and sexual orientation. Part III discusses the legal gains made by the APA and LGBT communities, despite the hardships they face, in areas such as hate crimes, language assistance, and quests for LGBT friendly spaces in public schools. Part IV will carefully analyze and critique these very gains by drawing attention to the overlooked and precarious ways in which APA LGBT youth are practically deterred from contacting a lawyer, as well as attaining any real chance of substantive legal relief true to their intersectional experience. Having articulated the need for lawyers to take a more imaginative approach, Part V looks at “community lawyering,”²⁰ an alternative to traditional lawyering, that provides a way for lawyers to improve services to APA LGBT youth. To illustrate the advantages of this alternate approach, Part VI demonstrates how community lawyering could have potentially improved Charlene’s legal advocacy and, more importantly, her welfare overall.

I. WHO ARE ASIAN AMERICAN, NATIVE HAWAIIAN, AND PACIFIC ISLANDER LESBIAN GAY BISEXUAL TRANSGENDER YOUTH?

To understand the legal inadequacies pertaining to APA LGBT youth, it is first necessary to discuss the demographic and political contexts informing this relationship. However, traditional archives yield little information²¹—documentation of this community arises from a few surveys, sparse anecdotes, and single-identity reports analyzing sexual orientation or race, but rarely both. Therefore, the following demographics are merely offered to claim that the APA LGBT youth community is a vastly diverse community found across the nation with established encounters with racism and homophobia.²²

20. See Part V, *infra*.

21. For example, Eric Wat has written one of the few books concerning gay and bisexual Asian men. See ERIC WAT, *THE MAKING OF A GAY ASIAN COMMUNITY: AN ORAL HISTORY OF PRE-AIDS LOS ANGELES* (2002). A dearth in legal scholarship is apparent as well, and is articulated on a broader note related to the intersection of race and ethnicity. See Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of “Sexual Orientation”*, 48 HASTINGS L.J. 1293, 1311–13 (1997) (stating that a so-called “second-stage” of sexual orientation antidiscrimination discourse incorporating experiences with race and ethnicity is “conspicuously missing.”).

22. Overall, the limited discussion in this Part demonstrates an overarching point—that scholars, service providers, and activists must provide greater visibility of APA LGBT youth.

A. Demographics

There are approximately 136,750 APA LGBT youth in the United States,²³ representing multiple identities across ethnicity, gender, class, religion, immigration status, and sexual orientation.²⁴ Within these identities is greater diversity. For instance, the term Asian American, Native Hawaiian, and Pacific Islander (APA) encompasses a vast variety of countries of origin.²⁵ APAs originate from more than fifty countries, including South Asian countries such as India, Bangladesh, Pakistan, and Sri Lanka; Southeast Asian countries such as Vietnam, Thailand, Laos, and Cambodia; East Asian countries such as China, Japan, and Korea; and Pacific Island countries such as the Philippines and Indonesia; as well as indigenous people of jurisdictions such as American Samoa, Guam, and Micronesia.²⁶ Some APAs do not even necessarily have one specific country of origin, such as Hmong and Bhutanese refugees.²⁷ Of these national and ethnic origins, Chinese descent is the largest represented in the United States with 3.62 million, followed by Filipinos at 3.09 million, Asian Indians at 2.73 million, and Vietnamese, Koreans, and Japanese each at under two million.²⁸ In total, there are 15.5 million APAs living in the United States, equaling five percent of Americans.²⁹ Among this five percent, reasons for immigration to the United States can range from family-based immigration³⁰ to refugees/asylees.³¹ Further, APAs differ

23. Given the limited, and largely aggregated, demographic data, certain assumptions must be made in order to arrive at this estimation. There are approximately 2,954,000 youth of APA descent. U.S. CENSUS BUREAU, CHARACTERISTICS OF CHILDREN UNDER 18 AND THEIR DESIGNATED PARENTS: 2009 (2009), available at <http://www.census.gov/hhes/socdemo/children/data/sipp/well2009/tables.html>. About five percent of any community is LGBT. ANJANI CHANDRA, ET AL., SEXUAL BEHAVIOR, SEXUAL ATTRACTION, AND SEXUAL IDENTITY IN THE UNITED STATES: DATA FROM THE 2006–2008 NATIONAL SURVEY OF FAMILY GROWTH 29–30 (2011), available at <http://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf>. Therefore, assuming that APA, LGBT, and youth populations are equally represented across each demographic, it appears that there may be 136,7500 APA LGBT youth whose experiences form the subject of this analysis.

24. What follows is not an exhaustive empirical analysis of APA LGBT youth—gender, ability, income, religion, geographic origin, and other personal characteristics influence identity formation and development, and elicit analysis well beyond the scope of this article. Rather, what follows is an attempt to begin this analysis by characterizing one overlooked and heterogeneous minority at the nexus of sexual orientation and race.

25. KAREN R. HUMES, ET AL., U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010 3 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

26. *Id.*

27. SUCHEN CHAN, HMONG MEANS FREE: LIFE IN LAOS AND AMERICA 1–2 (1994) (ethnic Hmong as nomads and not being accepted by China's government); MICHAEL HUTT, UNBECOMING CITIZENS: CULTURE, NATIONHOOD, AND THE FLIGHT OF REFUGEES FROM BHUTAN, 6–7 (2003) (Bhutanese refugees rejected by Nepal and Bhutan).

28. U.S. CENSUS BUREAU, ASIAN AMERICAN/PACIFIC HERITAGE MONTH: MAY 2010 (2010), available at <http://www.census.gov/newsroom/releases/pdf/cb10-ff07.pdf>.

29. *Id.*

30. Victor C. Romero, *Asians, Gay Marriage, and Immigration: Family Unification at a Crossroads*, 26 IMMIGR. & NAT'LITY L. REV. 3 (2005).

31. U.S. DEPT. OF COMMERCE, WE THE AMERICANS: ASIANS 3–4 (1993), available at

vastly in linguistic and social experiences; while some are wholly acculturated, others are socially and linguistically isolated from the English-speaking majority.³² APAs as a varied group also demonstrate an extreme bimodal distribution of economic income.³³ Educational achievement is also highly varied with dropout rates highest among Southeast Asian Americans.³⁴

Self-identified terms among the APA LGBT community represent complex dimensions of sexual identity. In a nationwide survey, a majority identified as “gay” or “lesbian,” while a significant percentage reported to be “queer” and “bisexual,” and a small minority listed “downe” and “family.”³⁵ Many of these labels represent the intersection of race, sexual orientation, and political identity. For example, the term “Downe,” which typically refers to an Asian individual whose same-sex attraction is known to few others, describes one’s race as well as one’s sexual orientation.³⁶ Additionally, the term “Queer” signifies an umbrella term for non-heterosexual orientation, but also a political statement to rebuke its pejorative use in past history.³⁷ For younger generations, sexual orientation may escape an identity altogether. Some feel that labeling one’s romantic, emotional, and sexual interests is restrictive to an individual’s process of self-determination and autonomy.³⁸

With respect to immigration patterns, APAs are increasingly migrating and settling outside traditional ports of entry. For example, while APAs continue to concentrate in metropolitan areas such as San Francisco, New

<http://www.census.gov/apsd/wepeople/we-3.pdf>.

32. In California: San Francisco, Los Angeles, and Orange Counties all reported linguistic isolation statistics of over thirty percent. See ASIAN PAC. AM. LEGAL CTR., THE DIVERSE FACE OF ASIANS AND PACIFIC ISLANDERS IN CALIFORNIA: ASIAN & PACIFIC ISLANDER DEMOGRAPHIC PROFILE 11 (2005), available at http://apalc.org/system/files/ENTERED_DiverseFace_CA_2005.pdf. In New York, as high as forty-nine percent of APA children are linguistically isolated. ASIAN AM. FED’N, WORKING BUT POOR: ASIAN AMERICAN POVERTY IN NEW YORK CITY 21 (2008), available at <http://www.aafny.org/doc/WorkingButPoor.pdf>.

33. Median household income differed greatly among Asian group. For example, the median income for Asian Indians in 2008 was \$90,528; in contrast this figure was \$55,667 for Vietnamese-Americans. See U.S. CENSUS BUREAU, *supra* note 28.

34. “40% of Hmong, 38% of Laotian, and 35% of Cambodian populations do not complete high school.” ALICE HOM, ASIAN AMS./PAC. ISLANDERS IN PHILANTHROPY, MISSED OPPORTUNITIES: HOW ORGANIZED PHILANTHROPY CAN HELP MEET THE NEEDS OF LGBTQ ASIAN AMERICAN, SOUTH ASIAN, SOUTHEAST ASIAN, AND PACIFIC ISLANDER COMMUNITIES 9 (2012), available at http://aapip.org/news/wp-content/uploads/2012/01/AAPIP-MissdOpp_FINAL.pdf

35. ALIAN DANG & CABRINI VIANNEY, NAT’L GAY AND LESBIAN TASK FORCE POLICY INST., LIVING IN THE MARGINS: A NATIONAL SURVEY OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASIAN AND PACIFIC ISLANDER AMERICANS 30 (2007), available at http://www.thetaskforce.org/downloads/reports/reports/api_living_in_margins_r.pdf.

36. See *Definition #1 of Downe*, URBAN DICTIONARY (Feb. 14, 2008), <http://www.urbandictionary.com/define.php?term=downe>.

37. See *Definition #3 of Queer*, URBAN DICTIONARY (April 1, 2005), <http://www.urbandictionary.com/define.php?term=queer>.

38. RITCH C. SAVIN-WILLIAMS, THE NEW GAY TEENAGER 208–11 (2005).

York City, and Los Angeles,³⁹ less dense and less diverse states like Nevada, Georgia, and Arizona⁴⁰ are experiencing the fastest rates of APA growth. In regional immigration settlements, APAs will also settle in the more suburban municipalities, such as Chicago's Mount Prospect and Arlington Heights.⁴¹

B. Racism and Homophobia

According to Robert Chang, the Asian American community is subjected to "nativistic racism," or racial nationalism, the perception that Asian Americans are foreign to America and therefore are not entitled to the rights of American land and citizenship.⁴² On school campuses, such nativistic racism tends to emerge through three particular racial stereotypes, producing tensions and violence among mixed-race classmates: (1) the "model minority myth,"⁴³ which fosters resentment among non-APA students who perceive their APA counterparts to be more academically successful and are therefore treated more favorably by teachers;⁴⁴ (2) the "silent minority" stereotype, which fuels student harassment of APAs, who are perceived as docile and quiet targets;⁴⁵ and (3) the "perpetual foreigner," which typecasts APA students, even those American-born, as exotic and deserving of ridicule for bearing accents, slanted eyes, and other markers of "outsider" difference.⁴⁶ Lastly, following the attacks on the World Trade Center on September 11, 2001, anti-Muslim sentiment has worked to pin many South Asian, Arab, and other perceived Muslim students as terrorist and disavowed Americans.⁴⁷

39. JESSICA S. BARNES & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, THE ASIAN POPULATION: 2000 7 (2002), available at <http://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>.

40. ASIAN AM. JUSTICE CTR., ASIAN AMERICAN GROWTH CONSISTENTLY OUTPACES TOTAL POPULATION GROWTH (2011), available at <http://www.advancingequality.org/attachments/files/469/Asian%20American%202010%20Growth%20Release%20041411.pdf>.

41. See generally ASIAN AM. INST., THE ASIAN AMERICAN COMPASS: A GUIDE TO NAVIGATING THE COMMUNITY 47-98 (2010), available at http://www.aaichicago.org/documents/publications/compass_aacommunityprofiles.pdf.

42. See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1255-58 (1993).

43. "Model minority" conveys the belief that Asian Americans, through their hard work, intelligence, and emphasis on education and achievement have been successful in American society. Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 16, 24 (1994).

44. William Y. Chin, *School Violence and Race: The Problem of Peer Racial Harassment Against Asian Pacific American Students in Schools*, 10 SCHOLAR 333, 346 (2007).

45. *Id.* at 347.

46. *Id.* at 348.

47. See generally N.Y. COMM'N ON HUMAN RIGHTS, DISCRIMINATION AGAINST MUSLIMS, ARABS, AND SOUTH ASIANS IN NEW YORK CITY SINCE 9/11 9-20 (2003), available at http://www.nyc.gov/html/cchr/pdf/sur_report.pdf (reporting several findings that many Muslims, Arabs and South Asians after Sept. 11, 2001 faced increased verbal harassment and the threats of retaliation on the basis of perceived affiliations with Osama Bin Laden, "Muslim country," and/or terrorist propensities); S. ASIAN AMS. LEADING TOGETHER, COMMUNITY RESILIENCE A SOUTH ASIAN

The internalization of these racist and limited images of APA youth has presumably played roles in reportedly anti-Asian incidents of violence at public schools. For example, in South Boston in 2004, a sixteen-year-old Vietnamese student was stabbed in a massive brawl between white and Vietnamese youth on a basketball court after brewing racial tensions.⁴⁸ More recently, in 2009, a Muslim girl was told by her classmate to “take that thing off your head,” referring to her hijab. The Muslim student was told to “act like you're proud to be an American” following her refusal to stand up during the class’s recitation of the Pledge of Allegiance.⁴⁹

With respect to sexual orientation discrimination, major surveys of lesbian and gay youth demonstrate that LGBT youth experience homophobia in a variety of ways. A 2009 national school climate study reported that eight out of ten LGBT students heard “gay” used in a negative way on school property,⁵⁰ that eighty-four percent of LGBT students were verbally harassed,⁵¹ and that nearly forty percent were physically harassed.⁵²

Studies confirm that the interplay of race, national origin, and sexual orientation intrinsic to an APA LGBT youth’s identity generates deeply felt strife. In the largest national survey of the APA LGBT community, nearly every respondent (ninety-eight percent) experienced at least one form of discrimination—with eighty-five percent experiencing discrimination based on race or ethnicity, and seventy-five percent based on sexual orientation.⁵³ More specific to youth, a national school climate survey reported that LGBT youth of color were more likely than their white counterparts to miss school as a result of feeling unsafe on campus.⁵⁴

The well-documented fact that APA LGBT youth face discrimination due to *both* their race and sexual orientation may explain the heightened

AMERICAN PERSPECTIVE ON THE TEN-YEAR ANNIVERSARY OF SEPTEMBER 11TH (2011), available at <http://saalt.org/filestore/An%20America%20for%20All%20of%20Us/Community%20Resilience%20FINAL.pdf>.

48. *Hate Crimes Against Asian Pacific Americans*, THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUC. FUND (last visited Aug 31, 2012), <http://www.civilrights.org/publications/hatecrimes/asian-pacific.html>.

49. Tony Marrero, *Flap over Flag, Hijab Leads to Suspension of Herando Student*, ST. PETERSBURG TIMES, Aug. 29, 2009, available at <http://www.tampabay.com/news/education/k12/article1032014.ece>. See generally Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441 (2008).

50. JOSEPH G. KOSCIW ET AL., GAY, LESBIAN & STRAIGHT EDUC. NETWORK, THE 2009 NATIONAL SCHOOL CLIMATE SURVEY 16 (2010), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1675-2.pdf.

51. *Id.* at 26.

52. *Id.*

53. DANG & VIANNEY, *supra* note 35, at 4.

54. JOSEPH G. KOSCIW, GAY, LESBIAN & STRAIGHT EDUC. NETWORK, THE 2003 NATIONAL SCHOOL CLIMATE SURVEY: THE SCHOOL-RELATED EXPERIENCES OF OUR NATION’S LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH 24-25 (2004), available at <http://www.eric.ed.gov:80/PDFS/ED486412.pdf>.

occurrence of suicidal tendencies in this community. The American Psychological Association reports that risk factors for suicide are a combination of external stressors such as sexual orientation confusion, interpersonal losses, family violence, and feelings of victimization.⁵⁵ Naturally, given that APA LGBT youth are exposed to LGBT bullying, racial violence, and rampant stereotyping—all at the same time, makes it likely that conditions leading to despair are all the more exacerbated.

II. MAINSTREAM LEGAL STRATEGIES

Because of their multiple-minority identities, APA LGBT youth struggle in ways that may require advocates to use nuanced and holistic approaches. Legal efforts to represent and assist these youth, however, have tended only to function under a single-identity approach. As the following sections will reveal, litigation on behalf of this distinct youth demographic is either based solely on sexual orientation and gender identity, or based on national origin and race.

A. LGBT Legal Strategies

Mainstream legal reform on behalf of queer and gender nonconforming youth is similar to the civil rights and equality strategies of national lesbian and gay organizations that place equal access, nondiscrimination, and equal protection under the law at the center of their collective agenda.⁵⁶ As LGBT community advocates have heavily focused on marriage equality and nondiscrimination/hate crimes statutes as precise organizing points,⁵⁷ advocacy focused on youth has worked to ensure that these equal access and nondiscrimination efforts are extended to LGBT youth at public schools. Although legal tactics may vary across jurisdictions because states themselves determine harassment standards and curriculum requirements,⁵⁸ they all rely on the Equal Protection Clause of the Fourteenth Amendment as the basis for their foundational support.

In particular, much of the foundation for anti-discrimination

55. *Teen Suicide is Preventable*, AM. PSYCHOLOGICAL ASS'N, <http://www.apa.org/research/action/suicide.aspx> (last visited Sept. 23, 2011).

56. See Douglas NeJaime, *Marriage, Cruising, and Life in Between: Clarifying Organizational Positionalities in Pursuit of Polyvocal Gay-Based Advocacy*, 38 HARV. C.R.-C.L. L. REV. 511, 525–28 (2003).

57. *Id.* at 512–513 (concerning centrist positions on nondiscrimination and hate crimes legislation).

58. Elizabeth J. Meyer & David Stader, *Queer Youth and the Culture Wars: From Classroom to Courtroom in Australia, Canada and the United States*, 6 J. OF LGBT YOUTH 135, 139 (2009) (asserting that since LGBT people are not considered a suspect or quasi-suspect class under the Equal Protection analysis, they are not specifically protected from discrimination based on their sexuality or gender identity/expression at the federal level). Eleven states currently have statutes protecting students in schools from discrimination on the basis of sexual orientation and/or gender identity; on the other hand, seven states have legislation that prohibits the positive portrayal of homosexuality (Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Texas and Utah). *Id.* at 142.

jurisprudence was a response to public school violence and bullying based on sexual orientation and gender nonconformity.⁵⁹ The first successful anti-bullying case involved Jamie Nabozny who eventually won nearly \$1,000,000 in a case settlement.⁶⁰ In that case, the court held that Jamie's school had violated his right to equal protection based on sexual orientation and gender when the administrators failed to protect him from anti-gay harassment and beatings by other students.⁶¹ Since then, there have been a number of cases throughout the country; however, only a few have been published.⁶² In addition to cases involving harassment and bullying, the courts have also been receptive to cases that challenge gender conformity such as bringing a same-sex date to the prom.⁶³

Gay-Straight Student Alliances (GSAs) have since furthered a tolerant environment for LGBT students through the Equal Access Act,⁶⁴ which permits gay-friendly student organizations in public schools to form and operate in a manner equal to other student-led organizations. Through the Equal Access Act, more than 4,000 GSA organizations nationwide⁶⁵ are protected against hostile school treatment and dismantling, despite some community opposition to their existence. For example, in *Colín v. Orange Unified School District*, the court ruled in favor of the founding of a Gay-Straight Student Alliance where the school board unfairly singled out the club's application by requesting, among other actions, a name change to the "Tolerance Club," subjecting the application to inexplicable delay, and ultimately rejecting its application.⁶⁶ There, the court issued a preliminary injunction to allow the group of students to organize—satisfying various thresholds such as "non-curriculum related student groups," "limited open forum," and "not controlled by nonschool personnel."⁶⁷ The authorized existence of GSAs creates a space for LGBT students to find and create support networks and appropriate guidance, as well as a space for student activism.⁶⁸

59. From Professor Quon's experience working on LGBT youth issues during his time at Lambda Legal 1996 to 2002.

60. Burt Constable, *Small gestures good and bad leave lasting marks*, CHICAGO DAILY HERALD, Feb. 1, 2011, <http://www.dailyherald.com/article/20110131/news/701319949/>.

61. Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996).

62. See, e.g., *Schroeder v. Maumee Bd. of Educ.*, 296 F. Supp. 2d 869 (N.D. Ohio 2003) (First Amendment claim survived summary judgment); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2000); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165, 1170 (N.D. Cal. 2000).

63. See *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980) (ruling that a gay teen had a First Amendment right to bring a same-sex partner to the senior prom).

64. 20 U.S.C. §§ 4071–4074 (1984).

65. Four thousand members are currently registered. *Students, GAY, LESBIAN & STRAIGHT EDUC. NETWORK*, <http://www.glsen.org/cgi-bin/iowa/all/student/index.html> (last visited July 31, 2012); See *GSA NETWORK*, <http://gsanetwork.org/about-us> (last visited July 31, 2012).

66. *Colín v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1139–40 (C.D. Cal. 2000).

67. *Id.* at 1143–46.

68. See e.g., Complaint, *Noble St. Gay Straight Alliance v. Noble Network of Charter Sch.*, No.

As a complementary strategy to creating a safe space for LGBT youth, legal advocates have used employment-based statutes to represent LGBT or LGBT-ally teachers in the public school system. For example, an award-winning lesbian teacher Dawn Murray successfully used California's anti-discrimination statute to prohibit sexual orientation harassment.⁶⁹ Although the case did not involve LGBT youth directly, legal advocates sought to clarify that administrator and staff harassment of a teacher based on her sexual orientation is illegal.⁷⁰ Further, there have been two other administrative cases that involved the removal of students from the classrooms of openly gay teachers or teachers who promoted LGBT tolerance.⁷¹ In both cases, the state administrative agency overseeing such employment issues ruled that any removal of students from the classroom is not permitted by law.⁷² These cases were instrumental in not only creating safe spaces for LGBT youth, it also provided further guidance to them that sexual orientation discrimination is prohibited.

B. APA Legal Strategies

Under the banners of equal protection and civil rights, mainstream legal advocates have advanced the rights of APA youth by organizing around anti-Asian violence, language access, and education policy. Similar to those using LGBT strategies, APA advocates have focused on fostering a tolerant and supportive public school setting to assist APA youth.

Advocates who focused on anti-Asian violence have relied upon equal protection and civil rights frameworks to enjoin schools from engaging in racial discrimination, and from otherwise failing to respond to student acts of race-based violence. For instance, the Asian American Legal Defense and Education Fund (AALDEF) successfully petitioned South Philadelphia High School to promulgate an "Action Plan" to adequately prepare for violence on campus after the school neglected a multi-year spate of racial incidents between its students.⁷³ Included in this plan were resolutions to distribute anti-harassment materials translated in different languages such

06C 2145 (N.D. Ill. Apr. 18, 2006), *available at* http://www.lambdalegal.org/in-court/legal-docs/noble-street-gsa_il_20060418_complaint-us-district-court; *Caudillo v. Lubbock Indep. Sch. Dist.*, 311 F. Supp. 2d 550 (N.D. Tex. 2004) (court held that gay-straight student alliance did not meet Equal Access Act provisions).

69. *Murray v. Oceanside Unified Sch. Dist.*, 95 Cal. Rptr. 2d 28 (2000).

70. *Id.* at 40 (characterization is based on the author's experience as attorney representing Dawn Murray).

71. *Kavanaugh v. Hemet Unified Sch. Dist.*, No. 99-04090, Cal. Dept. of Indus. Relations (2000); *Merrick v. Rio Bravo-Greeley Union Sch. Dist.*, No. 99-03985, Cal. Dept. of Indus. Relations (1999).

72. *Id.*

73. ASIAN AM. LEGAL DEF. AND EDUC. FUND, SUMMARY OF AALDEF'S COMPLAINT AGAINST THE SCHOOL DISTRICT OF PHILADELPHIA AND SOUTH PHILADELPHIA HIGH SCHOOL (2010), *available at* [aaldef.org/AALDEF_SummaryofDOJComplaint_Philly\(1\).pdf](http://aaldef.org/AALDEF_SummaryofDOJComplaint_Philly(1).pdf); Order Approving and Entering Settlement Agreement, *United States v. Sch. Dist. of Phila.*, No. 10-7301 (E.D. Penn. Dec. 15, 2010), *available at* <http://aaldef.org/Settlement%20Agreement.pdf>.

as Burmese, Chinese, and Vietnamese; designation of a district-wide investigator responsible for responding to allegations of hate incidents; and school staff trainings on multicultural awareness and diversity.⁷⁴ These legal strategies represent additional protections and preventative measures against racially motivated violence on school campuses.

In addition to targeting hate incidents, legal advocates have successfully framed language access within the ambit of civil rights protection.⁷⁵ In 1974, *Lau v. Nichols* ushered in the bilingual education movement to assist limited English proficient (LEP) youth in schools by clarifying that a school's failure to provide language assistance for LEP Chinese American students constituted national-origin discrimination.⁷⁶ Prior to *Lau*, LEP students were often required to attend regular classes conducted entirely in English. For example, in 1970 only thirty-seven percent of the nearly 3,000 English Language Learners of the San Francisco Unified School District obtained language assistance, leaving the majority of others to a higher risk of truancy, lower educational achievement, and delinquency.⁷⁷ In 2000, immigrant communities gained additional language access coverage through Executive Order 13166 which expanded the scope of language access by calling all federal agencies to provide reasonable steps towards "meaningful access" to LEP individuals.⁷⁸

APA legal advocacy has also framed education policy as a civil rights concern.⁷⁹ By lobbying around the No Child Left Behind Act,⁸⁰ advocates expressed grave concerns over the disproportionately large number of poor secondary and post-secondary test scores of some ethnic APAs. Here, legislative reform was used as a means to reduce these disparities. For example, nonprofits such as the Asian American Legal Defense and Education Fund (AALDEF) and the Southeast Asian Resource Action Center (SEARAC) have sought to dispel the model minority myth, in particular, by incorporating data disaggregation provisions to document Asian American, Native Hawaiian, and Pacific Islander ethnic-specific

74. *See id.* at 12–15.

75. *See e.g.*, Brief of Asian Pacific Legal Resource Center, et al., as Amici Curiae in Support of Appellant, Nonceeya v. Lone Star Steakhouse, 981 A.2d 1233 (2009) (No. 18) (concerning the definition of legal proceedings and legal requirement to provide interpreters to ensure meaningful participation).

76. *Lau v. Nichols*, 414 U.S. 563, 570 (1974).

77. NAT'L ASIAN PAC. AM. LEGAL CONSORTIUM, *LAU V. NICHOLS & ASIAN AMERICANS 30TH ANNIVERSARY QUESTION & ANSWERS* (2004), available at http://www.advancingequality.org/files/Lau_QA.pdf.

78. Improving Access to Services for Persons With Limited English Proficiency, 65 Fed. Reg. 50121, 50124 (Aug. 16, 2000).

79. *See Educational Equity*, ASIAN AM. LEGAL EDUC. FUND, <http://aaldef.org/programs/educational-equity/> (last visited July 31, 2012).

80. No Child Left Behind Act of 2001, Pub. Law No. 107-110, 115 Stat. 1425. (mandating K-12 Math and English proficiency via mandatory testing).

disparities,⁸¹ and by laying the groundwork for holistic measures such as strengthening parent engagement and funding diversity sensitivity trainings in schools.⁸² By including a school's relationship with youth and family as part of a community's welfare, advocates have shaped civil rights discourse to recognize the educational needs of APAs.

III. HOW MAINSTREAM LEGAL STRATEGIES FAIL TO EMPOWER APA LGBT YOUTH

Although legal strategies stand to improve the experiences of many APA LGBT youth in various ways, the community continues to face unique practical and substantive needs that are overlooked by these strategies.

Practically, APA LGBT youth face a variety of obstacles before contacting a lawyer, these include: basic language needs; a lack of support by dominant community groups; and negotiations of cultural values to "save face" and quietly assimilate. Altogether, these barriers serve to bear a

81. Contrary to the model-minority myth, many APA students report poor educational outcomes. Disproportionately, APAs are Limited English Proficient (LEP) students who require additional learning assistance, lag behind their peers in GPA and graduation rate, and are often misidentified as needing special education classes. Educational disparities are pronounced among Southeast Asians, many of whom immigrated as refugees. For example, most Hmong and Cambodian Americans never finish high school, while eighty-eight percent of Japanese American students go on to college. On LEPs, see RANDY CAPPS ET AL., URBAN INST., *The New Demography of American Schools Immigration and the No Child Left Behind Act 17* (2005), available at http://www.urban.org/uploadedPDF/311230_new_demography.pdf (noting that behind Spanish, four Asian languages represent the highest concentration of LEPs: Vietnamese, Hmong, Cantonese, Korean). On G.P.A. disparities, see NAT'L CTR. FOR EDUC. STATISTICS, AMERICA'S HIGH SCHOOL GRADUATES 54-55 (2009), available at <http://www.edpubs.gov/document/ed005213p.pdf?ck=6>; on graduation rates, while the general graduation rate climbed to 52.2% in 2007 from 46.5% in 2005, the rate for students learning English (called English language learners, or ELLs) dropped from 28.5% to 23.5% over the same period, see Meredith Kolodner, *English-only rise in New York City high school graduation rates*, N.Y. DAILY NEWS, Feb. 22, 2009, <http://www.nydailynews.com/new-york/education/english-only-rise-york-city-high-school-graduation-rates-article-1.372228>; on erroneous special education, see SE. ASIAN RESOURCE ACTION CTR., A DREAM DENIED: EDUCATIONAL EXPERIENCES OF SOUTHEAST ASIAN YOUTH: ISSUES AND RECOMMENDATIONS 3-4 (2003), available at <http://www.ocf.berkeley.edu/~sasc/wp-content/uploads/2010/08/A-Dream-Denied.pdf>; for Hmong/Cambodian disparities and Japanese college student study, see KOREAN CHURCHES FOR CMTY. DEV., PUSHED TO THE EDGE ASIAN AMERICAN YOUTH AT RISK 11 (2008), available at http://kccd.org/sites/default/files/pushed_to_the_edge_asian_youth_profile_updated_version_0.pdf.

82. See generally MARGRET FUNG & KHIN MAI AUNG, ASIAN AM. LEGAL DEF. AND EDUC. FUND, COMMENTS ON THE PROPOSED REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT (ESEA) (2010), available at <http://aaldef.org/AALDEF%20Comments%20ESEA%203.2010%20FINAL.pdf> (providing an overview of educational reform priorities such as funding language appropriate outreach in Asian enclaves and multicultural awareness for teachers); *Education Policies*, SE. ASIA RES. ACTION CTR., <http://www.searac.org/content/education> (last visited July 31, 2012); SE. ASIA RES. ACTION CTR., NEW FEDERAL GUIDELINES ON PROMOTING DIVERSITY & REDUCING RACIAL ISOLATION IN K-12 SCHOOLS AND HIGHER EDUCATION BENEFITS SE ASIAN AMERICAN STUDENTS (2011), available at <http://capmn.wordpress.com/2011/12/23/searac-press-release-new-federal-guidance-on-promoting-diversity-reducing-racial-isolation-in-k-12-schools-and-higher-education-benefits-se-asian-american-students/>.

considerable level of deterrence to using the courts.

Substantively, the multiple-discriminatory experiences intrinsic to an APA LGBT youth are unconventional issues to litigate.⁸³ Because jurisprudence has primarily evolved in single-identity terms, the limited case law necessarily narrows the court's ability to redress the layered discrimination uniquely felt by APA LGBT youth. On this analysis, before presuming the success of legal strategy in assisting their communities, APA and LGBT legal advocates must consider, more fundamentally, how APA LGBT youth are uniquely stymied in their ability to even pursue legal justice.

A. *Practical Barriers: Shortcomings of Mainstream Legal Strategies*

1. *Language Barriers at Legal Entry Points*

Language barriers can be a complete impediment to communicating one's needs in a new country. Government agencies and nonprofits responsible for nondiscrimination and working with the public must be especially cognizant of providing language-appropriate services to ensure the accessibility of their services to APA youth. In linguistically isolated households, youth often take on the role of interpreter and translator with regard to all interactions with mainstream institutions, including social service agencies, the school system, health care services, and even financial institutions.⁸⁴

Although a number of government agencies that work with LGBT youth have begun to provide access to LEP youth, specifically Spanish speakers,⁸⁵ the amount of information available for Asian-language youth remains very limited. For instance, the Los Angeles County Human Relations Commission only has a Spanish link on its home page.⁸⁶

83. Cases involving discrimination are often shown to privilege those that hold single-minority identities. See discussion, Section IV.B, *infra*.

84. See e.g., Glenn Flores, *Language Barriers to Health Care in the United States*, 355 NEW ENG. J. MED. 229 (2006); Linda Haffner, *Cross-Cultural Medicine a Decade Later: Translation Is Not Enough – Interpreting in a Medical Setting*, 157 W. J. MED. 255, 256 (1992).

85. Professor Quon has working experience with local government agencies in Chicago, Maryland, and Virginia, as well as experience as a funder of legal services provider in Cook County – these organizations have yet to fulfill their promise of language access.

86. LOS ANGELES COUNTY HUMAN RELATIONS, <http://www.lahumanrelations.org/> (last visited Oct. 08, 2011). Although there is only one direct link for Spanish speakers, there also appears to be a “Google translate” link on the webpage. *But see* Balk EM et. al., *Accuracy of Data Extraction of Non-English Language Trials With Google Translate. Methods Research Report*. (Prepared by the Tufts Evidence-based Practice Center under Contract No. 290-2007-10055 L) AHRQ Publication No. 12-EHC056-EF. Rockville, MD: Agency for Healthcare Research and Quality. April 2012. (highlighting the limitations of such translations especially involving Asian languages). Also, in addressing whether this type of language access is adequate, consider the aims of entities such as the LA Human Relations Commission to address racial and sexual orientation discrimination (much of which engenders legal claims), and their public servicing of large APA populations. Here, these entities likely fail to provide “meaningful access” contemplated by Executive Order 13166. See *supra* note 78.

Similarly, the Chicago Human Relations Commission and the San Francisco Human Rights Commission each only have one Spanish-language link.⁸⁷

More alarming is that even in crisis-responsive nonprofits, outreach efforts marginalize the limited English proficient community. For instance, the Trevor Project, a crisis hotline that often functions as last-minute live support to prevent lesbian and gay teens from committing suicide, fails to indicate on their website the availability of any multilingual assistance.⁸⁸ According to the National Gay & Lesbian Task Force's 2008 report on LGBT Asians, only fifty percent of survey respondents indicated English as their native language.⁸⁹ Without language access, the Trevor Project and other public-serving entities operating in a similar fashion only serve the linguistically privileged of society.

2. *Lack of Acceptance by Dominant Community Groups*

Because mainstream legal advocacy groups often set the legal priorities and provide legal referrals for their communities, the extent to which a youth belongs and feels comfortable making their identities known in that organization can impact access to the courts. APA LGBT youth face an intersectional struggle in the intrinsic identity negotiation of two communities that appear at odds. In a recent national survey, eighty-nine percent of APA LGBT individuals agreed that homophobia and transphobia are a problem within the broader APA community, and seventy-eight percent agreed that APA LGBT people experience racism within the predominantly white LGBT community.⁹⁰ While no national study examines the extent to which APA LGBT youth face this problem, an examination of the emergence of intersectional APA LGBT organizations might suggest widespread occurrence.

More than thirty volunteer-based nonprofit organizations have emerged across the country to provide a safe space for APA LGBT individuals marginalized by homophobia and racism.⁹¹ The National Queer Asian Pacific Islander Alliance (NQAPIA), a federation of over thirty APA LGBT-interest organizations seeks "to help build the organizational capacity of local groups, develop leadership, invigorate grassroots

87. CITY OF CHICAGO HUMAN RELATIONS, <http://www.cityofchicago.org/city/en/depts/cchr.html> (last visited Oct. 08, 2011); SAN FRANCISCO HUMAN RIGHTS COMMISSION, <http://www.sf-hrc.org/> (last visited Oct. 08, 2011).

88. THE TREVOR PROJECT, www.thetrevorproject.org (last visited Oct. 12, 2011).

89. DANG & VIANNEY, *supra* note 35, at 3.

90. *Id.* at 5.

91. See generally NATIONAL QUEER ASIAN PAC. ISLANDER ALLIANCE, QUEER ASIAN COMPASS: A DESCRIPTIVE DIRECTORY OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBTQ) ASIAN AMERICAN, SOUTH ASIAN, AND PACIFIC ISLANDER (AAPI) ORGANIZATIONS 2, available at http://www.lgbtracialequity.org/publications/NQAPIA_Compass_Directory.pdf

organizing, and challenge homophobia and racism.”⁹² Collectively serving more than 5,000 members⁹³ and each operating on an annual budget of less than \$10,000,⁹⁴ NQAPIA organizations address needs in specialized ways, for example, Al-Fatiha in Washington, DC fosters queer acceptance within the Muslim community;⁹⁵ Asian Pacific Islander Queer Women & Transgender Community (APIQWTC) in San Francisco raises awareness on gender issues;⁹⁶ and Southeast Asian Queers United for Empowerment and Leadership (seaQuel) in Rhode Island provides a sensitive space for queer refugee youth.⁹⁷

Despite the work of NQAPIA organizations in cultivating much-needed APA LGBT safe spaces, the mainstream reception of these organizations has not been positive. For example, while nearly all NQAPIA organizations participate in LGBT pride parades, fewer than half of these groups participate in APA-specific events such as Lunar New Year and Asian Pacific American Heritage Month.⁹⁸ According to NQAPIA leader Glenn Magpantay, this is in no small part due to homophobia among APAs.⁹⁹ In his experience as steering committee member for Gay Asian & Pacific Islander Men of New York (GAPMINY), he noticed that while LGBT groups often invited GAPMINY to co-sponsor events to demonstrate some level of inclusion and coalition-building,¹⁰⁰ non-LGBT APA groups rarely solicited this group.¹⁰¹ Such measures of isolation further serve to demonstrate how these two groups may be seemingly at odds with one another.

The problems of invisibility and exclusion felt by NQAPIA groups are exacerbated by organizational challenges to sustain their work.¹⁰² In a survey of NQAPIA leaders, the most commonly reported challenges facing these intersectional organizations included: the difficulty of encouraging member involvement, the inability to maintain communication databases, and, above all, the feeling of community invisibility and leadership burnout.¹⁰³

Issues of burnout and invisibility in the APA LGBT community are only worsened when mainstream organizations continue to ignore them.¹⁰⁴

92. *Id.*

93. *Id.* at 6.

94. *Id.* at 7.

95. *Id.* at 29.

96. *Id.* at 45.

97. *Id.* at 89.

98. *Id.* at 19.

99. DANG & VIANNEY, *supra* note 35, at 13.

100. *Id.*

101. *Id.*

102. See NATIONAL QUEER ASIAN PAC. ISLANDER ALLIANCE, *supra* note 91, at 26–27.

103. *Id.*

104. *Id.* (“A few groups commented that they felt they were constantly reinventing the wheel and felt like there were ‘building everything from the ground up.’ . . . A parallel dynamic was found among

Because large advocacy groups often facilitate the legal agenda of its community and intersectional organizations are frequently overworked, mainstream legal groups must not only ensure that these APA LGBT communities have an internal and well-recognized safe space in which to develop and contribute, but also that efforts are made to meaningfully support those organizations already doing the work. In addition, these mainstream groups need to acknowledge and meet the language needs and cultural differences of its APA members.

3. *Cultural Aversions to Advocacy*

In addition to acknowledging a youth's need for a safe space, lawyers should also consider the differing cultural attitudes of vulnerable clients in the bringing of such legal claims. As an example of this mindfulness, nonprofits across the country have conducted "Know Your Rights" workshops on various issue areas for different age groups, and in specific languages. These workshop were conducted to help ensure that these rights were real, intelligible, and responsive.¹⁰⁵ Accordingly, APA and LGBT advocates must sensitively manage cultural values against advocacy particular to APA LGBT youth. Such issues include fears of deportation and public disclosure of sexual orientation.

Historically, cultural norms within APA communities in the United States have discouraged individuals from "rocking the boat"¹⁰⁶ and instead encouraged members to assimilate quietly into mainstream society.¹⁰⁷ This cultural pressure may deter some youth from accessing legal rights because litigation would create strife within the family due to fears of public exposure and adversarial government relationships.¹⁰⁸ Specifically, using the courts might bring attention to the family, and potentially implicate one's immigration status. For those who are foreign-born, undocumented, or generally uninformed of the repercussions of contacting state-aligned programs, greater visibility in a new country may inadvertently open up the

some individuals who were resistant to taking on leadership roles because they 'couldn't give 100%.' There was a notion that to be involved, they had to do everything, know everything, and be aware of every contingency.").

105. The workshops were conducted by a now defunct organization, Asian Pacific Islanders for Human Rights. The "Facing Out" program was specifically intended to focus on APA LGBT youth. As opposed to "coming out," the program worked on assisting APA LGBT youth with "facing out"—discussing sexual orientation and gender identity with and as part of the family. Interview with Henry Lo, Founding Board Member, Asian Pacific Islanders for Human Rights, via telephone in Los Angeles (Oct. 1, 2011).

106. See J.D. HOKOYAMA, CONTINUING LEARNING, 21ST CENTURY LEADERSHIP: UNDERSTANDING YOUR CULTURAL VALUES (2011). The Author's working experience with Asian communities throughout the country reveals and highlights these fears.

107. *Id.*

108. For some APA family members, the government represents danger—communist regimes or other wars can influence some APAs perception of government. See, e.g., SUCHENG CHAN, SURVIVORS: CAMBODIAN REFUGEES IN THE UNITED STATES 26–27 (2004) (detailing government reign of terror upon local communities).

family to deportation.¹⁰⁹ In the context of a youth considering the services of a lawyer, the competing fear of single-handedly putting the family at risk for deportation, through a decision to move forward with litigation, can extinguish the legal pursuit at its inception.

In addition to deportation fears, APA LGBT youth might oppose using the courts when considering a legal claim related to sexual orientation. To understand this opposition, consider the cultural context facing many APA youth. APA youth are often raised to prioritize the family unit over the individual—to respect one’s elders, to maintain harmonious relationships, and to avoid inviting negative attention to the family.¹¹⁰ These ingrained values can dictate the extent to which a youth chooses to make their possibly controversial sexual orientation known to friends, family, and the public. But the gay-rights movement harbors dissonance.¹¹¹ “Out and proud,” pride parades, and gender nonconformity are images and concepts that have become associated with the gay-rights movement and thus part and parcel to the socialization process of an APA LGBT youth. Identifying with both cultures, an APA LGBT youth faces an extreme obstacle when deciding to “come out” that is unique from the white majority. Put another way, since APA LGBT youth are a community between two opposing value systems and modes of self-expression,¹¹² this community faces the conflicting pressures to embrace one’s sexual identity, while at the same time, not to impose on the family in any negative way. Pressure to hide one’s sexual orientation, an inherent basis of discrimination for this group, can impact the extent to which one publicly advocates against homophobia. To illustrate this point, Grace Chen, an APA bisexual woman shares her experience:

109. From Professor Quon’s working experience with hundreds of APA clients across the country at the Asian American Institute and the Asian Pacific American Legal Resource Center, one of the first fears about using the legal system includes ramifications such as deportation.

110. See generally Elizabeth J. Kramer, *Cultural Factors Influencing the Mental Health of Asian Americans*, 176 WESTERN J. MED. 227, 227–30 (2002), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1071736/pdf/wjm17600227.pdf> (mentioning Confucian collectivist ideals, the concept of saving face/shame, and the family unit as cultural factors affecting help-seeking attitudes among Asians).

111. See L. Michael Gipson, *Poverty, Race and LGBT Youth*, 2 POVERTY & RACE 2, 3 (2002), available at <http://www.nyacyouth.org/docs/PRRAC.pdf> (“The individualism often espoused by the framers of a Westernized gay identity, which often is a consequence of that identity, is often considered by communities of color to be antithetical to the interdependent communal and family relationships traditionally promoted by those communities.”).

112. “Opposing” is not meant to convey that the gay rights movement and Asian identities are inherently at odds; family opposition to publicly disclosing sexual orientation is influenced by various cultural and religious contexts. See, e.g., Eunai Shrake, *Homosexuality and Korean Immigrant Protestant Churches*, in EMBODYING ASIAN AMERICAN SEXUALITIES 145, 147–51 (Gina Masequesmay & Sean Metzger eds., 2009). (“[S]trong opposition to homosexuality comes from the theological conservatism of most Korean immigrant churches. . . . [M]any Korean/Americans consider homosexuality as a liberal lifestyle that goes against their moral values . . . [P]arents, who want their children to follow their cherished Confucian moral tradition, are eager to protect their children from the corrupting influence of this perceived American liberal lifestyle.”).

Even though I became heavily involved with bi activism and participated in LGBT panels at various colleges, it took me five years to come out to my parents. . . . My parents are really traditional, authoritarian Chinese/Vietnamese people who emigrated from Vietnam in 1980 and aren't well educated, so I had hid my sexual orientation from them and acted "straight" whenever I went home to visit. I came out to them two-and-one-half years ago but they are still struggling with it and still want me to "hide" my sexual orientation, especially from the extended family.¹¹³

Although many APA youth experience discrimination based on their sexual orientation, the likelihood of accessing the judicial system is reduced by familial homophobia. Indeed, a study comparing Asian gay men to white gay men confirm this notion: APAs were found motivated more by following authority and foregoing disclosure.¹¹⁴ Ultimately, more of them kept their sexuality a secret.¹¹⁵

B. Substantive Barriers: How the Law is Only Tooled to Address Single-Identity Discrimination

Even if an APA LGBT youth successfully overcomes the difficulties of contacting a lawyer regarding a potential legal claim, he or she is still faced with the obstacle of obtaining legal relief once in court. This Section discusses the limited substantive relief available to APA LGBT youth through the theoretical framework of "intersectionality." Through critique of the narrow tenor of antidiscrimination law, intersectionality is an intellectual movement that offers reasons for why APA LGBT youth, despite having multiple experiences with stereotyping and discrimination, might not encounter a forum that recognizes them.

Kimberle Crenshaw, the pioneer of intersectional discourse and an extensive writer on its genesis with women of color, explains that "[b]ecause the scope of antidiscrimination law is so limited, sex and race discrimination have come to be defined in terms of the experiences of those who are privileged *but for* their racial or sexual characteristics."¹¹⁶ Crenshaw asserts that this "but-for" concept is a narrow lens to understand discrimination; the judicial system extends legal relief only to those

113. DANG & VIANNEY, *supra* note 35, at 11.

114. A survey comparing sixty-three gay APA men to fifty-nine gay European-American men found that gay APA men exhibited higher levels of vertical collectivism, a stronger endorsement of traditional Asian values, and a greater desire to maintain a private gay identity than did gay European-American men. ALAIN DANG & MANDY HU, NATIONAL GAY & LESBIAN TASK FORCE INST., ASIAN PACIFIC AMERICAN LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE: A COMMUNITY PORTRAIT 1, 13 (2004), available at <http://www.thetaskforce.org/downloads/reports/reports/APACommunityPortrait.pdf>.

115. *Id.*

116. Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, U. CHI. LEGAL F. 139, 151 (1989).

afforded with the privilege of having an “obvious” case of discrimination that is uncomplicated by multiple experiences with bias.¹¹⁷ Crenshaw argues that those who can claim, “but-for (X) identity, this act of harm would not have occurred” are more likely to be successful with their claims—a function that has produced antidiscrimination jurisprudence that has universalized the racial experience as typically understood by black male plaintiffs, and the female experience as typically understood by white female plaintiffs.¹¹⁸ This dynamic in litigation and its impact on jurisprudence has led to entrenched anti-racist organizing that marginalizes racial groups outside of the black male experience and feminist organizing that marginalizes women outside of the white female experience.¹¹⁹ In examining but-for jurisprudence, Crenshaw argues how women of color, because they are not but-for plaintiffs, are significantly ignored by the courts and thus unable to obtain antidiscrimination relief for harms inflicted upon them.¹²⁰

Drawing on Crenshaw’s work, Ruthann Robson coined the term “but-for queer” to extend intersectional analysis to LGBT communities.¹²¹ Here, Robson asserts that cases deemed victories by mainstream LGBT advocates only benefits those individuals who “‘but for’ their being queer . . . would be perfect.”¹²² Parallel to Crenshaw’s critique, this lens has universalized “gay” as a wealthy white struggle, much to the marginalization of poor LGBT communities of color outside of such experience.

Two cases in particular demonstrate the judicial treatment of sexual orientation in a single-identity manner. In *High Tech Gays v. Defense Industrial Security Clearance Office*, the Ninth Circuit declined to apply the greater protection of strict scrutiny analysis to a group of gay men and lesbian women who asserted that the Department of Defense conducted an expanded investigation into their backgrounds upon an employment application process.¹²³ Appearing to review footnote four of *United States v. Carolene Products Co.*, the court assessed whether gay people have: (1) endured a history of discrimination, (2) carry immutable characteristics that define their discrete group, or (3) were “politically powerless.”¹²⁴ In assessing the last prong, the Ninth Circuit reasoned that gay men and lesbian women were not politically powerless on account of their “ability

117. *Id.* at 140 (“The focus on the most privileged group members marginalizes those who are multiply burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination.”).

118. *See id.* at 152.

119. *Id.* at 152.

120. *See generally id.* at 150–52.

121. Darren Rosenblum, *Queer Intersectionality and the Failure of Recent Lesbian and Gay “Victories”*, 4 *LAW & SEXUALITY* 83, 84, 93 (1994).

122. *Id.* at 93. (citing Ruthann Robson, Address at the Conference of the National Lesbian and Gay Lawyers Association (NLGLA) (Oct. 24, 1992)).

123. *High Tech Gays v. Def. Indus. Sec. Clearance Office*, 895 F.2d 563, 565 (9th Cir. 1990).

124. *Id.* at 574; *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

to . . . attract the attention of lawmakers” as evidenced in their successful organizing around antidiscrimination legislation.¹²⁵ In *Romer v. Evans*, Justice Scalia argued in his dissent that gay men and lesbian women have political power “because those who engage in homosexual conduct tend to reside in disproportionate numbers in certain communities, have high disposable income, and, of course, care about homosexual-rights issues much more ardently than the public at large”¹²⁶ Although both cases refrain from explicitly describing this gay and lesbian community as white and wealthy, the reference to “high disposable income” and the citation to statutory politics reveals the court’s ignorance of low-income lesbians and gays of color, who are typically absent from such markers of privilege.

As illustrated in *High Tech Gays* and *Romer*, anti-discrimination jurisprudence often fails to conceptualize the multidimensionality of identities, thereby limiting the potential relief afforded to APA LGBT youth. Indeed, a recent study examining federal discrimination cases from 1965 to 1999 found that cases that alleged single-identity discrimination were more likely to win their cases compared to cases that alleged multiple harms.¹²⁷ Because APA LGBT youth experience multiple forms of discrimination, they are less likely to claim, “but-for my sexual orientation or racial identity, this harm would not have occurred” since discrimination may still have been independently caused by racial or sexual orientation bias. Accordingly, APA LGBT youth may assert overly complex claims as a matter of the court’s first impression. Because APA LGBT plaintiffs do not fit mainstream notions of discrimination, lawyers trained to think narrowly may feel ill-equipped to assert meritorious claims. Alternatively, lawyers who file multiple-discrimination allegations to a court may ultimately find that judges throw out such claims on perceived frivolity, or that they may collapse all such claims into one.¹²⁸

IV. RE-IMAGINING LEGAL STRATEGY: ON COMMUNITY LAWYERING

The strategic shortcomings and limited but-for relief portrays few promising legal solutions for APA LGBT youth. The continuum upon which legal claims come into fruition is riddled with practical deterrents,

125. *High Tech Gays*, 895 F.2d at 574.

126. *Romer v. Evans*, 517 U.S. 620, 645-46 (1996) (Scalia, J. dissenting).

127. Rachel Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 LAW & SOC’Y REV. 991, 991, 1008-09 (2011). (“[P]laintiffs who make intersectional claims are only half as likely to win their cases as plaintiffs who allege a single basis of discrimination.”).

128. *Id.* at 25. See also *Payne v. Travenol Laboratories, Inc.*, 673 F.2d 798, 811-13 (5th Cir. 1982) (upholding ruling that black females could not adequately represent claims of black men). See generally *Moore v. Hughes Helicopters, Inc.*, Div. of Summa Corp., 708 F.2d 475 (9th Cir. 1983) (refusing to certify the plaintiff, a black female, as the class representative—likely because she did not represent white women).

and substantive law appears to proceed narrowly—it is no wonder that APA LGBT youth have yet to emerge as studied subjects in legal scholarship or known victors in legal pursuits.

In the face of a neglected community, legal advocates must re-imagine legal strategy. It is important to remember that lawyers do not operate in a vacuum and that law schools must emphasize building client trust around issues of race, sexual orientation, and emotion. What can LGBT groups do to reduce the racism experienced by APA people? What can APA organizations do to combat homophobia? Since the law guides American policy and programs, how can judges, lawyers, and law students address issues of depression and suicide in the APA LGBT youth community (matters that are often considered to be extralegal)? This Article is not motivated by the need to ascertain the APA LGBT experience, nor intended to imply that lawyers should solve all problems. Instead, the point is to come to an imaginative project where lawyers and courts do not leave APA LGBT youth behind.

A. Community Lawyering

Community lawyering provides a legal framework to assist in this inquiry. Also called “rebellious lawyering,”¹²⁹ community lawyering is a holistic, empowerment-driven approach¹³⁰ to legal advocacy that emerged in response to the failure of traditional methods to consider the systemic causes of community problems, and the lack of collaboration with other actors assisting the same community.¹³¹ Gerald Lopez, one of the pioneers of community lawyering, considers traditional lawyers as holding themselves out as “experts”—those who “collaborate principally and often exclusively with one another” and “show too little interest in regularly adapting aims and means to what unfolding events and relationships reveal; too little curiosity about the institutional dynamics through which routines and habits form.”¹³² This behavior, community lawyers contend, leads to

129. Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608 (1989) (describing “rebellious” lawyering as it contrasts with traditional lawyering).

130. Traditional lawyering is contrasted with “rebellious lawyering” which Lopez associates as a “collective fight for social change.” *Id.*

131. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 438 (1995) (explaining that providing legal services for individual clients had a tendency to undermine organizing and community building because clients were not facilitated to address systemic issues causing their legal problems); 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) (noting that in a traditional attorney-client relationship, client voices are suppressed and dependency on the lawyers is encouraged, which only further leads to their subordination). See generally GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VIEW OF PROGRESSIVE PRACTICE* 24, 70–82 (1992) (analyzing the problems with traditional litigation techniques and discussing the need to reorient lawyers’ work).

132. Gerald P. Lopez, *Keynote Address: Living and Lawyering Rebelliously*, 73 FORDHAM L. REV.

three problematic areas of traditional lawyering: (1) the interpersonal dominance behaviors maintained by lawyers, (2) the client disempowerment produced by a reliance on litigation-based resolutions, and (3) the inability of legal intervention to create meaningful change in the lives of low-income people.¹³³

In recognition of such critiques, Lopez calls on lawyers to re-imagine their method of problem solving. Lopez casts a rebellious vision, whereby lawyers work within “networks of co-eminent institutions and individuals,” learning from and engaging all other pragmatic practitioners.¹³⁴ Instead of extolling the benefit of litigation-based strategies, community lawyers place more importance on organizing, mobilizing, and empowering individuals and community groups.¹³⁵ In so doing, community lawyers collaborate “with problem solvers of all sorts”—in a way that seeks to liberate their clients from their disempowerment after the need for the lawyer terminates.¹³⁶

One way to illustrate this philosophy is to understand the poor reputation of lawyers in marginalized communities. These are issues, prevalent in marginalized communities, that community lawyers often grapple with, but traditional lawyers tend to ignore.¹³⁷ In *The Work We Know So Little About*, Gerald Lopez offers the story of Maria Elena—a Latina, low-income, housekeeper, wife, and mother—someone Lopez says, “too many of us regrettably have come to regard as unremarkable.”¹³⁸ Pressed about her undocumented status and hopeful that obtaining amnesty would bring greater opportunities for her children, Elena sought attorneys at reputable immigration law firms to file her application. Interestingly, Elena obtained legalization, but it was not through the assistance of her lawyers. It was through a self-help service that Elena’s church led her to,

2041, 2042 (2005).

133. Paul Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 952 (1992).

134. *Id.* at 2043. See also Betty Hung, *Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change* 1 L.A. PUB. INT. L.J. 4 (2008).

135. See Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 CLINICAL L. REV. 127, 127 n.2 (1999) (providing various examples of law and organizing actions).

136. Lopez, *supra* note 132, at 2048; For example, Lopez launched a Center for Community Problem Solving inspired by the vision of rebellious lawyering. Its mission statement included, “We collaborate with those who live and work in low-income, of color, and immigrant communities. We seek out and share knowledge about existing problems, available resources, and useful strategies. Drawing upon this knowledge, we connect those who face problems with those in public, private, and civic realms who help address them. . . . Where problems remain underaddressed even after making such connections, we help fill those voids by scavenging around for resources.” *Id.* at 2049.

137. See generally Gerald P. Lopez, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989) (through the common experience of Maria Elena, Lopez discusses, a low-income woman of color, whose fears and vulnerabilities concerning the legal field are almost wholly ignored in traditional models of legal education and in the mainstream practice of law.)

138. *Id.* at 1.

which she felt was an altogether less vulnerable and less intimidating experience than her interaction with lawyers. Elena stated, “[the self-help assistants] kinda knew what we had to hear—you know, what we were going through, what we needed to do. From step one on.”¹³⁹ She attributed her decision against using lawyers to their “gouging” and “disorganized” behavior,¹⁴⁰ as well as their limited capacity to effect change: “‘being on the short end and being on the bottom is an everyday event in my life,’ she says, usually half-smiling. ‘What can a lawyer do about that?’”¹⁴¹

Lopez uses Elena’s story as an example of how, oftentimes, individuals (here, women of color) avoid lawyers, not because of a “failure to use lawyers and the law,” but from a feeling of “guilt, fear, and heightened sense of destruction” toward the law.¹⁴² From interviewing many women of color clients, Lopez attributes this aversion to the law to both the economic and social circumstances disempowering Maria Elena, as well as to the intimidating legal field hardened by its failure to train practitioners on how to work with subordinated communities.¹⁴³

According to Lopez, law schools have interdisciplinary lessons from ethnic studies, gender studies, and psychology to train students on how to better engage “Elenas”¹⁴⁴ but have vastly neglected to utilize them.¹⁴⁵ For instance, law schools have failed to brand Elena’s commonly shared fear of the law and its lawyers as even worthy of a lawyer’s concern.¹⁴⁶ Looking forward, Lopez calls law schools and lawyers to grapple with interdisciplinary ideas, work with clients and non-lawyers in an accessible way, and thus challenge the professional tendencies that often lead to avoidance of lawyers.¹⁴⁷

139. *Id.* at 4.

140. *Id.*

141. *Id.* at 6.

142. *Id.* at 7–8.

143. *Id.* at 7–12.

144. *See Id.* at 11. Lopez remarks:

Whether or not legal education likes it, the study of women in all their heterogeneous complexity is no longer just a curiosity. Neither is the study of people of color. Nor the study of gays and lesbians. Nor the study of power. Nor the study of quiescence and rebellion. Nor the study of economic democracy and development. Nor the study of the secondary labor market. Nor the study of cultural production and identity. These people and these dynamics pervade our legal and social and political and economic world. That’s no wondrous insight.

Id.

145. *See Id.* Lopez further states:

It turns on taking seriously a diverse range of scholarship and teaching that focuses rigorous, eclectic, and sustained attention on the Maria Elenas of our communities, on others subordinated by social and political life in this country, and on what it means for lawyers and others to work with them in the effort to change the world.

Id.

146. *See Id.* at 12 (“Can it be that we are actually willing to declare openly that the Maria Elenas of our communities just don’t count?”).

147. *See id.* at 7–12.

B. Community Lawyering for APA LGBT Youth: Directions for Change

Lawyers are urged to address the issues of language barriers, aversion to the courts, and feelings of exclusion in community-based groups with the guidance provided by community lawyering. By shifting their scope of concern—from lawyer as insular expert, to lawyer as empowerment-driven advocate—lawyers might construe APA LGBT youth as also feeling “guilt, fear, and a heightened sense of destruction” for the law. It is with this cognitive shift that lawyers begin to understand that APA LGBT youth are not personally failing to use the law, per se, but rather are influenced by systemic conditions causing their absence.

Motivated by this notion, the community lawyer works to improve access to the legal field for APA LGBT youth. Community lawyers begin to improve, if not transform, the conditions within which the impracticality of the courts is deeply embedded by ensuring language access at social service organizations, promoting a diverse membership and an agenda free from racism and homophobia, and appropriately clarifying the ways in which legal advocacy comports with aversions to public advocacy. While these measures are diffuse in nature, as previously mentioned, the community lawyer attempts to problem-solve alongside non-lawyers, including service providers, community leaders, youth, and families.

In terms of obtaining or improving substantive legal relief, community lawyers and APA LGBT youth clients need to collaborate in deciphering the appropriate course of action. Here, lawyers must not rely solely on legal pursuits in creating meaningful change in a youth’s life, but instead forge new and necessary understandings about the client-attorney relationship in question. At this point, there is no one obvious “solution” to improve the experiences for APA LGBT youth, especially in light of limited jurisprudence. But by engaging more practitioners to consider this overlooked community, and by opening up legal advocacy and the courts for APA LGBT youth, it is fathomable that more effective measures will arise.

V. REVISITING CHARLENE

The recommendations in Part V, *supra*, may have better addressed the challenges faced by Charlene Nguon. In adopting the professionally collaborative, context-considerate approach of a community lawyer, what could have been done differently to empower Charlene? Exploring Charlene’s story in greater detail reveals two areas for alternative strategy: (1) litigation, which relates to how her privacy interest could have been better framed by “collaborating” with sociological and psychological data; and (2) institutional dynamics, which examines systemic conditions leading to her case in the first place.

With respect to litigation, one area where more holistic advocacy might have benefited Charlene is her privacy interest. One of the deciding factors for this legal issue was the balancing of the state's interest to disclose the reasons for suspension with Charlene's right to privacy in her sexual orientation. The court astutely acknowledged that Charlene had a reasonable expectation that her sexual orientation would not be disclosed to her family because the school and home were two disconnected spheres.¹⁴⁸ In other words, although Charlene was visibly "out" at school in terms of her sexual orientation, her privacy rights at home were not relinquished:

The record revealed that Charlene's parents emigrated from Southeast Asia, and spoke a limited amount of English. Her parents rarely went to the high school, and Charlene did not bring Trang home to visit. Outside of school, displays of affection between Charlene and Trang were limited to holding hands at a shopping mall. The court finds that Charlene's home was an insular environment, and that her activities with Trang at school were unlikely to be known to her parent unless they were expressly informed.¹⁴⁹

Despite this point, the court ruled that Charlene's right to privacy at home was less important than the state's interest to comply with the education code that permitted the disclosure. The court reasoned that: while Charlene did have a reasonable expectation of privacy as to her sexual orientation, Wolf's disclosure of Charlene's behavior with another "girl" was within his statutory discretion in order to have a meaningful conversation with the parents regarding the suspension.¹⁵⁰

Absent from this balancing of interests, and perhaps where substantive relief could have been realized, however, is the governmental interest in preventing youth depression and suicide, a line of argument that becomes tenable when "collaborating" with socio-psychological expertise. Suicide is the third leading cause of death among youth,¹⁵¹ likely higher among APA LGBT youth, considering previously cited reports.¹⁵² The court did not comment on how administrators should (or should not) conduct themselves around sexual orientation disclosure. Had the court been made aware of research related to sexual orientation matters and their tremendous bearings on self-esteem (or conversely, depression),¹⁵³ its balancing act might have

148. *Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1191 ("[T]he School Defendants would conclude that Charlene forfeited her privacy right in all contexts. The Court disagrees. It does not follow that disclosure in one context necessarily relinquishes the privacy right in all contexts.").

149. *Id.*

150. *Id.* at 1197.

151. *Injury Prevention and Control: Suicide Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/ViolencePrevention/pub/youth_suicide.html (last updated Oct. 15, 2009) (last visited Aug. 31, 2012.)

152. AFRICA & CARRASCO, *supra* note 11; *Statistics*, *supra* note 11; *Teen Suicide is Preventable*, *supra* note 56.

153. See Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774 (2006). See also Anthony R. D'Augelli, *Mental Health Problems*

militated toward treating sexual orientation matters with increased sensitivity. Confronted with such information, a judge might have found that the principal, Wolf, callously handled the situation—thus, influencing the court to consider an alternate claim based on negligence.¹⁵⁴

In considering Charlene's context, a rebellious lawyer might address certain disempowering dynamics of Santiago High School's administration that led to Wolf's disclosure in the first place. First, Charlene was not the first lesbian or gay student to whom Santiago High School Administration had displayed animus.¹⁵⁵ In 2003, Wolf prohibited the formation of a GSA club, claiming that there was "no need" for the club at the school—in direct contravention of the federal Equal Access Act.¹⁵⁶ In addition, Charlene noted she received little support from either teachers or staff; she believed that no staff member stood up for her because they were afraid to lose their jobs.¹⁵⁷ To potentially exacerbate the lack of support networks, Santiago High School's town of Corona, California is one of the most conservative cities in the country,¹⁵⁸ and it is questionable whether appropriate local LGBT or APA resources were available to assist her coming-out experience.¹⁵⁹ Community lawyers might contend that had there been more locally accessible culturally appropriate services, she could have been able to better manage her ordeal. Moreover, had diversity sensitivity resources been incorporated into staff trainings at Santiago High School, Wolf might have conducted a more sophisticated approach altogether.

CONCLUSION

The foregoing legal study of Asian American, Native Hawaiian, and Pacific Islander LGBT Youth is a starting point. With little research available to discuss the struggles of this community, it is easy to speculate

Among Lesbian, Gay, and Bisexual Youths Ages 14–21, 7 *CLINICAL CHILD PSYCHOLOGY & PSYCHIATRY* 433 (2002).

154. To the contrary, the court appears to cite Charlene's supportive parents as adequate evidence for the general directive that disclosing sexual orientation is permissible: "It would be improper to assume that disclosure of facts which are indicative of sexual orientation will always result in negative consequences. The record here establishes that Charlene's mother and sister have been supportive of her. Charlene specifically testified that her parents were supportive once she announced that she was a lesbian." *Nguon v. Wolf*, 517 F. Supp. 2d at 1195 n.27.

155. Complaint for Injunctive and Declaratory Relief at 5, *Nguon v. Wolf*, 517 F. Supp. 2d 1177 (C.D. Cal. 2007) (No. 05-868), available at <http://www.aclu-sc.org/downloads/52/475518.pdf>.

156. *Id.*

157. ACLU LGBT Project, *supra* note 1, at 1:08–1:30.

158. THE BAY AREA CENTER FOR VOTING RESEARCH, *THE MOST CONSERVATIVE AND LIBERAL CITIES IN THE UNITED STATES* 8 (2005) (measuring conservatism through voting patterns and placing Corona at number 19), available at <http://alt.coxnewsweb.com/statesman/metro/081205libs.pdf>. (last visited Aug 31, 2012).

159. A strong community nonprofit advocacy agency focused on Cambodian girls could have assisted Charlene. See *KHMER GIRLS IN ACTION*, http://www.kgalb.org/about_us/history.html (last visited July 31, 2012).

whether mainstream legal strategies adequately support APA LGBT youth. However, the absence of such literature in both court filings and legal scholarship suggests either an unremarkable existence or a complex and overlooked one. Upon interdisciplinary study, however, APA LGBT youth appear to struggle in unique ways that reduce access to the judicial system. Depending on the generation and immigration status, one might need language assistance. Assuming participation in local APA and LGBT communities, their unique identity might evidence mutually exclusive, and deficient, support. And in pursuing advocacy, negotiations of intersecting values on public exposure can stunt their empowerment. The intuitive, holistic lawyer views these struggles as sites of legal accessibility and as basic barriers to the courts. The community lawyer seeks to rectify these conditions, and yet, does so acknowledging litigation as a limited or singular strategy toward community empowerment. Through embracing the rebellious lawyering approach, APA and LGBT legal advocates begin to perceive not just how to improve legal strategy for intersectional community but also how to participate in broader community progress.

Although this article is focused on the crucial and specialized circumstances unique to APA LGBT youth, all legal advocates are urged to begin thinking about the holistic needs of multiple-identity communities. In a nation alive with increasing pluralism,¹⁶⁰ legal advocates must respond to the needs of diverse communities. They must “relearn” that legal work is more interdisciplinary than law schools suggest, that “personal failure to use the law” might have systematic causes, and that the justice system might not comprehend the plight of multiple-identity minorities. In using APA LGBT youth as an example, a broader vision of advocacy that encompasses multiple-identity groups—such as the re-imagined, rebellious notions of lawyering—are better drawn from the margins, and more appropriately served by the legal community.

160. The United States is now arguably the most religiously diverse country in the world. See Diana L Eck, *A NEW RELIGIOUS AMERICA* 4–5 (2001), available at <http://infousa.state.gov/government/overview/eck.html>. Also, the U.S. Census now acknowledges sixty-three possible racial identities. See ELIZABETH M. GRIECO & RACHEL C. CASSIDY, *CENSUS 2000 BRIEF: OVERVIEW OF RACE AND HISPANIC ORIGIN* 3 Table 1, 4 Table 2 (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf> (showing that racial combinations available on Census forms yield up to 63 racial groups).