

2-2011

## Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the *Loncheros*

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### Recommended Citation

Ingrid V. Eagly, *Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the Loncheros*, 2 U.C. IRVINE L. REV. 91 (2012).  
Available at: <http://scholarship.law.uci.edu/ucilr/vol2/iss1/4>

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# Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the *Loncheros*

Ingrid V. Eagly\*

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## INTRODUCTION

For decades, the men and women operating mobile catering trucks in Los Angeles have been subjected to a variety of local regulation. In 2006 these workers—known colloquially as lunch truck vendors, *loncheros*, or *taqueros*<sup>1</sup>—found

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\* Acting Professor of Law, UCLA School of Law. I am grateful to Anthony Alfieri, Sameer Ashar, Sean Basinski, Paul Bergman, Michael Bindas, David Binder, Gary Blasi, Scott Cummings, Matthew Geller, Erin Glenn, Laura Gómez, Gregg Kettles, Albert Moore, Victor Narro, Angélica Ochoa, Ernesto Hernández-López, Hiroshi Motomura, Sanjukta Paul, Rocio Rosales, Joanna Schwartz, and Noah Zatz for feedback on earlier drafts of this Essay. Participants in UC Irvine School of Law’s symposium “Persistent Puzzles in Immigration Law” and the Sixth Annual Colloquium on Current Scholarship in Labor and Employment Law also provided helpful comments. Thank you to June Kim, Mariana Newman, and Zachary Thompson for their research assistance. Finally, I am indebted to Francisco González, Alfredo Magallanes, and the Asociación de Loncheros for giving the UCLA School of Law’s Criminal Defense Clinic the opportunity to work with them and for granting me permission to write about our collective efforts.

1. For a discussion of some of the legal issues that arise in the context of street vending, see

themselves subject to a new municipal ordinance that severely limited the amount of time that they could sell food in public streets.<sup>2</sup> Specifically, the law required catering trucks—defined as motorized vehicles “designed primarily for dispensing victuals”—to move every thirty minutes (if parked in a residential zone) or sixty minutes (if parked in a commercial zone) to a location at least one-half mile away.<sup>3</sup> Vendors who did not comply were subject to steep fines.<sup>4</sup>

As catering trucks racked up thousands of dollars in penalties, a grassroots group began to organize to evaluate possible responses. Over dinners at a South Los Angeles restaurant, the vendors congregated to discuss shared experiences operating their trucks under the stringent durational restriction. Gradually, attendance at the weekly meetings grew with the support of a community organizer,<sup>5</sup> a web-based community of taco enthusiasts,<sup>6</sup> and leadership training provided by the UCLA Downtown Labor Center and the National Day Labor Organizing Network.<sup>7</sup> In 2008 the vendors established a formal organization, which they named *La Asociación de Loncheros L.A. Familia Unida de California*.<sup>8</sup> Shortly thereafter, the Asociación contacted UCLA’s Criminal Defense Clinic, which I direct, to help its members explore their options in defending against continued prosecutions under the ordinance. Eventually, the Asociación asked the clinic to represent one of its members in an administrative appeal contesting the numerous fines he had received under the ordinance, while also using the appeal to challenge the validity of the ordinance itself.

This Essay examines the clinic’s work on the *lonchero* case. The goal of this

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Ernesto Hernández-López, *LA’s Taco Truck War: How Law Cooks Food Culture Contests* (Chap. Univ. Sch. of L. Legal Studies Research Paper Series, Paper No. 10–29, 2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1694747](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694747) and Gregg W. Kettles, *Regulating Vending in the Sidewalk Commons*, 77 TEMP. L. REV. 1 (2004).

2. L.A., CAL., MUN. CODE § 80.73(b)(2)(F) (2011) (effective July 23, 2006).

3. *Id.* § 80.73(b)(1)(B). The ordinance also requires catering trucks to remain at these distant locations for an equivalent length of time (thirty or sixty minutes depending on the zone). *Id.* § 80.73(b)(2)(F).

4. Fines under the ordinance run as high as \$361. *Id.* § 89.60 (see tbl. “Los Angeles Municipal Code,” under Section “80.73(b)(2)(F)”).

5. Erin Glenn, who began as a volunteer organizer with the Asociación in 2008 and now serves as the group’s executive director, has recently published an article about her experience. See Erin Glenn, “Taco Trucks” on the Streets: *Where Food and Social Justice Meet*, 3 L.A. PUB. INT. L.J. (forthcoming 2012).

6. See SAVEOURTACOTRUCKS.ORG, <http://saveourtacotrucks.org> (last visited Jan. 7, 2012).

7. Victor Narro, Project Director of the UCLA Labor Center, and Chris Newman, Legal Director of the National Day Labor Organizing Network (NDLON), were both instrumental in the Asociación’s development.

8. See ASOCIACIÓN DE LONCHEROS L.A. FAMILIA UNIDA DE CALIFORNIA, <http://www.loncheros.com> (last visited Jan. 7, 2012). The Asociación is certainly not the first grassroots group to mobilize in Los Angeles around the rights of vendors. See, e.g., Clair M. Weber, *Latino Street Vendors in Los Angeles: Heterogeneous Alliances, Community-Based Activism, and the State*, in *ASIAN AND LATINO IMMIGRANTS IN A RESTRUCTURING ECONOMY: THE METAMORPHOSIS OF SOUTHERN CALIFORNIA* 217 (Marta López-Garza & David R. Diaz eds., 2001) (discussing a Latino street vendor association that was active in the late 1980s in Los Angeles).

Essay is to document and assess a criminal clinic's effort to link an individual client's defense with a broader community-based campaign to organize immigrant workers around legal reform. Toward this end, Part I offers a descriptive account of the *loncheros*' political mobilization to challenge the Los Angeles durational restriction and the clinic's legal work on behalf of an individual vendor to advance that goal. Next, in Part II, this Essay uses the *lonchero* case study as a basis for reflecting on some of the implicit professional choices that underlie the conventional model for criminal defense and for explaining how cases like that of the *loncheros* can teach students about the practically important, but academically underexamined, role of defense lawyers in the pursuit of law reform. In sum, I contribute the story of the *loncheros* as a case study in clinical process, while also using it to explore alternative conceptions of defense practice.

### I. THE ROLE OF LAWYERS IN THE LONCHERO CAMPAIGN

The *loncheros*' strategy of contesting the Los Angeles ordinance through an individual test case evolved through a series of meetings that began in late 2008. As the clinic's director, the first question that I confronted in deciding whether we would accept the invitation to support the workers' campaign was whether the substance of the work would in fact fit within the subject matter of a criminal clinic. Although at one time parking violations were treated as infractions in California's criminal justice system, in 1992 the legislature converted such violations into civil offenses subject to administrative enforcement.<sup>9</sup> Ultimately, I was convinced that the severity of the frequent fines received by the vendors—combined with the vigorous enforcement of such violations by officers of the Los Angeles Police Department (LAPD)—placed the vendors' plight squarely in the realm of a criminal defense clinic.<sup>10</sup> The procedural rules that applied to the administrative proceedings fell outside the constitutional guarantees of the criminal system, but the posture of the case—defending against government-invoked sanctions designed to punish violators—was familiar.<sup>11</sup>

My students' clinical work with the Asociación began in the first week of the spring semester with a meeting at the UCLA Downtown Labor Center, a university program that supports research and education on labor issues. At the meeting, the core leadership of the Asociación explained to the students that the mission of their newly formed organization was to protect the rights of catering truck owners and operators. Much of the discussion, which was facilitated by a

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9. CAL. VEH. CODE §§ 40200 et seq. (West 2000 & Supp. 2012).

10. See generally Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L.J. 1795, 1798 (1992) (arguing that “punitive civil sanctions” function as criminal punishment “even though their procedural setting is civil”).

11. As discussed later in Part I, the explicit criminalization of a similar parking restriction in the unincorporated areas of Los Angeles County further persuaded me that the issue was one that belonged within a criminal clinic. See *infra* notes 90–94 and accompanying text.

volunteer English-Spanish interpreter,<sup>12</sup> focused on the toll that the city ordinance was taking on their ability to earn a living.<sup>13</sup> The members explained how their hard work over time had earned them the patronage of local customers who regularly purchased their food. The durational restriction had rendered their established business model obsolete. If they remained on the move, their customers could not find them. On the other hand, if they stayed in their regular spots, they could not afford to pay the fines.

At the conclusion of this initial meeting, the leadership of the Asociación asked our clinic to research the new ordinance and to help the membership identify possible strategies for challenging it. This Part traces the students' work over two distinct phases. In the first phase, our clinic counseled the Asociación on its options for pursuing both legal and nonlegal remedies.<sup>14</sup> In the second phase, the clinic's role shifted to that of lawyers defending an individual member of the Asociación against the fines he received under the ordinance.

#### A. *The Organizational Phase: Contesting the Durational Restriction*

Street vending has a rich and complex legal history in Los Angeles. Vending of wares by individuals on the sidewalk has been banned in Los Angeles by local ordinance since the 1930s and is punishable by up to six months in jail.<sup>15</sup> In contrast, vending of food from stationary vehicles parked on city streets is explicitly permitted under state law,<sup>16</sup> although subject to a complex web of regulations governing its form and function. For example, mobile catering vendors, like their brick-and-mortar counterparts, must follow strict food safety and hygiene requirements.<sup>17</sup> In addition, operators must comply with regulations unique to the mobile catering industry, such as limitations on where trucks may sell food,<sup>18</sup> restrictions on purchasing and preparing food,<sup>19</sup> and requirements for waste disposal and bathroom facilities.<sup>20</sup>

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12. Thank you to Maria Dolores Martin for her support of the clinic. For a discussion of the critical role of the interpreter in poverty lawyering, see Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1078–79 (2007).

13. L.A., CAL., MUN. CODE § 80.73(b)(2)(F) (2011) (effective July 23, 2006).

14. For a thoughtful discussion of the various ethical and practice issues involved in counseling community groups, see Paul R. Tremblay, *Counseling Community Groups*, 17 CLINICAL L. REV. 389 (2010).

15. See generally L.A., CAL., MUN. CODE § 42.00(b) (2011) (“No person . . . shall on any sidewalk . . . offer for sale . . . any goods, wares or merchandise which the public may purchase at any time.”); *id.* § 11.00(m) (making vending wares on the sidewalk a misdemeanor punishable by a fine of up to one thousand dollars and/or by imprisonment in the county jail for up to six months).

16. CAL. VEH. CODE § 22455(a) (West 2000 & Supp. 2012) (“The driver of any commercial vehicle engaged in vending upon a street may vend products on a street in a residence district only after bringing the vehicle to a complete stop and lawfully parking adjacent to the curb.”).

17. CAL. HEALTH & SAFETY CODE § 113725 (West 2006 & Supp. 2012).

18. See, e.g., L.A., CAL., MUN. CODE § 56.08(c) (2011) (prohibiting catering trucks from blocking the public right-of-way); *id.* § 80.73(b)(2)(A)(5) (prohibiting sale of food within 500 feet of a school).

Los Angeles first passed a law requiring the regular movement of mobile catering trucks in 1991.<sup>21</sup> However, the law allowed vendors to return immediately to their original location and continue selling food to their customer base. It therefore imposed a significant inconvenience, but no genuine impediment, to the trade. Moreover, as experienced catering operators explained to the students, the 1991 law was rarely enforced. In 2006 Los Angeles amended the ordinance to require catering vehicles to remain parked in a distant location for a period of thirty or sixty minutes before returning to the original location to resume sales.<sup>22</sup>

The students' research on the new durational restriction soon focused on the relationship between the city's restrictive ordinance and a California state law that permits vending from commercial vehicles. As the students learned, under the California Vehicle Code commercial vehicles are permitted to sell food items, subject only to the requirement that they first stop and lawfully park before doing so.<sup>23</sup> California law also makes clear that the state scheme for mobile catering operation has preemptive force over conflicting municipal regulation.<sup>24</sup> The only exception to exclusive state-level control over mobile catering vehicles is for those local regulations that further "the public safety."<sup>25</sup>

The students' investigation thus spotlighted the key legal question: Did state law preempt the Los Angeles ordinance?<sup>26</sup> If the ordinance legitimately furthered public safety, it fell within the proper jurisdiction of the city. However, if it was devised to advance a different goal, it improperly encroached on the exclusive

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19. See, e.g., HEALTH & SAFETY § 114295(c) (requiring that catering trucks store their food at a commissary); *id.* § 113947.1 (requiring that at least one employee in each vehicle have a food-handler certificate).

20. See, e.g., *id.* § 114244 (requiring waste receptacles and disposal); *id.* § 114315(a) (requiring that food trucks which remain in one location for more than one hour park within two hundred feet of a toilet and hand-washing facility).

21. L.A., CAL., ORDINANCE NO. 167175 (1991) (codified as amended at L.A., CAL., MUN. CODE § 80.73(b)(2)(F) (2011)), available at [http://clkrep.lacity.org/online/docs/1988/88-1266\\_ORD\\_167175\\_09-21-1991.pdf](http://clkrep.lacity.org/online/docs/1988/88-1266_ORD_167175_09-21-1991.pdf).

22. L.A., CAL., ORDINANCE No. 177620 (effective July 23, 2006) (codified at L.A., CAL., MUN. CODE § 80.73(b)(2)(F) (2011)), available at [http://clkrep.lacity.org/online/docs/2005/05-2220\\_ord\\_177620.pdf](http://clkrep.lacity.org/online/docs/2005/05-2220_ord_177620.pdf).

23. CAL. VEH. CODE § 22455(a) (West 2000 & Supp. 2012).

24. *Id.* § 21 ("Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and in all counties and municipalities therein, and a local authority shall not enact or enforce any ordinance or resolution on the matters covered by this code . . . unless expressly authorized by this code.").

25. *Id.* § 22455(b) ("Notwithstanding subdivision (a) of Section 114315 of the Health and Safety Code or any other provision of law, a local authority may, by ordinance or resolution, adopt additional requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon any street." (emphasis added)).

26. See CAL. CONST. art. XI, § 7 ("A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."). See generally *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal.4th 893, 897 (1993) (local legislation that conflicts with state law is preempted by state law).

state authority to regulate the parking of such vehicles.<sup>27</sup> Since there was no contemporaneous public record of the underlying rationale for the 2006 amendment,<sup>28</sup> the students searched for evidence to cast doubt on the link between the durational restriction, its enforcement, and public safety. Through the course of their research, three possible rationales for the city ordinance emerged: crime reduction, competition restriction, and racial discrimination.

### 1. *Crime*

Crime reduction is often cited as a public safety rationale for restricting catering trucks. Vigorous enforcement of order-maintenance laws like parking restrictions for mobile eateries has been associated with the so-called broken windows theory of policing.<sup>29</sup> Central to the broken windows approach is the belief that crime rates will rise if public disorder is left uncontrolled. The notion, taken from George Kelling and James Wilson's 1982 *Atlantic Monthly* essay on the topic, is that if one window is left broken and unrepaired, soon all of the building's windows will be broken.<sup>30</sup> Therefore, to keep crime under control, law enforcement must start from the bottom and stringently enforce petty infractions.

Such theories of policing have been influential in cities like New York and Los Angeles, although subject to sharp criticism in academic circles. For example, Bernard Harcourt concluded in his comprehensive study of New York City policing that there is no statistically significant relationship between public disorder enforcement and the commission of more serious crimes such as assault, burglary, and rape.<sup>31</sup> Still, application of this theory retains strong support among many city officials, including in Los Angeles, where it was adopted when William Bratton became chief of police in 2002.<sup>32</sup> In his previous position as police commissioner for New York City, Bratton gained nationwide notoriety for his adherence to zero-tolerance policing strategies.<sup>33</sup> His ideas had immediate

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27. See generally *Barajas v. City of Anaheim*, 19 Cal. Rptr. 2d 764 (Ct. App. 1993) (concluding that the California state legislature has demonstrated its intent that laws regulating vendors "selling from motorized contraptions" is unquestionably a matter of "statewide concern" rather than merely a "municipal affair").

28. Neither the City Attorney's report to City Council regarding the draft ordinance nor the final version of the ordinance itself contained an analysis of the reasons animating the change. L.A. City Council File No. 05-2220, <http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=05-2220> (last visited Jan. 11, 2012).

29. James Q. Wilson & George Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29.

30. *Id.*

31. Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 293, 309–29 (1998).

32. Bernard E. Harcourt, *Bratton's 'Broken Windows'*, L.A. TIMES, Apr. 20, 2006, at B13.

33. WILLIAM BRATTON WITH PETER KNOBLER, *TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC* (1998).

resonance with Los Angeles lawmakers.<sup>34</sup>

As applied to catering trucks, the broken windows argument is simple: the sale of food on city streets encourages people to congregate, thus increasing criminal activity and attracting criminal elements to neighborhoods.<sup>35</sup> Restricting street vending, so the argument goes, can help to reduce overall crime rates. As one Los Angeles legislator revealed, the effort to restrict food truck parking was based “on the broken windows concept.”<sup>36</sup> Without vigilant enforcement of taco trucks, “it becomes a free-for-all in the street.”<sup>37</sup> Los Angeles police officers assigned to the Vice Squad unit that tickets lunch trucks have also echoed the broken windows rationale, citing “blight” and “crime” as the two primary reasons why parking restrictions should be enforced.<sup>38</sup> Similarly, Vice Squad patrol officers articulate the belief that catering vendors foster criminal activity by encouraging their customers “to be outside, on the street, where they may be exposed [to crime] as opposed to staying out of harm’s way.”<sup>39</sup>

If crime control was indeed the theory that the city would advance, could it succeed in showing that taco trucks and crime are in fact linked in practice? The students were assisted in analyzing this question by their discovery of a 2006 case in which a group of vendors challenged a similar durational ordinance in the nearby city of Santa Ana, California.<sup>40</sup> In defending the city’s ninety-minute food truck parking limit, Santa Ana took the broken windows theory to trial. Presenting its case complete with an expert witness, the city attorney argued that mobile eateries begin a vicious cycle by causing people to congregate outside—which, in turn, causes neighborhoods to deteriorate (beginning with trampling of grass in the parkway)—and, ultimately, invites criminal activity.<sup>41</sup> The trial judge was not

34. As one City Councilman explained, “[i]f you see a neighborhood go down, it causes urban problems to accelerate.” Jessica Garrison, *No Issue Too Small for L.A. Council*, L.A. TIMES, Sept. 28, 2004, at A1 (quoting L.A. City Councilman Tom LaBonge).

35. See generally MITCHELL DUNEIER, *SIDEWALK* (1st paperback ed. 2001) (explaining how broken-windows policing has been vigorously applied to regulating sidewalk vending); Daniel M. Bluestone, “*The Pushcart Evil*: Peddlers, Merchants, and New York City’s Streets, 1890–1940,” 18 J. URB. HIST. 68, 69 (1991) (offering an historical analysis of how turn-of-the-century proposals for banning pushcarts reflected upper-class ideals of “public decorum and social separation”); Linda M. Ricci, *Hawking Neighborhood Justice: Unlicensed Vending in the Midtown Community Court*, 12 YALE L. & POLY REV. 231, 233 (1994) (arguing that unlicensed vending is “representative of the quality-of-life crimes” prosecuted in New York City).

36. Alfred Lee, *L.A. Food Trucks: Set to Serve Up Battle for Rights*, L.A. BUS. J., June 21, 2010, at 6 (quoting L.A. City Councilman Tom LaBonge).

37. *Id.*

38. Jesús Hermosillo, *Locheras: A Look at the Stationary Food Trucks of Los Angeles*, 44–46 (Sept. 2010) (unpublished M.A. thesis, UCLA), available at <http://www.labor.ucla.edu/publications/reports/Locheras.pdf>.

39. *Id.* at 45.

40. Thank you to attorney Randall Guritzky, who litigated the Santa Ana case on behalf of a group of mobile catering vendors, for sharing his expertise with our clinic.

41. Minute Order Granting Entry of Preliminary Injunction, *Vasquez v. City of Santa Ana*, No. 05CC13450, at 2, 6–8 (Orange Cnty. Super. Ct. Aug. 18, 2006).



persuaded by the city's defense and flatly refused to find that the durational restriction promoted public safety.<sup>42</sup> Vague assertions that the sale of food on the streets increased crime rates were simply too unsubstantiated to carry the day in court. To the extent that Los Angeles' strikingly similar law was also conceived as a measure to reduce crime, the students felt that the city would encounter similar problems of proof.

## 2. *Competition*

A second rationale for regulating Los Angeles lunch trucks that the students encountered was competition.<sup>43</sup> The competition argument proceeds as follows: catering trucks sell inexpensive, tasty food in the vicinity of existing restaurants, thereby unfairly luring customers from brick-and-mortar establishments that incur higher overhead costs. Indeed, Los Angeles officials who cast votes in favor of durational restrictions are often heard articulating precisely this concern. Los Angeles County Supervisor Gloria Molina, a proponent of durational restrictions, has described the problem as a "turf war that goes on between the vendors and the merchants."<sup>44</sup> Members of the Los Angeles City Council have explained the predicament more candidly to the *Los Angeles Times*, accusing catering trucks of brazenly parking near restaurants and "stealing" their business.<sup>45</sup>

In the past, Los Angeles has been explicit in its legislative aim to protect restaurants from sidewalk competition. In 1978 the city passed an ordinance banning the sale of "victuals" on public streets within one hundred feet of an entrance to a brick-and-mortar establishment.<sup>46</sup> Los Angeles lawyer Philip Greenwald, a pioneer in the field of mobile catering law, challenged the law on behalf of his client, Ala Carte Catering Company. After receiving numerous parking citations, Ala Carte was prosecuted by the city attorney. However, Greenwald and his client emerged victorious, convincing the trial court to dismiss

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42. *Id.* at 12 ("The short answer is that the City of Santa Ana has not demonstrated a specific public safety issue, either criminal or traffic, associated with the activities of the vendors . . . . Absent a specific verifiable public safety problem, the court cannot say that either of the solutions, by regulating their hours or requiring their movement, meets the requirements of a public safety exception to the clearly preempted area of street vending.").

43. See Bluestone, *supra* note 35, at 75–76 (citing competition as a major tension surrounding the banishing of pushcarts from the streets in the early 1900s).

44. Jean-Paul Renaud, *Curbing East L.A. Taco Trucks: Restrictions Loom as Restaurants Complain That the Vendors Are Hurting Business*, L.A. TIMES, Apr. 14, 2008, at B1.

45. See, e.g., Jessica Garrison, *Food Trucks May Hit Detour*, L.A. TIMES, Sept. 4, 2003, at B1 (quoting City Councilwoman Janice Hahn as favoring increased catering truck regulation because "some catering trucks are stationing themselves in front of restaurants and stealing their business"); Phil Willon, *Taco Trucks Can Just Stay Put, Court Says*, L.A. TIMES, June 11, 2009, at A6 (quoting Los Angeles City Councilman Dennis Zine explaining that durational restrictions are needed because "[w]hat happens is that these guys go and park near restaurants, and that hurts the restaurants' business").

46. L.A., CAL., ORDINANCE No. 150561 (effective March 19, 1978) (invalidated by *People v. Ala Carte Catering Co.*, 159 Cal. Rptr. 479 (App. Dep't Super. Ct. 1979)).

the charge under the rationale that the city's ordinance "discriminated economically against catering truck operations" and amounted to nothing more than an unconstitutional "naked restraint of trade."<sup>47</sup>

The students' research on the competition rationale put them in touch with other legal organizations that challenge government-erected barriers to individual rights. For example, the Institute for Justice (IJ), a "libertarian public interest law firm," was at the time interested in taking on street vending as one of its priority issues.<sup>48</sup> In IJ's view, laws that restrict vending "usually serve no purpose other than to burden entrepreneurs, sustain the city's bureaucracy or protect other businesses from competition."<sup>49</sup> In the process, such laws interfere with "the right of street vendors to earn an honest living."<sup>50</sup> In 2010 IJ would launch a "National Street Vending Initiative" by filing a highly publicized federal lawsuit against the city of El Paso, Texas. Specifically, the suit asked the court to invalidate an ordinance that made it illegal to operate a food truck within one thousand feet of any restaurant, convenience store, or grocery.<sup>51</sup> El Paso responded just three months later by repealing the challenged food truck restriction.<sup>52</sup>

To the extent that rooting out competition was the purpose of the new Los Angeles ordinance, the students believed that the law would be susceptible to a preemption claim. Eliminating competitors to brick-and-mortar restaurants is clearly distinct from promoting public safety. The city would be hard-pressed to promote the competition rationale as a legitimate legal ground for keeping taco trucks on the move.

In the context of their ongoing organizing work, the members of the Asociación had already developed a sophisticated understanding of policymakers' competition concerns. To respond to this widely disseminated critique of mobile vending, the Asociación began a *campana de educación*—or educational campaign—that emphasizes its members' right to earn an honest living and engage in old-fashioned American competition.<sup>53</sup> After all, catering operators are entrepreneurs:

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47. *Ala Carte Catering Co.*, 159 Cal. Rptr. at 481, 484 (quoting and affirming the trial court's dismissal of the charges).

48. See *About IJ: Our Mission*, INSTITUTE FOR JUSTICE, <http://www.ij.org/about> (last visited Feb. 9, 2011). For a comprehensive study of conservative cause lawyers, see ANN SOUTHWORTH, *LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION* (2008).

49. MICHAEL BINDAS, *L.A. VS. SMALL BUSINESS: CITY OF ANGELS NO HEAVEN FOR ENTREPRENEURS 3* (2010), available at <http://www.scribd.com/doc/48115153/L-A-vs-Small-Business-City-of-Angels-No-Heaven-for-Entrepreneurs>.

50. See Web Release, *El Paso Mobile Food Vendors File Major Federal Lawsuit Against City*, INSTITUTE FOR JUSTICE (Jan. 26, 2011), <http://www.ij.org/about/3652>.

51. Complaint for Declaratory and Injunctive Relief, *Castaneda v. City of El Paso*, No. EP-11-CV-35-KC, at 1 (W.D. Tex. Jan. 26, 2010) (arguing that the El Paso regulation violates the Due Process and Privileges or Immunities Clauses of both the United States and Texas Constitutions).

52. See Web Release, *Victory for El Paso Mobile Food Vendors*, INSTITUTE FOR JUSTICE (Apr. 26, 2011), <http://www.ij.org/about/3790>.

53. Glenn, *supra* note 5.

they own their businesses, set their own hours, and establish their own prices.<sup>54</sup> And, as the members joked with the students, maybe a restaurant that cannot compete with a taco truck should not be in business after all. The vendors' ongoing campaign thus seeks to destabilize the unfair competition rationale by embracing the virtues of competition, publicizing the vendors' strict adherence to applicable licensing and sanitation laws, and fostering cooperative relationships with local business owners.<sup>55</sup>

### 3. Race

A third potential factor motivating the regulation of *loncheros* was racial discrimination. "Isn't this all about race?" one of my students bluntly asked the vendors during our first meeting. She was certainly not alone in suspecting discrimination. As Regina Austin argued in her foundational *Yale Law Journal* essay on black street vendors, historically race has strongly influenced debates over whether to allow vending in public space.<sup>56</sup> More broadly, scholars have documented ties between broken windows-style policing and racially discriminatory enforcement practices.<sup>57</sup>

A silence fell over the room after the student's question was translated into Spanish. Her seemingly simple question was, after all, exceedingly complex. In part, she was asking whether the city's ticketing of vendors might be targeted

54. For a sampling of scholarship identifying the often-overlooked entrepreneurial aspect of immigrant work in industries such as day labor and street vending, see ROGER WALDINGER ET AL., *ETHNIC ENTREPRENEURS: IMMIGRANT BUSINESS IN INDUSTRIAL SOCIETIES* (1990), Yvonne V. Jones, *Street Peddlers as Entrepreneurs: Economic Adaptation to an Urban Area*, 17 *URB. ANTHROPOLOGY & STUD. CULTURAL SYS. & WORLD ECON. DEV.* 143 (1988), and Abel Valenzuela Jr., *Day Laborers as Entrepreneurs*, 27 *J. ETHNIC & MIGRATION STUD.* 335 (2001).

55. Glenn, *supra* note 5.

56. Regina Austin, "An Honest Living": *Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 *YALE L.J.* 2119 (1994). See also Gregg W. Kettles, *Legal Responses to Sidewalk Vending: The Case of Los Angeles, California*, in *STREET ENTREPRENEURS: PEOPLE, PLACE AND POLITICS IN LOCAL AND GLOBAL PERSPECTIVE* 58, 72 (John Cross & Alfonso Morales eds., 2007) ("Though rarely expressed directly, many opponents of sidewalk vending reject the practice because it signifies the rise of a foreign culture that threatens the status of their own."). In the closely related context of day laborers, Stephen Munzer has similarly argued that opposition may stem from "unease over groups of men, especially Latinos, standing together; concern that they will take jobs from 'real' Americans; and opposition to immigrants and especially to illegal immigrants." Stephen R. Munzer, *Ellickson on "Chronic Misconduct" in Urban Spaces: Of Panhandlers, Bench Squatters, and Day Laborers*, 32 *HARV. C.R.-C.L.L. REV.* 1, 34 (1997).

57. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 11 (2010) (arguing that zero-tolerance policing strategies can "effectively funnel youth of color from schools to jails"); Dorothy E. Roberts, *Forward: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 *J. CRIM. L. & CRIMINOLOGY* 775, 779 (1999) (highlighting the potential of order-maintenance policing to "enforce and magnify racist norms of presumed Black criminality"); Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 *YALE L.J.* 2249, 2251–52 (1998) (claiming that while broken-windows type laws, such as vagrancy laws, are "facially race-neutral, . . . implementation of these laws was often targeted at minority communities").

against the group's Latino membership serving Mexican fare in East and South Los Angeles. Did the high-end, gourmet "Twitter trucks"<sup>58</sup> that serviced the West Side of Los Angeles find themselves the same predicament?<sup>59</sup> More deeply, her question also probed whether the Asociación's largely Mexican American membership self-identified as a *racial* group subject to discrimination in the first instance.<sup>60</sup>

During the conversation that followed, the vendors explained how the law's continued enforcement had damaged their traditions and livelihoods. One vendor recounted in detail the recipe handed down in his family for generations—a traditional Mexican grilled meat dish known as *carne asada*—that he sold with pride from his truck. Another spoke emotionally of his children, who literally grew up in the trucks, helping in the family business that would later pave their way to college. But, the vendors did not at this point accept the student's invitation to define their experience in explicit racial terms—for example, they did not employ terms such as Chicano, race, or discrimination.<sup>61</sup>

For the students, the Latino vendors' plight was a modern-day version of *Yick Wo v. Hopkins*,<sup>62</sup> a case touched upon in law school courses on constitutional law, criminal procedure, and immigration law.<sup>63</sup> Like the catering vendors, the Chinese launderers who brought suit against the city of San Francisco found their livelihood threatened by a city regulation that targeted their immigrant-dominated industry. The San Francisco ordinance at issue required laundries, including those

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58. Twitter is a real-time social networking service that allows users to share short messages, popularly known as "tweets." See About, TWITTER, <https://twitter.com/about> (last visited Jan. 13, 2012). Twitter has been popular among gourmet food trucks that rely on the service to publicize their location to loyal followers. See generally Ben Bergman, *Tweeting Food Truck Draws L.A.'s Hungry Crowds*, NAT'L PUB. RADIO, Mar. 23, 2009, available at <http://www.npr.org/templates/story/story.php?storyId=101881984>.

59. For discussion of the emerging gourmet food truck industry in Los Angeles, see Glenn, *supra* note 5 and Hernández-López, *supra* note 1.

60. As research by Laura Gómez has shown, a common misconception "is that Mexican Americans are not a *racial* group at all, but instead merely an ethnic group." LAURA GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* 1 (2007). Their treatment in U.S. history as "*legally* white," but "*socially* non-white"—a status that Gómez terms "off-white"—has resulted in modern day ambiguity as to the collective racial identification of Mexican Americans. *Id.* at 149–50. As Gómez documents, studies have found that many Latinos today self-identify as white despite the persistence of racial discrimination. *Id.* at 149–61.

61. The term "Chicano" arose as an alternative to "Mexican American" in the late 1960s to incorporate "the assertion that Mexicans constituted a non-White race." Ian F. Haney López, *Protest, Repression, and Race: Legal Violence and the Chicano Movement*, 150 U. PA. L. REV. 205, 208 (2001).

62. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); see generally HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 63–65 (2006) (discussing *Yick Wo*'s challenge).

63. For examples of law school textbooks that mention *Yick Wo*, see KATHLEEN M. SULLIVAN & GERALD GUNTHER, *CONSTITUTIONAL LAW* 522 (17th ed. 2010), THOMAS A. ALENIKOFF ET AL., *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 198–200 (7th ed. 2012), and CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, *CRIMINAL PROCEDURE: AN ANALYSIS OF CASES AND CONCEPTS* 507 (5th ed. 2008).

operated by Yick Wo and Wo Lee, to be located in brick or stone buildings.<sup>64</sup> Because almost all of San Francisco's existing 320 laundries were made of wood, the new law gave the city discretion to allow some laundries to continue in wooden buildings. However, the city systematically refused to grant variances to Chinese immigrant launderers who operated out of wooden buildings.<sup>65</sup>

Counsel for the San Francisco sheriff argued before the United States Supreme Court that the Chinese businessmen who rented the wooden buildings to establish laundries contributed to a general dilapidation of the neighborhood and depreciated the "value of all the property within reach of the annoyance radiating from the laundry."<sup>66</sup> Rejecting this attempt to defend the law as "purely a police regulation,"<sup>67</sup> the Supreme Court invalidated the city's enforcement of the facially neutral law as racially discriminatory. As the Court explained, "no reason for it exists except hostility to the race and nationality to which the petitioners belong."<sup>68</sup>

The students went about researching how they could marshal facts to support a claim of discriminatory enforcement similar to the one that succeeded in *Yick Wo*.<sup>69</sup> In winning their charge of intentional prosecutorial discrimination,<sup>70</sup> Yick Wo and Wo Lee were able to show that of the 320 turn-of-the-century laundries in San Francisco, 310 were in wooden buildings, 240 were owned by Chinese, and only non-Chinese were granted variances.<sup>71</sup> Much less is known about the modern catering truck industry. The students' research did confirm that there is a high overall proportion of Latinos<sup>72</sup> (many of whom are also foreign born<sup>73</sup>) among the owners and operators of Los Angeles lunch trucks. Yet, they

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64. *Yick Wo*, 118 U.S. at 368.

65. *Id.*

66. Authorities and Argument for Defendant and Respondent at \*2, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (Nos. 1280, 1281), 1885 WL 18153.

67. *Id.* at \*6.

68. *Yick Wo*, 118 U.S. at 374.

69. For a discussion of how students must move from the identification of the "legal elements" of a particular claim to identifying "factual propositions" and supporting evidence, see ALBERT J. MOORE ET AL., TRIAL ADVOCACY: INFERENCES, ARGUMENTS AND TECHNIQUES 10–19 (1996).

70. Although *Yick Wo* is traditionally cited for the principle of banning race-based prosecutorial discrimination on equal protection grounds, Jack Chin has argued that this is a misreading of the decision. Instead, Professor Chin contends that the decision was based on the federal government's plenary power to manage foreign treaties with China. Gabriel J. Chin, *Unexplainable on Grounds of Race: Doubts About Yick Wo*, 2008 U. ILL. L. REV. 1359, 1360 (2008).

71. *Yick Wo*, 118 U.S. at 358–59.

72. Somewhat outdated statistics from the Industrial Caterers Association estimate that the Los Angeles catering truck industry is ninety percent Latino. Dean Murphy, *City Council May Curb Catering Trucks*, L.A. TIMES, Jan. 4, 1990, at B3. More recent data compiled from the 2000 Census data by Rocio Rosales has shown that sixty percent of street vendors (a category that include mobile catering vendors and other street vendors) are Hispanic. Email from Rocio Rosales, Ph.D. Student, UCLA Department of Sociology, to author (Feb. 16, 2009, 15:28 PST) (on file with author).

73. 2000 Census data reflect that 62.5% of street vendors are foreign born, and 47% are

were unable to obtain exacting race-based enforcement statistics like those relied upon in *Yick Wo*. As the students were disappointed to discover, Latino vendors that have challenged vending restrictions on equal protection grounds in other cities have encountered similar problems of proof.<sup>74</sup>

Despite the lack of empirical support, one option that our clinic discussed was that of combining a race claim with others (like preemption) that would not face similar problems of proof. A classic example of this type of strategy was prominently employed four decades ago in the home territory of many of the Asociación's members—East Los Angeles. In 1968 a young criminal defense attorney by the name of Oscar Acosta represented leaders of the East Los Angeles Chicano movement in a criminal case.<sup>75</sup> The charges that the men faced, including disturbing the peace and trespassing on school grounds, stemmed from their role organizing a student boycott to demand improvements in the public education system.

In crafting his defense, Acosta merged promising legal theories based on the First Amendment and insufficiency of evidence with a more tenuous race-based claim that the absence of Mexican Americans on the grand jury violated equal protection.<sup>76</sup> Acosta and his clients did not raise the race-based claim because they thought it would prevail, but rather because its strategic placement in the litigation allowed them to frame their overall defense around the very theme that the defendants embraced—that of promoting a nonwhite Chicano identity and revealing pervasive societal racism.<sup>77</sup> Although delays caused by litigating the equal

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noncitizens. Rocio Rosales, *Help Wanted: International Labor Recruitment Among Los Angeles Fruit Vendors*, in *THE MIGRATION INDUSTRY: BROKERS, BUSES, AND THE BUSINESS OF INTERNATIONAL MOBILITY TO THE UNITED STATES* (Rubén Hernández-León ed., forthcoming 2012) (documenting cross-border recruitment strategies for fruit vendors from Mexico to Los Angeles).

74. See *Hispanic Taco Vendors of Washington v. City of Pasco*, 994 F.2d 676, 680 (9th Cir. 1993) (finding that Hispanic vendors failed to show that they “would be deprived of their livelihood while vendors of other races would continue to operate as before”); *Amezua v. City of Pomona*, 216 Cal. Rptr. 37, 39 (Ct. App. 1985) (concluding there was no evidence in the record to support the plaintiffs’ equal protection claim that enforcement of a vending ordinance discriminated against vendors of Mexican ancestry). For more scholarship discussing the difficulty in proving prosecutorial discrimination, see Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 *FORDHAM L. REV.* 13, 18 (1998) (noting that equal protection claims require “a nearly impossible showing that the prosecutor intentionally discriminated against the defendant . . .”) and Sofia D. Martos, *Coded Codes: Discriminatory Intent, Modern Political Mobilization, and Local Immigration Ordinances*, 85 *N.Y.U. L. REV.* 2099, 2102 (2010) (showing how the legal application of the Equal Protection Clause makes discrimination challenges to quality-of-life city ordinances extremely difficult to prove).

75. IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* 27–40 (2003). Acosta was aided in his work by lawyers from the National Lawyers’ Guild and the American Civil Liberties Union as well as law students in the La Raza student organization. *Id.* at 31.

76. *Id.*

77. *Id.* at 32. As Lucie White has argued in the civil context, a “well-crafted lawsuit” can have a number of benefits beyond legal relief, including serving as “an occasion for plaintiffs and their allies to learn about their own powers to make change.” Lucie E. White, *Mobilizing on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 *N.Y.U. REV. L. & SOC. CHANGE* 535, 538 (1987–88).

protection claim were significant,<sup>78</sup> Acosta's seamless integration of the moral theme of racism with a solid legal theory for acquittal ultimately resulted in a dismissal of the charges.<sup>79</sup> Whether a similar strategy of integrating a race claim with other potential challenges would be embraced by the *loncheros* remained to be determined.<sup>80</sup>

#### 4. *Collective Decisionmaking*

With their research in hand, the students met with the full membership of the Asociación. At least sixty vendors were in attendance at the evening session held at the Labor Center. The students discussed the evolution of the Los Angeles ordinance and presented their legal research on potential claims. As a group, the vendors recounted ongoing problems that they were having in operating their trucks and discussed their options for addressing the mounting enforcement problem.

In the conversation that followed, several strategies for addressing the situation emerged. One alternative was to work with city officials and other stakeholders to amend the law. This was seen as a prudent strategy that would allow the members to not only address the current crisis, but also enable them to react effectively to other legal and political challenges that may emerge down the road. Continuing with the education campaign that was already underway was also important to the group. Through public education, they could demystify some of the misleading stereotypes about vendors by promoting the positive contributions that mobile vendors have made to Los Angeles food and culture.

The group spent a good deal of time discussing with the students the proper role of the law in their organizing work. In particular, the members considered involving the clinic and pro bono lawyers more directly in mounting a legal challenge to the ordinance. As the students explained, the organization could file an affirmative suit against the city seeking to enjoin enforcement of the law. Alternatively, the vendors could pursue a more individualized challenge to the law by appealing members' individual parking tickets.<sup>81</sup> By requesting administrative

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78. HANEY LÓPEZ, *supra* note 75, at 32 (noting that a two-year delay resulted, in part, from the litigation of the equal protection claim).

79. *Id.* For a discussion of the critical role of theme—as distinguished from legal theory—in trial advocacy, see STEVEN LUBET, MODERN TRIAL ADVOCACY: ANALYSIS AND PRACTICE (4th ed. 2009). As Professor Lubet explains, a case theme supplements a legal theory by showing the fact finder *why* the verdict sought is moral and just. *Id.* at 8.

80. Hiroshi Motomura's work has demonstrated that litigants challenging state and local immigration laws may want to raise equal protection issues despite the fact that the strongest legal argument is preemption because "[a] judge concerned that racial or ethnic animus is the impetus for a law that targets unauthorized migrants can channel those concerns into the preemption analysis." Hiroshi Motomura, *The Rights of Others: Legal Claims and Immigration Outside the Law*, 59 DUKE L.J. 1723, 1739, 1743 (2010).

81. See generally CAL. VEH. CODE § 40215(b) (West 2000 & Supp. 2012) (granting the right to request a "personal conference" before an "examiner").

review before a hearing examiner to determine the legality of their tickets, vendors could challenge any facial inadequacies in the written tickets.<sup>82</sup> At the same time, they could potentially raise broader claims rooted in the illegitimacy of the ordinance and its enforcement. Given the high number of vendors affected by the durational restriction, some members suggested that the organization might invest in training its members to represent themselves pro se in administrative appeals of their parking tickets.

After discussing these topics for a few hours, the members of the Asociación explained that their primary concern was that the group not be distracted from its organizing mission by a protracted legal battle.<sup>83</sup> Although a legal victory was undeniably a goal for the membership, simply invalidating the *current* ordinance could not ensure their *future* protection from similar problems created by revisions to the municipal code. Therefore, the members believed it was preferable to limit their overall organizational commitment to litigation so that they would have sufficient time for other organizational objectives, such as promoting a positive image of catering vendors, building their core leadership, and working with local stakeholders to draft truck-friendly laws.<sup>84</sup>

Ultimately, citing concerns that involving too many members in a legal challenge would distract the membership from its organizing mission, the organization asked the clinic to pursue a single member's case to test the validity of the law.<sup>85</sup> The Asociación chose a member who had been particularly affected by the ordinance—Francisco González—to be the clinic's client.<sup>86</sup> As the leadership of the Asociación explained, González's situation was representative of the experience of the group's membership. Over the past year, he received so many tickets under the durational restriction that he was on the verge of abandoning his once-successful East Los Angeles business. Although he was not a member of the leadership of the Asociación, he agreed to participate actively in his own defense, attend regular membership meetings, and keep the organization updated on the progress in his case.

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82. Under state law, the Notice of Parking Violation is admitted during the administrative hearing and treated as "prima facie evidence of the facts contained therein." *Id.* § 40202(a).

83. Jennifer Gordon's foundational work on immigrant worker organizing has highlighted precisely this tension between pursuing legal action versus collective organizing. JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* 186 (2004).

84. See generally White, *supra* note 77, at 564 (noting that litigation runs the risk of drawing "clients into a culture and a discourse that is likely to seem strange and intimidating").

85. As work by Susan Carle has shown, the "test case" concept is a strategy that civil rights groups have employed since the turn of the century "to establish a point of law as precedent in future cases." Susan Carle, *Race, Class, and Legal Ethics in the Early NAACP (1910–1920)*, 20 *LAW & HIST. REV.* 97, 100–01 (2002).

86. In representing González, the clinic partnered with Los Angeles civil rights lawyer Sanjukta Paul, who took on the case pro bono while working as an associate at the Pasadena firm of Rothner, Segall, Greenstone & Leheny.



B. *The Individual Phase: Defending the Test Case*

The clinic's role had now shifted from advising the group to defending an individual client. As a result, the students needed to remain especially vigilant of their responsibility to not allow the interests of the group to interfere with their zealous advocacy on behalf of their individual client.<sup>87</sup> With their obligations to their client in mind, the students went to work developing a legal strategy.<sup>88</sup>

The clinic's commitment to a client-centered approach to representation required us to pose directly to our client the question of which claims to pursue.<sup>89</sup> As lawyers-in-training, the students' job was to advise their client so that he could meaningfully participate in the decision. The students therefore took care in counseling their client on the various claims that he might raise in an appeal of his numerous parking tickets.

Much time was spent discussing the possibility of a preemption claim, which González firmly supported including in the litigation. First and foremost, he was swayed by the fact that a similar ordinance adopted by Los Angeles County (and enforced in the unincorporated areas of the county) had recently been invalidated on state preemption grounds.<sup>90</sup> Like the city, the county had imposed strict time limits on the parking of lunch trucks.<sup>91</sup> The main difference between the city and the county restrictions was that county violations could also be prosecuted as misdemeanors.<sup>92</sup> When long-time vendor Margarita Garcia found herself facing up

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87. For a discussion of the ethical tensions that can arise when a lawyer simultaneously works with individual community members and community-based organizations, see Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 502–16 (2001). See also GORDON, *supra* note 83, at 208 (noting that attorneys who link individual legal representation with collective organizing must ensure that a third party does not “make demands on how [the attorney] handles the case or seek to influence her strategy so that it favors its ends over the client’s”); Charles J. Ogletree & Randy Hertz, *The Ethical Dilemmas of Public Defenders in Impact Litigation*, 14 N.Y.U. REV. L. & SOC. CHANGE 23, 23 n.2 (1986) (exploring some of the ethical issues that arise when attorneys in the public defender setting go beyond the needs of the individual client to seek “reform for all other individuals who are or will be suffering from the same legal problems as the individual client”).

88. In cases where the interests of clients do not remain aligned, lawyers must follow the ethical rules that govern conflicts of interest and withdrawal from representation. See generally Cummings & Eagly, *supra* note 87, at 510–13 (discussing the application of conflict of interest rules in the context of poverty law and criminal defense).

89. Fundamental to the client-centered counseling model is the principle that clients must be given the opportunity to make their own decisions, particularly when case decisions are “likely to have a substantial legal or non-legal impact” on the client. DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 318–38 (3rd ed. 2011).

90. See generally Garrett Therolf, *Taco Trucks Can Stay Parked*, L.A. TIMES, Aug. 28, 2008, at B1 (discussing county challenge).

91. Specifically, the county law limited lunch truck operation to thirty minutes in residential zones or sixty minutes in commercial zones, during any three-hour period. L.A. CNTY., CAL., CODE § 7.62.070 (2011).

92. Violations were punishable with up to six months in the county jail and/or up to a one-thousand-dollar fine. *Id.* § 7.62.140; CAL. PENAL CODE § 19 (West 1999 & Supp. 2012).

to six months in jail, her lawyer (in fact, the same lawyer who defended Ala Carte Catering Company three decades earlier<sup>93</sup>) succeeded in having the charge dismissed based on the rationale that the county had overstepped its authority in creating a parking restriction that did not promote public safety.<sup>94</sup> González, like other members of his organization, believed it was important to build on the momentum of Garcia's recent triumph.

With respect to the race claim, González worried that its inclusion could potentially delay the litigation—especially if the city were to mount a vigorous defense. Speedy resolution was a critical concern for González, given that the tickets he received with each passing day drove him closer to losing his business. González also wondered if alleging that the city's enforcement was racially discriminatory might risk associating his organization with what some might perceive as a controversial claim. Ultimately, given the concerns raised by the client and problems of proof that the students anticipated, a race-based equal protection claim was omitted.<sup>95</sup>

A separate question of legal strategy involved how to balance the collective claims to invalidate the ordinance with our client's individual right to contest his fines based on flaws in the specific tickets he received. If he were solely to raise a constitutional challenge to the validity of the ordinance, he would waive the individualized arguments that could potentially win him a refund of the fines in the event that the constitutional claims were not successful. If, however, he only raised individualized arguments regarding the prima facie legitimacy of his current batch of tickets, any victory in his case would only advance his immediate personal economic situation and not that of other vendors.

In an attempt to balance these competing concerns, it was agreed that the students would raise claims specific to his individual tickets alongside broader constitutional claims. On the individual side, the students would question whether the tickets properly alleged facts such as whether the vehicle was engaged in “dispensing virtuals” or whether the vehicle was continuously parked in the location for longer than the prescribed time period. On the collective side, the students would feature the preemption challenge, but also argue that the ordinance was not rationally related to a legitimate government purpose<sup>96</sup> and was

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93. See *supra* notes 46–47 and accompanying text. Thank you to Philip Greenwald for his generous assistance to our clinic.

94. *People v. Margarita Garcia*, No. 8EA05884 (L.A. Cnty. Super. Ct. Aug. 27, 2008).

95. In the immigration field, the strategic decision to litigate a race-neutral claim such as preemption in lieu of a race-focused claim such as equal protection is familiar ground. As Hiroshi Motomura has highlighted, often litigation on behalf of immigrants' rights will emphasize preemption claims over equal protection so as to maximize the probability of legal victory. Motomura, *supra* note 80, at 1738.

96. *People v. Ala Carte Catering Co.*, 159 Cal. Rptr. 479 (App. Dep't Super. Ct. 1979) (finding catering restriction violated equal protection because it was an economic regulation with no reasonable or rational basis).

impermissibly vague.<sup>97</sup> In order to maximize the client's chances of having both individual and collective arguments heard, the students evenly divided his tickets and requested two separate administrative hearings, one in Van Nuys and the other in downtown Los Angeles.<sup>98</sup>

By requesting two hearings, the students ensured that two different hearing examiners would look at González's claims.<sup>99</sup> As it turned out, the two examiners did have quite different approaches to the case. The Los Angeles examiner found that the tickets were facially invalid—in other words, he concluded that each ticket failed to state a violation of the durational restriction. Therefore, although González was refunded the fines for that group of tickets, the preemption claim that was of primary concern to the membership was not reached.<sup>100</sup>

In contrast to the examiner in Los Angeles, the Van Nuys hearing examiner rejected Mr. González's individual defenses, concluding instead that the tickets before him did properly set forth a violation of the parking law.<sup>101</sup> Further, the Van Nuys examiner declined to rule on the constitutional claims, reasoning that hearing examiners lack jurisdiction to invalidate a city ordinance because, in his words, they do “not have the powers of a Superior Court Judge.”<sup>102</sup> The Van Nuys ruling thus opened the possibility of an appeal to the final arbiter of parking tickets in California—the superior court.<sup>103</sup>

At the end of the semester, the students argued González's appeal before Los Angeles Superior Court Commissioner Barry D. Kohn, who agreed that the ordinance was not based upon public safety and thus was preempted by state law.<sup>104</sup> As a result of this ruling, Francisco González received a refund of his remaining tickets. At the same time, he won the legal victory his organization hoped for—a finding that the law was unconstitutional.

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97. See generally *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926) (A statute is unconstitutionally vague when persons “of common intelligence must necessarily guess at its meaning and differ as to its application.”).

98. See generally CAL. VEH. CODE § 40215(c)(1) (West 2000 & Supp. 2012).

99. See generally L.A. DEP'T. OF TRANSP., ADMINISTRATIVE HEARING (2011), available at <http://ladot.lacity.org/pdf/PDF44.pdf> (providing information on possible locations for Los Angeles County administrative hearings on parking tickets).

100. *In re González*, Citation No. 2032772011 et al. (L.A. Dep't of Transp., Parking Adjudication Div. Apr. 22, 2009).

101. *In re González*, Citation No. 2032566605 et al. (L.A. Dep't of Transp., Parking Adjudication Div. Apr. 3, 2009).

102. *Id.* at 2.

103. Under the process established by the California legislature, individuals dissatisfied with the hearing examiner's written decision can obtain a de novo review by filing an appeal with the superior court. VEH. § 40230(a).

104. See *González v. City of Los Angeles Dep't of Transp.*, No. 09K08413 (L.A. Cnty. Super. Ct. June 5, 2009).

## II. IMPLICATIONS FOR CLINICS AND PRACTICE

The case study just presented tells the story of student involvement, through a criminal clinic, in a community-based campaign for immigrant workers' rights. In the first phase of the campaign, the clinic advised the Asociación on legal options for the collective protection of its membership. Here, the students acted as fact finders, legal analysts, and counselors to the organization. In the second phase, the clinic was asked by the Asociación to defend a single representative of the group who had agreed to assert his individual defense as a test case to challenge the ordinance's constitutionality. Here, the students acted as zealous trial counsel, protecting their individual client's rights in contesting the fines levied against him. Because these two phases were both structured by the Asociación to advance the ultimate law reform goal (invalidating the ordinance), taking on the individual case placed the students squarely in the context of an effort to link individual and collective interests.<sup>105</sup>

In the discussion that follows, I reflect on the *lonchero* case study to make three related points about the structure of criminal defense clinics and, by extension, the role of criminal defense attorneys. First, I draw on the clinic's work to explore the defense attorney's use of individual cases to pursue law reform objectives. Second, I explore how involving criminal clinics with campaigns like that of the *loncheros* allows clinical students to develop models of practice that respond to the fading line between civil and criminal law. Finally, I examine the pedagogical payoff of collaboration between a criminal clinic and a community-based campaign.

*A. Individual Clients and Law Reform*

First, the clinic's work on the *lonchero* case highlights how criminal defense lawyers, despite their necessary focus on individual client representation in court, do at times harness their skills to play a role in law reform efforts. The test case concept employed by the Asociación—while familiar in the academic literature on cause lawyering<sup>106</sup>—has received less scholarly attention in the context of criminal

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105. This tension between lawyering on behalf of an individual client and using an individual case to implement broader societal changes is the subject of much scholarship on public interest lawyering. See, e.g., Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964) (distinguishing between individual client representation and a cause orientation); Kenneth W. Mentor & Richard D. Schwartz, *A Tale of Two Offices: Adaptation Strategies of Selected LSC Agencies*, 21 JUST. SYS. J. 143 (2000) (contrasting "cause-oriented" representation that seeks broader impacts with "client-centered" representation that limits lawyering to the individual case).

106. See generally STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING (2004) (exploring the role of "cause lawyers," which they define as lawyers who "take sides in political and moral struggle").

practice.<sup>107</sup> However, coordinating individual defense with legal reform has important historical and contemporary applications for criminal defense lawyers.

Historically, there are some quite famous examples of defense lawyers engaging systemic issues in the course of individual client representation. Recall the work of attorneys in the 1930s that merged criminal defense with groundbreaking civil rights advocacy. As vice-dean of Howard University Law School, Charles Hamilton Houston began one of the first criminal law clinics in the country, known as the “Criminal Law Laboratory.”<sup>108</sup> Working in a team that included attorneys trained at Howard law, Houston represented George Crawford, a black man charged with the murders of a wealthy white woman and her white maid in Virginia.<sup>109</sup> As part of the defense, Houston mounted a constitutional challenge to Crawford’s indictment based on the exclusion of blacks from the grand jury.<sup>110</sup> Although the trial judge rejected the highly publicized race claim, the Virginia trial jury’s decision to sentence Crawford to life in prison, rather than death, was regarded at the time as a significant defense victory.<sup>111</sup>

Twenty years later, a young Alabama attorney by the name of Fred Gray represented Rosa Parks before the criminal court of Montgomery after she refused to give up her bus seat to a white passenger.<sup>112</sup> In defending Parks, Gray challenged the constitutionality of the municipal segregation law that she was charged with violating.<sup>113</sup> When his client was nonetheless convicted, Gray went to federal court to demand that the Montgomery ordinance be enjoined.<sup>114</sup> A few months later, the United States Supreme Court affirmed the district court’s finding that the law violated equal protection, thus integrating the city’s public bus system.<sup>115</sup>

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107. For one notable exception, see Margareth Etienne, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 J. CRIM. L. & CRIMINOLOGY 1195 (2005).

108. *Justice Thurgood Marshall*, 27 NEW ENG. L. REV. 625, 628–29 (1993).

109. *Id.* at 629 & n.32.

110. KENNETH W. MACK, REPRESENTING A RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 83-93 (2012). A challenge to Crawford’s extradition from Massachusetts to Virginia based on the racial composition of the southern grand jury had already failed. *Hale v. Crawford*, 65 F.2d 739 (1st Cir. 1933), *cert. denied*, 290 U.S. 674 (1933).

111. RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA’S STRUGGLE FOR EQUALITY 147–54 (2004); Darlene Clark Hine, *Black Lawyers and the Twentieth-Century Struggle for Constitutional Change*, in AFRICAN AMERICANS AND THE LIVING CONSTITUTION 33, 36 (John Hope Franklin & Genna Rae McNeil eds., 1995).

112. *Weinglass Award Goes to Alabama Civil Rights Attorney*, TRIAL, June 2009, at 14. Charles Langford also represented Ms. Parks. ROBERT AITKEN & MARILYN AITKEN, LAW MAKERS, LAW BREAKERS AND UNCOMMON TRIALS 370 (2007).

113. *Id.* at 371.

114. *Id.* at 373–78.

115. *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), *aff’d per curiam*, 352 U.S. 903 (1956), *reh’g denied*, 352 U.S. 950 (1956).

During the 1960s, William Kunstler was known for transforming his defense in criminal cases into a political stage for the causes of his clients, such as antiwar protestors<sup>116</sup> and members of the American Indian Movement.<sup>117</sup> As Kunstler explained to Yale Law School students researching the emerging field of public interest law, “I only defend those whose goals I share. I’m not a lawyer for hire. I only defend those I love.”<sup>118</sup> Consider also the work of Susan Jones, a defense attorney well known for her representation of Inez Garcia, a woman charged with murdering her rapist in 1977.<sup>119</sup> Jones forged a case theory that merged the standard doctrine of self-defense with feminist movement efforts to reshape the law’s treatment of abused women.<sup>120</sup> In a similar vein, prior to joining the Harvard Law School faculty, Gary Bellow used his position as a public defender to raise public awareness “about the widespread lawlessness that pervaded the administration of criminal justice.”<sup>121</sup>

Yet, defense attorneys’ work on systemic causes reaches well beyond that of these few high-profile attorneys. Empirical research by Margareth Etienne has underscored that contemporary defense attorneys routinely pursue objectives beyond the individual goals of their clients, even within the institutional setting of public defender offices.<sup>122</sup> For example, public defenders in Los Angeles County have engaged in cross-case advocacy to enjoin sex offender residency restrictions, which they argue cause homelessness and fail to effectively protect children.<sup>123</sup> The Racial Disparity Project (RDP) of the Seattle Defender Association has, among other initiatives, worked to end Seattle’s policy of issuing “trespass

116. Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 380 (1982–83).

117. JOHN WILLIAM SAYER, GHOST DANCING THE LAW: THE WOUNDED KNEE TRIALS (1997).

118. Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1092 (1970).

119. Gabel & Harris, *supra* note 116, at 383.

120. Etienne, *supra* note 107, at 382–84. See generally Austin Sarat, *Bearing Witness and Writing History in the Struggle Against Capital Punishment*, 8 YALE J.L. & HUMAN. 451 (1996) (arguing that death penalty defense lawyers often move beyond the individual case to promote the politicized view that the death penalty ought to be abolished); Abbe Smith, *Rosie O’Neill Goes to Law School: The Clinical Education of the Sensitive, New Age Defender*, 28 HARV. C.R.-C.L. L. REV. 1, 34 (1993) (describing what she calls the “feminist/political lawyer” who realizes that “political defendants” may “seek to use the criminal system to make a political point and to encourage political change” rather than merely achieve the best individual case result).

121. Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 297 (1996).

122. Etienne, *supra* note 107, at 1199–223.

123. The Public Defender for Los Angeles County publicly expressed his office’s opposition to the law in a published editorial. Michael P. Judge, Op-Ed., *Stop the Sex Offender Fear Mongering*, L.A. TIMES, Nov. 16, 2010, available at <http://articles.latimes.com/2010/nov/16/opinion/la-oe-w-judge-jessicaslaw-20101116>. Similar work has been undertaken by the Los Angeles County Public Defender at earlier points, such as when the office enjoined the sheriff’s practice of intercepting and reading attorney-client written correspondence. Brenda H. Bohne, *The Public Defender as Policy-Maker*, 62 JUDICATURE 176, 178 (1978).

admonishments” that effectively bar targeted individuals from public spaces such as parks or sidewalks.<sup>124</sup> By combining legal representation of individuals banned from public spaces with community-based policy work,<sup>125</sup> RDP and its allies were able to eliminate the trespass policy in favor of a more limited program that allows business owners to enforce specific rules on their property.<sup>126</sup>

Although this type of law reform work is not common within criminal clinics, some clinics, like the UCLA clinic, have begun to experiment with justice-oriented reform. For example, the Criminal Justice Clinic at Pace University represented individuals charged with criminal trespass in an effort to mount a civil class action challenge to the use of trespass prosecutions as an order maintenance policing practice in New York City.<sup>127</sup> Similarly, the Criminal Defense Clinic at Tulane University successfully challenged the constitutionality of a Louisiana law that allowed the state to place permanently incompetent, nondangerous defendants on probation.<sup>128</sup>

### B. *Criminal Defense Outside the Criminal Law*

The second aspect of criminal defense practice that is illustrated by the *lonchero* case study is the gradual movement of the work of defense attorneys outside the formal boundaries of criminal law. This transition in the composition of criminal defense practice is related to a trilogy of structural changes in the broader criminal justice system. The first structural change is a shift in the adjudicatory systems relied upon to punish violators; the second is an expansion in the civil consequences that flow from criminal convictions; and the third is a growth in nonadversarial, problem-solving courts.

First, criminal law is increasingly being supplemented by punitive civil sanctions that are adjudicated in alternative administrative systems.<sup>129</sup> Thus, rather than prosecuting an individual under a section of the penal code, the state may opt

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124. *Racial Disparity Project—Current Projects*, RACIAL DISPARITY PROJECT, <http://rdp.defender.org/projects> (last visited Jan. 12, 2012). For a detailed discussion about RDP’s earlier work, see Kim Taylor-Thompson, *Taking It to the Streets*, 29 N.Y.U. REV. L. & SOC. CHANGE 153, 180–94 (2004) [hereinafter Taylor-Thompson, *Taking It to the Streets*].

125. Email from Lisa Daugaard, Deputy Director, Seattle Defender Association, to author (Jan. 13, 2012, 15:02 PST) (on file with author).

126. Lauren C. Williams, *Seattle Police to Revise Trespass Policy That Has Banished Hundreds*, SEATTLE TIMES, Dec. 11, 2010, at A1.

127. M. Chris Fabricant, *Rethinking Criminal Defense Clinics in “Zero-Tolerance” Policing Regimes*, 36 N.Y.U. REV. L. & SOC. CHANGE (forthcoming 2012).

128. Katherine Mattes, *The Tulane Criminal Law Clinic: An Evolution into a Combined Individual Client and Advocacy Clinic*, 18 CLINICAL L. REV. 77, 79 (2011).

129. See generally Mann, *supra* note 10, at 1798 (arguing that punitive civil sanctions are replacing criminal law, particularly in the areas of narcotics and white collar crime, “because they carry tremendous punitive power”); Carol S. Steiker, *Punishment and Procedure: Punishment Theory and the Criminal-Civil Procedural Divide*, 85 GEO L.J. 775, 796–97 (1997) (“[T]he overlap between modern modes of criminal punishment and civil regulation has made it harder to distinguish between the two.”).

instead to utilize a civil remedy. The civil sanction can function as punishment, but nonetheless is adjudicated without the constitutional constraints of the criminal system. An often-cited example of this dynamic is the use of civil commitment proceedings to detain sex offenders beyond the term of any criminal sentence based only on a finding of dangerousness.<sup>130</sup> The *lonchero* case provides another current example: the proceedings in which the *loncheros* were charged were administrative, but the cumulative effect of the fines was punitive.<sup>131</sup>

The second structural change in the criminal justice system that has begun to push criminal practice outside criminal law is a broadening of the civil consequences of criminal convictions.<sup>132</sup> Indeed, criminal convictions can have a profound impact on eligibility for public benefits, employment, and educational programs.<sup>133</sup> Criminal convictions can also subject noncitizens to permanent removal from the United States.<sup>134</sup> Even more directly, criminal law can be harnessed to achieve specific civil outcomes, such as immigration control.<sup>135</sup> For example, local laws that criminalize day laborers soliciting work on public streets have become a frequent component of state and local anti-immigration measures.<sup>136</sup>

A third related change in the criminal justice system is the creation of nonadversarial “community courts,” such as drug courts, mental health courts, homeless courts, and diversion courts. The growing popularity of alternative courts since the 1980s has partially reoriented the criminal process around the provision of therapeutic aid.<sup>137</sup> Within these new court structures, the criminal

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130. See generally Jenny M. Roberts, *The Mythical Divide Between Collateral and Direct Consequences of Criminal Convictions: Involuntary Commitment of “Sexually Violent Predators,”* 93 MINN. L. REV. 670 (2008); Stephen J. Schulhofer, *Two Systems of Social Protection: Comments on the Civil-Criminal Distinction, with Particular Reference to Sexually Violent Predator Laws,* 7 J. CONTEMP. LEGAL ISSUES 69 (1996).

131. See *supra* notes 9–11 and accompanying text.

132. Reflecting this reality, the most recent edition of the classic text *Lawyers as Counselors* now recommends that criminal lawyers identify and respond to collateral consequences as early as the initial interview with a criminal defendant. BINDER ET AL., *supra* note 89, at 259, 525–26.

133. Michael Pinard & Anthony Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction,* 30 N.Y.U. REV. L. & SOC. CHANGE 585, 586–88 (2006).

134. For a sampling of scholarship that has drawn attention to the immigration consequences of criminal convictions, see Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security,* 39 CONN. L. REV. 1827, 1843–48 (2007), Daniel Kanstroom, *Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases,* 113 HARV. L. REV. 1890, 1890–91 (2000), and Teresa A. Miller, *Citizenship & Severity: Recent Immigration Reforms and the New Penology,* 17 GEO. IMMIGR. L.J. 611, 616–20, 631–37 (2003).

135. As I have argued elsewhere, in practice the criminal prosecution, rather than the administrative agency immigration process, can serve as the de facto immigration screener. Ingrid V. Eagly, *Prosecuting Immigration,* 104 NW. U. L. REV. 1281, 1289, 1349–59 (2010).

136. For example, Arizona’s anti-immigration law known as “SB 1070” includes a provision that criminalizes blocking traffic to hire or seek work on the street. Ingrid V. Eagly, *Local Immigration Prosecution: A Study of Arizona Before SB 1070,* 58 UCLA L. REV. 1749, 1767 (2011) (documenting the evolution of state-level criminal immigration law in Arizona).

137. See Eric J. Miller, *Drugs, Courts, and the New Penology,* 20 STAN. L. & POL’Y REV. 423 (2009).



defense attorney has been reconceived as an assistant seeking interdisciplinary therapeutic treatment, rather than a fierce courtroom advocate seeking acquittal. Even the federal criminal system has bowed to this new rehabilitative trend by establishing a federal drug court in Los Angeles. As the federal judge who oversees the new program explained, the idea is that defendants “can be saved” through the active involvement of defense attorneys, probation officers, treatment specialists, and even prosecutors.<sup>138</sup> The rapid expansion of such courts has spawned a proliferation of criticism,<sup>139</sup> but also underscored the corresponding necessity of the defense bar to develop expertise in areas outside the criminal law and skills beyond those of a courtroom advocate.<sup>140</sup>

As a result of these shifts, contemporary criminal lawyers at times find themselves operating between criminal law and other domains that are closely connected to criminal justice, such as immigration, civil rights, homelessness, and mental health. Increasingly, public defenders must take this civil-criminal merger into account in structuring their delivery of services. The Public Defender Service (PDS) for the District of Columbia’s opening of a Civil Legal Services Division to assist criminal clients in civil matters demonstrates the significance of this transition in practice. For example, PDS attorneys now represent their young clients with learning disabilities in civil proceedings to obtain special educational

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138. Don J. DeBenedictis, *Drug Court Poised for Move into a New Arena: Federal Judges Eager to Monitor Progress of Defendants They Have Sent to Prison*, DAILY JOURNAL, July 24, 2008, at 1.

139. See, e.g., Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783 (2008) (arguing that drug courts may in fact lead to longer sentences for indigent defendants who are unable to complete mandated treatment programs); Cait Clarke & James Neuhard, “*From Day One*”: *Who’s in Control as Problem Solving and Client-Centered Sentencing Take Center Stage?*, 29 N.Y.U. REV. L. & SOC. CHANGE 11 (2004) (raising ethical concerns for the practice of criminal defense in nonadversarial “problem-solving” courts); Mae C. Quinn, *An RSVP to Professor Wexler’s Warm Therapeutic Jurisprudence Invitation to the Criminal Defense Bar: Unable to Join You, Already (Somewhat Similarly) Engaged*, 48 B.C. L. REV. 539 (2007) (highlighting contradictions between a “rehabilitative” approach to defense lawyering employed in the community court setting and zealous, quality advocacy on behalf of criminal defendants); Steven Zeidman, *Policing the Police: The Role of the Courts and the Prosecution*, 32 FORDHAM URB. L.J. 315, 337–42 (2005) (raising the concern that problem-solving courts mask the prevalence of police misconduct and racial discrimination in the criminal system).

140. See, e.g., Bruce J. Winick & David B. Wexler, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law Clinic*, 13 CLINICAL L. REV. 605, 627–28 (2006) (arguing that defense lawyers and clinical students representing clients in problem-solving courts must learn to work in interdisciplinary teams and to develop “rehabilitative options and alternatives to incarceration” for their clients); William H. Simon, *Criminal Defenders and Community Justice: The Drug Court Example*, 40 AM. CRIM. L. REV. 1595, 1605–08 (2003) (discussing the new skills that criminal defenders must develop to be effective in community drug courts, a practice he describes as closer to “transactional” work than litigation).

services.<sup>141</sup> PDS defenders also counsel their adult clients in civil matters related to public benefits, housing, child support, and health care.<sup>142</sup>

As defense attorneys grapple with responding to the growing intersectional demands of criminal defense, criminal clinics can provide a unique site for exploring alternate practice models. Given reduced case loads and the luxury of choosing projects, clinics may have more flexibility to experiment with new lawyering roles than do practicing lawyers in the trenches.<sup>143</sup> Two areas where criminal clinics have made significant strides in molding defense lawyering to accommodate the dissolving border between civil and criminal practice are reentry and immigration.

With respect to reentry, academics such as Michael Pinard have argued that defense lawyers ought to serve as “reentry service providers” and assist clients with their post-incarceration transition into the community.<sup>144</sup> Although a reentry role is not yet a standard component of services offered by public defender offices, criminal clinics can provide opportunities to accommodate such a model of practice. For example, New York University (NYU) has used its criminal clinic as a creative space to engage students in the multidisciplinary demands of reentry work.<sup>145</sup> Together with the Neighborhood Defender Service of Harlem (NDS), NYU clinical students advise clients regarding how a criminal record will affect their employment rights and connect clients with service providers in the community.<sup>146</sup> In the process, the clinic fosters a model of defense practice that views the client, the client’s community, and the public defender as long-term partners.<sup>147</sup>

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141. PDS DC: Civil Legal Services, THE PUB. DEFENDER SERV. FOR THE D.C., <http://www.pdsdc.org/PDS/CivilLegalServices.aspx> (last visited Jan. 9, 2012).

142. *Id.* For discussion of PDS and similar organizations, see Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067 (2004).

143. *See generally* Thomas F. Geraghty, *The Criminal/Juvenile Clinic as a Public Interest Law Office: Defense Clinics; The Best Way to Teach Justice*, 75 MISS. L.J. 699, 718 (2006) (stressing that criminal clinics, as opposed to “over-taxed” practice settings, have “a particular advantage” in exploring how case representation can be integrated with work on “systemic problems” such as “substance abuse, mental health, and after prison support”).

144. *See generally* Michael Pinard, *A Reentry-Centered Vision of Criminal Justice*, 20 FED. SENT’G REP. 103 (2007). *Cf.* Brooks Holland, *Holistic Advocacy: An Important But Limited Institutional Role*, 30 N.Y.U. REV. L. & SOC. CHANGE 637, 639 (2006) (suggesting that holistic defense is limited by resource constraints and therefore should not be the centerpiece of a public defender office).

145. *See* Gerald P. López, *Rebelling Against the War on Low-Income, of Color, and Immigrant Communities*, in AFTER THE WAR ON CRIME: RACE, DEMOCRACY, AND A NEW RECONSTRUCTION 151, 156–60 (Mary Louise Frampton et al. eds., 2008) (describing, among other clinical programs at NYU, a reentry project); Pinard & Thompson, *supra* note 133, at 613–15 (describing the same).

146. For a description of the Criminal and Community Defense Clinic taught by Professor Anthony Thompson, see Criminal and Community Defense Clinic, NYU LAW, <http://www.law.nyu.edu/training/sandbox/clinics/year/criminaldefense/index.htm> (last visited Feb. 22, 2012).

147. *See generally* Pinard & Thompson, *supra* note 133, at 613–15 (arguing that law school

With respect to immigration, Professor Violeta Chapin's criminal defense clinic at the University of Colorado provides an innovative approach. The Supreme Court's recent pronouncement in *Padilla v. Kentucky*<sup>148</sup> that criminal lawyers must advise their clients as to the immigration consequences of criminal pleas has resulted in significant commentary regarding how defense attorneys might structure their practice vis-à-vis the immigration concerns of their noncitizen clients.<sup>149</sup> Although *Padilla* requires defense attorneys to apprise clients of potential immigration consequences, it stops short of mandating that attorneys tailor plea bargains to mitigate immigration consequences.<sup>150</sup> And, *Padilla* most certainly does not require defense counsel to affirmatively seek relief for their clients facing future deportation.

Enter Chapin's students, who negotiate with prosecutors on behalf of their noncitizen clients to attempt to avoid immigration consequences and then assist these same clients with their immigration case. In immigration court, Chapin's clinical students provide comprehensive legal representation in immigration bail hearings and removal proceedings.<sup>151</sup> In the process, the clinic experiments with a comprehensive approach to criminal defense that treats the client's immigration case with the same care as the criminal charge.

### C. Defenders and Community

Thus far, this Essay has documented how participation in the *lonchero* campaign allowed students to explore the erosion of the civil-criminal divide and the potential of law reform in the defense context. A third aspect of practice that is illustrated by the *lonchero* case study is collaboration between criminal lawyers and community members in the pursuit of justice-oriented work. Community-based support for the cause that the students litigated provided a direct opportunity for lawyer participation in a broader advocacy campaign. In this final Subsection, I examine how collaboration with a community group informed the students' clinical work.

Although the majority of law school clinical offerings feature civil law

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clinics could provide space for testing creative criminal defense models, such as reentry advocacy).

148. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

149. See, e.g., PETER L. MARKOWITZ, PROTOCOL FOR THE DEVELOPMENT OF A PUBLIC DEFENDER IMMIGRATION SERVICE PLAN (2009), available at [http://www.immigrantdefenseproject.org/docs/2010/10\\_Public%20Defender%20Immigration%20Protocol.with%20appendice.pdf](http://www.immigrantdefenseproject.org/docs/2010/10_Public%20Defender%20Immigration%20Protocol.with%20appendice.pdf) (sketching different organizational models for immigration advising after *Padilla*); Margaret Love & Gabriel J. Chin, *The "Major Upheaval" of Padilla v. Kentucky*, 25 CRIM. JUST. 36 (2010) (discussing how defense lawyers can integrate the *Padilla* decision into their practice); Ronald F. Wright, *Padilla and the Delivery of Integrated Criminal Defense*, 58 UCLA L. REV. 1515, 1531–34 (2011) (providing examples of how public defender institutions might restructure their offices to deliver advice on immigration matters).

150. Darryl K. Brown, *Why Padilla Doesn't Matter (Much)*, 58 UCLA L. REV. 1393, 1393–96 (2011).

151. Email from Violeta Chapin, Associate Clinical Professor of Law, University of Colorado Law School, to author (Dec. 16, 2011, 15:18 PST) (on file with author).

practice, criminal clinics have remained a consistent component of clinical legal education since clinics emerged in significant numbers in the 1970s.<sup>152</sup> According to a recent study of law school clinical programs, ten percent of clinics focus on criminal defense or prosecution, with another six percent dedicated to the related criminal fields of innocence projects,<sup>153</sup> death penalty, and prisoner rights.<sup>154</sup> The majority of criminal clinics include work on real criminal cases through placements at prosecutor or public defender offices or under the direct supervision of clinical faculty.<sup>155</sup> The classroom component of such clinical courses typically emphasizes those trial skills—such as cross-examination and closing argument—that are necessary to prepare students for the litigation aspects of criminal law practice.<sup>156</sup>

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152. At some law schools, such as Howard University and Northwestern University, criminal clinics were in operation by 1930. See Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 NW. U. L. REV. 231, 234 (2006) (discussing the early years of Northwestern's clinical program established by Dean John Henry Wigmore); *Justice Thurgood Marshall*, *supra* note 108, at 628–29 (referencing Dean Charles Hamilton Houston's initiation of a criminal clinic). Many other law schools, including New York University, Stanford University, and UCLA, began their criminal law clinics in the 1970s. See Miguel A. Méndez, *On Teaching Criminal Law from a Trial Perspective*, 48 ST. LOUIS U. L.J. 1181, 1181 (2004) (discussing Stanford's early program taught by Anthony Amsterdam); Harry I. Subin, *Clinical Pedagogy—The Educational Program of the New York University School of Law Criminal Law Clinic*, in GUIDELINES FOR CLINICAL LEGAL EDUCATION 254-68 (1980) (providing background on NYU's program). See generally Steven Zeidman, *Sacrificial Lambs or the Chosen Few?: The Impact of Student Defenders on the Rights of the Accused*, 62 BROOK. L. REV. 853 (1996) (tracing the development of criminal clinics to the creation of public defender offices in the 1960s and 1970s).

153. Professor Abbe Smith has recently expressed concern that the growing popularity of innocence advocacy in law school clinics may conflict with the traditional goals of criminal defense clinics—which she refers to as “guilty projects.” See Abbe Smith, *In Praise of the Guilty Project: A Criminal Defense Lawyer's Growing Anxiety about Innocence Projects*, 13 U. PA. J. L. & SOC. CHANGE 315 (2010).

154. DAVID A. SANTACROCE ET AL., CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE), REPORT ON THE 2007–2008 SURVEY 8 (2008) (based on a review of 131 law school clinical programs). Overall, there are about sixty to seventy-five criminal clinics (of 523 total clinics) at the top one hundred U.S. law schools. Becky L. Jacobs, *A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools*, 75 TENN. L. REV. 343, 354 (2008).

155. See, e.g., Norman Fell, *Development of a Criminal Law Clinic: A Blended Approach*, 44 CLEV. ST. L. REV. 275 (1996) (presenting an externship-based model for a criminal clinic); Jean Montoya, *The University of San Diego Criminal Clinic: It's All in the Mix*, 74 MISS. L.J. 1021, 1037 (2005) (discussing the benefits of a criminal clinic that combines prosecution and defense work); Linda F. Smith, *Benefits of an Integrated (Prosecution & Defense) Criminal Law Clinic*, 74 MISS. L.J. 1239 (2005) (describing an externship model for a criminal clinic that integrates prosecution and defense students into one classroom session).

156. See, e.g., Larry Cunningham, *The Use of “Boot Camps” and Orientation Periods in Externships and Clinics: Lessons Learned from a Criminal Prosecution Clinic*, 74 MISS. L.J. 983 (2005) (describing a criminal prosecution clinic at Texas Tech University School of Law that focuses on litigation skills); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1291 (1993) (providing an explanation of a trial advocacy course at Harvard Law School in which students participate in direct, trial-level client representation); Subin, *supra* note 152, at 254 (featuring New York University's criminal clinic in which students work trial-level criminal cases); Rodney J. Uphoff et al., *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U.

To the extent criminal clinicians have moved beyond criminal trial work, they have tended to emphasize skills not far removed from trial itself, such as appellate advocacy,<sup>157</sup> plea-bargaining negotiation,<sup>158</sup> or sentencing litigation.<sup>159</sup>

In contrast, outside of the context of criminal clinics, clinicians who teach in civil clinics have begun to document the pedagogical benefits of integrating community-based advocacy projects alongside litigation-oriented casework.<sup>160</sup> As clinicians such as Sameer Ashar, Jennifer Koh, and Jayashri Srikantiah have shown, by diversifying clinical projects, students are able to implement a range of advocacy strategies. In this way, students develop a more complete understanding of the varied tools that practitioners use for addressing social problems. Such approaches to clinical teaching are deeply rooted in the foundational thinking of poverty scholars such as Anthony Alfieri, Gary Blasi, Gerald López, and Lucie White, who have persuasively argued that lawyers should move away from relying solely on traditional litigation strategies and instead facilitate lay problem solving, leadership development, and collective resistance.<sup>161</sup>

CIN. L. REV. 381 (1997) (discussing Wisconsin Law School's Legal Defense Project that allows students to prepare misdemeanor cases for trial); Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13 CLINICAL L. REV. 573 (2006) (describing a Fordham criminal defense clinic that focuses on individual client representation in small misdemeanor cases).

157. See John Pray & Byron Lichstein, *The Evolution Through Experience of Criminal Clinics: The Criminal Appeals Project at the University of Wisconsin Law School's Remington Center*, 75 MISS. L.J. 795, 798 (2006).

158. See Rodney J. Uphoff, *The Criminal Defense Lawyer as Effective Negotiator: A Systemic Approach*, 2 CLINICAL L. REV. 73, 74 (1995).

159. See Kimberly A. Thomas, *Sentencing: Where Case Theory and the Client Meet*, 15 CLINICAL L. REV. 187, 188 (2008).

160. See, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 399–401 (2008) (calling for clinic engagement in “cross-modal advocacy and strategy”); Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913 (2009) (describing the potential of the “law and organizing” model for certain types of social and legal problems); Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL'Y 201, 226 (2006) (arguing that “law school clinics can also be important sites for employing ‘new’ models of lawyering”); Kevin R. Johnson & Amagda Pérez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423 (1998) (describing an immigration clinic that merges individual client work with impact litigation and community outreach); Marcy L. Karin & Robin R. Runge, *Toward Integrated Law Clinics that Train Social Change Advocates*, 17 CLINICAL L. REV. 563 (2011) (describing an “integrated approach” in which clinics explore more than one advocacy strategy); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451 (2010) (identifying a “combined advocacy model” adopted by many law school clinics in which students work both on individual cases and broader advocacy projects).

161. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 38–92 (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2146–47 (1991); Blasi, *supra* note 160, at 914; Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 158–61 (1994). More recent work by social movement scholars has also underscored that complex social problems require multiple approaches that merge lawyering with other advocacy strategies. See generally WORKING FOR JUSTICE: THE L.A. MODEL OF ORGANIZING

Yet, this movement to restructure clinical teaching to incorporate community collaboration and nonlitigation advocacy projects has focused primarily on the civil side of practice, where the tradition of law reform and political mobilization has been most prominent. On the criminal side, the movement to merge community advocacy and individualized litigation has not yet had a major influence on clinical teaching. Instead, for the most part, criminal clinics have retained their focus on representing individual clients.<sup>162</sup>

This dominant structure for criminal clinics reflects the conventional view of criminal defense: highly individualistic and centered on the courtroom trial.<sup>163</sup> Within our adversarial criminal defense system, crafting a vigorous and individualized defense to criminal charges through dismissal, acquittal, or minimization of sentencing exposure remains the core of the defense lawyer's role.<sup>164</sup> Despite the steady decline of the trial in modern criminal practice,<sup>165</sup> it is still true that criminal lawyers do practice primarily in courtrooms and will see more trials during their careers than most of their colleagues in civil practice.<sup>166</sup> Moreover, although most cases do not end in trial, criminal lawyers must nonetheless prepare for trial and understand how the possibility of a trial informs the bargaining process.<sup>167</sup> Therefore, even in the age of the guilty plea, clinicians who want to teach their students to become criminal lawyers understandably

AND ADVOCACY (Ruth Milkman et al. eds., 2010); AUSTIN SARAT & STUART SCHEINGOLD, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 1, 1–34 (Austin Sarat & Stuart Scheingold eds., 2006).

162. I do not want to suggest that criminal clinics have not experimented with community collaboration. Rather, I mean to stress that the overall level of community engagement remains lower across criminal clinics than in their civil counterparts.

163. See e.g., Etienne, *supra* note 107, at 1196 (noting that criminal defense practice is conventionally understood as being about helping “individual clients achieve their individual goals”); Michael Pinard, *A Reentry-Centered Vision of Criminal Justice*, 20 FED. SENT’G. REP. 103, 105 (2007) (“In general, the criminal justice system is *individual-focused*, as it views the defendant in relative isolation from his or her family and community.”); Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L.J. 2419, 2425–29 (1996) [hereinafter ‘Taylor-Thompson, *Individual Actor*’] (explaining that the prevailing model for public defender institutions is the “individualized paradigm” in which defenders serve as “individual actors” on behalf of each client). *But see* Quinn, *supra* note 139, at 562 (arguing that “no single, monolithic, ‘traditional’ means of representation currently exists” in criminal practice).

164. See generally Abbe Smith, *The Burdens of Representing the Accused in an Age of Harsh Punishment*, 18 NOTRE DAME J.L. ETHICS & PUB. POL’Y 451, 462 (2004) (discussing how defense lawyers “win” cases on behalf of their clients—“through an acquittal, a successful pretrial motion, a favorable negotiation, a favorable sentence”); Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender’s Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123, 124 (2004) (“Traditional defenders address themselves primarily to the client’s immediate legal needs, believing that removing or reducing the imminent threat of incarceration is their function.”).

165. See generally GEORGE FISHER, *PLEA BARGAINING’S TRIUMPH: A HISTORY OF PLEA BARGAINING IN AMERICA* (2003).

166. Subin, *supra* note 152, at 256 (noting that the “criminal lawyer” is “much more likely to be involved in litigation than most other lawyers”).

167. Quinn, *supra* note 139, at 577–78 (referring to the trial as the “constitutional ‘main course’ of criminal defense work”).

remain zealously focused on the criminal trial.<sup>168</sup>

In many respects, the criminal clinic that I teach models the dominant trial-centered structure of criminal clinics as they have evolved since the 1970s. In cooperation with local defender offices and pro bono counsel, we represent criminal defendants charged with misdemeanors and low-level felonies. During the class seminar, which meets twice a week for a total of four hours, students study substantive criminal law topics, ranging from bail to sentencing. Students are taught particular lawyering skills through simulation exercises,<sup>169</sup> live client interaction, and, depending on the case, real courtroom work. Indeed, even the *lonchero* case hinged on the power of effective litigation skills to advance a broader community campaign.

However, the community orientation of the clinic's work with the *loncheros* also pushed the students beyond the traditional courtroom practice norm.<sup>170</sup> In particular, the students' involvement in the community campaign exposed them to a range of advocacy skills, including organizing,<sup>171</sup> community education,<sup>172</sup> and institutional advocacy.<sup>173</sup> A key lesson for the students was to understand how their traditional skills (i.e., litigation) informed and enriched the advocacy work of the group. For example, after receiving the decision from the Los Angeles hearing examiner, the students worked with the Asociación to train the group's leadership to use the decision on behalf of the membership.<sup>174</sup> Several members reported successfully applying these advocacy techniques to challenge the legitimacy of

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168. Cf. Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 950 (1992) (arguing that clinicians should prepare students for street-level practice).

169. For a discussion of the importance of simulation exercises in law school clinics, see David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 202 (2003) (emphasizing that simulation provides "repeated opportunities for practice and feedback in a variety of factual settings that promotes conceptual understanding and thus transfer") and Albert J. Moore, *Trial by Schema: Cognitive Filters in the Courtroom*, 37 UCLA L. REV. 273, 275 (1989) (describing how simulation can be used in a trial advocacy course).

170. A number of scholars have called for teaching students skills beyond litigation. See, e.g., Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 307, 356 (1989) (criticizing the legal academy "for training in all but a relatively small number of skills"); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307 (2001) (arguing that students in clinical programs must be trained to work with community members on issues of social justice).

171. For examples of lawyer involvement in community organizing, see 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, 12–13 (2009) and Victor Narro, *Finding the Synergy Between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 FORDHAM URB. L.J. 339, 339–44 (2008).

172. In earlier work I explored the pedagogical implications of lawyer involvement in community education for clinical education. Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433 (1998).

173. See Srikantiah & Koh, *supra* note 160.

174. For a description of the Los Angeles hearing officer's decision, see *supra* note 100 and accompanying text.

their own tickets.

Later, after the superior court ruled, the students drafted a lay summary of the decision, which the Asociación used to educate its members on how to respond when approached by law enforcement while operating their trucks. Vendors reported that some officers were unaware of the group's legal victory. Thus, through lay advocacy, members were able to avoid receiving new tickets in the first instance.<sup>175</sup> This reinforced an important lesson of legal mobilization, which is that litigation may be most effective when it is supported by additional advocacy efforts to educate and implement.<sup>176</sup>

Such lessons are also important because the types of nonlitigation skills that the students employed are ones that some criminal lawyers actually use in practice. Increasingly, defense attorneys understand that community partnerships are important to both individual client advocacy and broader structural change.<sup>177</sup> Prosecutors realize that involving community groups in crime prevention and discretionary decisionmaking will engender trust and aid in solving crime.<sup>178</sup>

Illustrating the importance of collaboration in criminal justice work, innovative defender offices have begun to involve community members and social services providers in solving client problems. For example, at the Louisiana Justice Coalition, community defenders affirmatively seek participation of the community “rather than simply waiting for clients to appear alongside them in court.”<sup>179</sup> At NDS, attorneys employ an approach that encourages defense attorneys to go into the community and educate their neighbors about the criminal justice process.<sup>180</sup>

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175. Thank you to Angélica Ochoa, one of the clinical students who worked on the case, for sharing this observation.

176. Cf. JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978) (emphasizing the limited effectiveness of litigation at the level of enforcement).

177. Kim Taylor-Thompson, herself a former public defender, is a leading academic proponent of the community-oriented model of criminal defense. Taylor-Thompson, *Individual Actor*, *supra* note 163, at 2458 (discussing the “community defender office” that “sees its clients as individuals with ties to the community”); Taylor-Thompson, *Taking It to the Streets*, *supra* note 124, at 156 (exploring a model of criminal defense practice that “invites community input and collaboration”); see also Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 *GEO. J. LEGAL ETHICS* 401 (2001) (identifying the multidisciplinary, problem-solving focus emerging in public defender offices around the country).

178. See, e.g., Anthony V. Alfieri, *Community Prosecutors*, 90 *CALIF. L. REV.* 1465, 1469 (2002) (investigating how criminal prosecutors can involve the community in the prosecutorial discretion process); Anthony C. Thompson, *It Takes a Community to Prosecute*, 77 *NOTRE DAME L. REV.* 321, 322–23 (2002) (documenting the expansion in “community prosecution” programs that envision “an invigorated role for the community in defining and enforcing standards of conduct”).

179. See *Community Defense Resources*, LOUISIANA JUSTICE COALITION, <http://www.lajusticecoalition.org/Resources/Community%20Defense%20Resources.php> (last visited Feb. 25, 2012).

180. *Introduction to NDS*, NEIGHBORHOOD DEFENDER SERVICE OF HARLEM, <http://www.ndsny.org> (last visited Feb. 25, 2012).



The Bronx Defenders has also been exemplary in this regard—its attorneys have sought to reevaluate litigation-centered public defender practice and instead adopt an interdisciplinary model that facilitates interaction with client communities.<sup>181</sup>

As these examples underscore, although criminal defense still remains largely focused individual clients, some practitioners and practice sites have begun to creatively align their work with that of the community. Notably, such shifts in practice have taken place even in the face of severe resource constraints that plague criminal defense institutions.<sup>182</sup> The *loncheros* case thus provides one example of how clinical students can mirror the community-orientation of groups like NDS and the Bronx Defenders by collaborating with community leaders in an advocacy campaign.

### CONCLUSION

In conclusion, this Essay has shown how the *lonchero* case allowed clinical students to engage three underappreciated areas of criminal practice: law reform, the civil-criminal overlap, and community mobilization. By highlighting the role of defense attorneys in these three areas, I do not mean to suggest that all defense lawyers or criminal clinics can or should engage in such work.<sup>183</sup> Rather, my point has been to explore how it might be possible to incorporate these elements of criminal defense practice in the context of a criminal clinic. In so doing, I hope to also foster a more complex understanding of the evolving role of the criminal defense attorney.

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In the two years that have passed since the durational restriction was invalidated, the Asociación has used its victory in the González case to advance its broader organizing mission.<sup>184</sup> Among its many accomplishments, the Asociación has been credited with taking the lead in negotiations with the LAPD in the months that followed the Los Angeles Superior Court decision. In June 2009, as a result of the Asociación's negotiations, the LAPD issued a directive to cease

181. Steinberg & Feige, *supra* note 164, at 124.

182. See, e.g., Stephen B. Bright, *Legal Representation for the Poor: Can Society Afford This Much Injustice?*, 75 MO. L. REV. 683, 683 (2010) (documenting the inadequacy of criminal representation in most states); Bruce A. Green, *Criminal Neglect: Indigent Defense from a Legal Ethics Perspective*, 52 EMORY L.J. 1169, 1170 (2003) (explaining that many public defender offices cannot fulfill even the most basic obligations, such as keeping their clients “reasonably informed” about their cases); Charles J. Ogletree, Jr., *An Essay on the New Public Defender for the 21st Century*, 58 LAW & CONTEMP. PROBS. 81 (1995) (discussing resource constraints and other strains on the public defender system).

183. As a practical matter, some law school clinics that have taken on controversial causes have been threatened with funding cuts by state legislators. See Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, Apr. 4, 2010, at A12.

184. Susan Coutin has made this point in her research on the use of legal victories as part of broader organizing campaigns on behalf of Central American asylum seekers. See generally Susan Coutin, *Cause Lawyering and Political Advocacy: Moving Law on Behalf of Central American Refugees*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 161, at 101.

enforcing the durational restriction.<sup>185</sup> Later, when some members continued to be harassed by certain officers, the Asociación again took action—issuing a press release criticizing the incidents and filing a complaint with the Board of Police Commissioners.<sup>186</sup> More recently, the Asociación provided critical support to Los Angeles officials who proposed a new letter-grade system for taco trucks based on city health inspections.<sup>187</sup> The Asociación's popular support for the initiative helped pave the way for the rating system that is now in effect.<sup>188</sup>

The Asociación has also continued to grow as an organization. In 2009 it obtained nonprofit status,<sup>189</sup> becoming the first trade organization in Southern California dedicated to advancing the food truck industry.<sup>190</sup> The UCLA Downtown Labor Center and the National Day Laborer Organizing Network have provided ongoing support for the Asociación's leadership.<sup>191</sup> The organization now has approximately three hundred members, including forty core members and a full-time executive director who coordinates the group's daily work.<sup>192</sup> As new debates over regulation of Los Angeles lunch trucks emerge,<sup>193</sup> the strength of this grassroots group of entrepreneurs will continue to provide a voice for the interests of traditional catering vendors in Los Angeles.

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185. Memorandum from William Bratton, Chief of Police, L.A. Police Dep't, to All Sworn Personnel (June 12, 2009) (on file with author).

186. Letter from Bd. of Dirs., Asociación de Loncheros L.A. Familia Unida de Cal., to Bd. of Police Comm'rs & William Bratton, Chief of Police, L.A. Police Dep't (July 14, 2009) (on file with author); Press Release, Asociación de Loncheros L.A. Familia Unida de Cal., Los Angeles Taco Truck Owners to Present Formal Complaints of Harassment by LAPD Officers to the Board of Police Commissioners and LAPD Chief Bratton (July 14, 2009) (on file with author).

187. See, e.g., Rong Gong Lin II, *L.A. County Wants Food Trucks to Carry Health Letter Grades*, L.A. TIMES, Sept. 13, 2010, <http://latimesblogs.latimes.com/lanow/2010/09/la-county-wants-food-trucks-to-carry-health-letter-grades.html> (quoting the Executive Director of the Asociación, Erin Glenn, explaining that “we’re all for” the new grading system).

188. L.A. CNTY., CAL., ORDINANCE NO. 2010-0045 (effective Nov. 17, 2010) (codified at L.A. CNTY., CAL., CODE § 8.04.595 (2011), available at <http://file.lacounty.gov/bos/supdocs/56984.pdf> (requiring mobile food vehicles to participate in the county's restaurant grading program).

189. I.R.C. § 501(c)(6) (West 2010). Students in UCLA's community economic development clinic, directed by Professor Scott Cummings, represented the *loncheros* in this matter. For additional information on 501(c)(6) organizations, see *Business Leagues*, IRS, <http://www.irs.gov/charities/nonprofits/article/0,,id=96107,00.html> (last visited Feb. 22, 2012).

190. Press Release, Asociación de Loncheros L.A. Familia Unida de Cal., Los Angeles Taco Truck Owners Celebrate New Trade Association Status (June 11, 2009) (on file with author).

191. As research by Shannon Gleeson has shown, nonprofit organizations can play pivotal roles in mobilizing immigrant workers—including undocumented workers—to assert workplace rights. Shannon Gleeson, *From Rights to Claims: The Role of Civil Society in Making Rights Real for Vulnerable Workers*, 43 LAW & SOC'Y REV. 669 (2009).

192. Glenn, *supra* note 5.

193. See, e.g., Kate Linthicum, *Miracle Mile Lunch Trucks Prompt a Food Fight*, L.A. TIMES, June 17, 2010, at AA3 (discussing new motions introduced by the L.A. City Council to study food truck regulation); Report of the Chief Legislative Analyst to the Honorable Members of the City Council, *Regulation of Mobile Food Trucks*, Feb. 16, 2011, available at [http://clkrep.lacity.org/onlinedocs/2009/09-2357\\_rpt\\_cla\\_02-17-11.pdf](http://clkrep.lacity.org/onlinedocs/2009/09-2357_rpt_cla_02-17-11.pdf) (recommending that the city's food truck regulations be revised).

