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## Racial Trauma in Civil Rights Representation

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# RACIAL TRAUMA IN CIVIL RIGHTS REPRESENTATION

Angela Onwuachi-Willig\* & Anthony V. Alfieri\*\*

*Narratives of trauma told by clients and communities of color have inspired an increasing number of civil rights and antiracist lawyers and academics to call for more trauma-informed training for law students and lawyers. These advocates have argued not only for greater trauma-sensitive practices and trauma-centered interventions on behalf of adversely impacted individuals and groups but also for greater awareness of the risks of secondary or vicarious trauma for lawyers who represent traumatized clients and communities. In this Article, we join this chorus of attorneys and academics. Harnessing the recent civil rights case of P.P. v. Compton Unified School District, we illustrate how trauma-informed lawyering can both advance civil rights and provide healing for affected communities and individuals. In so doing, we focus our analysis on the use of racial trauma evidence in the Compton school litigation specifically and in contemporary civil rights representation more generally. Building on our prior work on race, cultural trauma, and civil rights lawyering, we investigate the meaning of racial trauma for individual, group, and community clients and for their legal teams while detailing the importance of establishing a trauma-informed practice for today's civil rights lawyers. This litigation-based investigation shows that sociolegal meaning is bound up in the struggle to accommodate community violence-centered racial trauma advocacy within traditional lawyering processes and legal ethics frameworks. Often overlooked, that ethical and professional struggle affects the form and substance of lawyer decisionmaking and discretion in civil rights cases.*

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#### INTRODUCTION

On July 13, 2013, George Zimmerman, a neighborhood watch volunteer of white American and Peruvian descent, was acquitted of the murder charges against him for shooting and killing Trayvon Martin, an unarmed African American teenager who was walking back to his father's girlfriend's house in the Retreat at Twin Lakes neighborhood in Sanford, Florida, on the night of

February 26, 2012.<sup>1</sup> That very same day, 100 activists and organizers ranging in age from eighteen to thirty-five were meeting in Chicago, Illinois, “to discuss movement building beyond electoral politics.”<sup>2</sup> After hearing the Zimmerman verdict, the activists banded together under the organizational title, Black Youth Project 100, to draft a collective statement that was “[a]ddressed to ‘the Family of Brother Trayvon Martin and to the Black Community.’”<sup>3</sup> The statement read in pertinent part:

As we waited to hear the verdict, in the spirit of unity, we formed a circle and locked hands. When we heard “not guilty,” our hearts broke collectively. In that moment, it was clear that Black life had no value. Emotions poured out—emotions that are real, natural and normal, as we grieved for Trayvon and his stolen humanity.<sup>4</sup>

Through this statement, members of the Black Youth Project 100 revealed for many the collective pain that Blacks have frequently experienced from police killings and quasi-police,<sup>5</sup> vigilante killings of other Blacks<sup>6</sup> in the United

1. Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin*, 102 IOWA L. REV. 1113, 1114–15, 1161–67 (2017).

2. Mychal Denzel Smith, *How Trayvon Martin’s Death Launched a New Generation of Black Activism*, NATION (Aug. 27, 2014), <https://www.thenation.com/article/archive/how-trayvon-martins-death-launched-new-generation-black-activism> [perma.cc/9ZUQ-AJ33].

3. *Id.*

4. *MUST WATCH: 100 Young Black Activists Respond to George Zimmerman Verdict*, BLACK YOUTH PROJECT (July 14, 2013) [hereinafter *MUST WATCH*], <https://blackyouthproject.com/byp100> [perma.cc/ZG65-DPH2]; see also Smith, *supra* note 2.

5. Merriam-Webster’s online dictionary defines the term “police” as “the department of government charged with prevention, detection, and prosecution of public nuisances and crimes” or members of such a unit. *Police*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/police> [perma.cc/RMB9-2G2D]. It defines “quasi” as “having some resemblance usually by possession of certain attributes.” *Quasi*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/quasi> [perma.cc/J6GX-56WB] (internal citation omitted). By “quasi-police,” we mean individuals or groups that are operating or view themselves as operating like the police in the “prevention, detection, and prosecution of public nuisances and crimes.” *Police*, *supra*. Examples of quasi-police officers include members of a neighborhood watch organization like George Zimmerman or individual lay citizens like Gregory and Travis McMichael, a white father-son duo who chased down, shot, and killed black jogger Ahmaud Arbery near his home just outside of Brunswick, Georgia on February 23, 2020, because they viewed him as suspicious. See Onwuachi-Willig, *supra* note 1, at 1114–15; *Ahmaud Arbery Shooting: A Timeline of the Case*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/article/ahmaud-arbery-timeline.html> [perma.cc/SF3R-8EE3]; Doha Madani, *Father and Son Arrested and Charged with Murder in Death of Ahmaud Arbery*, NBC NEWS (May 7, 2020, 9:07 PM), <https://www.nbcnews.com/news/us-news/father-son-arrested-charged-murder-death-ahmaud-arbery-n1202501> [perma.cc/YK3D-B5J8].

6. Throughout this Article, we capitalize the term “Black” when used as noun to describe the specific racial group. Here as elsewhere, we use “Blacks” rather than “African Americans” because it is more inclusive. See Anthony V. Alfieri & Angela Onwuachi-Willig, *Next-Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 YALE L.J. 1484, 1488 n.5 (2013) (book review). Additionally, we find that “[i]t is more convenient to invoke the

States, as well as the collective pain that often stems from the repeated acquittals and non-indictments of the officers and quasi-officers involved in these killings. Indeed, the group's statement articulated for the Black community a specific form of collective trauma that sociologists have termed "cultural trauma."<sup>7</sup> According to Yale University sociologist Jeffrey Alexander, cultural trauma is a group-based trauma that "occurs when members of a collectivity feel they have been subjected to a horrendous event that leaves indelible marks upon their group consciousness, marking their memories forever and changing their future identity in fundamental and irrevocable ways."<sup>8</sup> It is a socially mediated process, one by which an injured group not only identifies its trauma or injury but then also describes the very nature of that pain to itself and the public, along with the source of that pain, the perpetrators responsible for inflicting the pain, and the impact of the injury and trauma on the group.<sup>9</sup>

Critically, the statement by the Black Youth Project 100 did more than offer a view into the cultural trauma that Blacks have borne in relation to the police and quasi-police killings of other Blacks and in response to the disappointing legal outcomes that tend to follow such tragic slayings. In fact, the statement also delved into the world of individualized or psychological trauma, offering a glimpse into the long-term effects of repeated "exposure to multiple persistent sources of violence, loss, and other adverse childhood [and adult] experiences" for members of an identifiable group—in essence, what psychologists have defined as "complex trauma."<sup>10</sup> Although the Black Youth Project 100 statement spoke of turning "anger into action and pain into power,"<sup>11</sup> it also opened a window into the long-term effects of repeated violence, devastation, and loss for Blacks in the United States, regardless of whether one is directly impacted. In so doing, it aired a distinctive form of

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terminological differentiation between black and white than say, between *African-American* and *Northern European-American*, which would be necessary to maintain semantic symmetry between the two typologies." Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 U. ILL. L. REV. 1043, 1044 n.4. Professor Kimberlé Crenshaw, one of the founders of Critical Race Theory, has explained that "Black" deserves capitalization because "Blacks, like Asians [and] Latinos . . . constitute a specific cultural group and, as such, require denotation as a proper noun." Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (citing Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN IN CULTURE & SOC'Y 515, 516 (1982)).

7. See, e.g., Jeffrey C. Alexander, *Toward a Theory of Cultural Trauma*, in *CULTURAL TRAUMA AND COLLECTIVE IDENTITY 1* (Jeffrey C. Alexander et al. eds., 2004).

8. *Id.* at 1.

9. See Alexander, *supra* note 7; Angela Onwuachi-Willig, Address, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV. 817, 828–30 (2021).

10. Plaintiffs' Complaint at 1, *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1098 (C.D. Cal. 2015) (No. LA CV-15-3726 (PLAx)); see *MUST WATCH*, *supra* note 4; see also Lisa Firestone, *Recognizing Complex Trauma: Educating Ourselves on the After-Effects of Repetitive or Cumulative Trauma*, PSYCH. TODAY (July 31, 2012), <https://www.psychologytoday.com/us/blog/compassion-matters/201207/recognizing-complex-trauma> [perma.cc/B4U5-BLHV].

11. *MUST WATCH*, *supra* note 4.

repeated and enduring collective trauma for Blacks.<sup>12</sup> For example, the statement referred to “the hopelessness of a generation that has been broken trying to find its place in this world,” and it identified its drafters as “young leaders standing on the shoulders of our ancestors, *carrying the historical trauma embedded in a legal system that will NOT PROTECT US.*”<sup>13</sup>

Narratives of trauma like those told by the Black Youth Project 100 have inspired an increasing number of civil rights and antiracist lawyers and academics to call for more trauma-informed training for law students and lawyers.<sup>14</sup> These advocates have argued not only for greater training that “recognizes the impact of trauma on systems and individuals” to ensure “access to trauma-focused interventions” for clients and the rights asserted on their behalf<sup>15</sup> but also for greater awareness of the risks of secondary or vicarious trauma for lawyers who represent traumatized clients and communities.<sup>16</sup>

In this Article, we join this chorus of attorneys and academics, deploying the recent civil rights case of *P.P. v. Compton Unified School District* as an example of how trauma-informed lawyering can both advance civil rights and provide healing for affected communities and individuals. In so doing, we center our analyses on the use of racial trauma evidence in the Compton school litigation specifically and in contemporary civil rights representation

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12. Jennifer M. First et al., *Posttraumatic Stress Related to the Killing of Michael Brown and Resulting Civil Unrest in Ferguson, Missouri: Roles of Protest Engagement, Media Use, Race, and Resilience*, 11 J. SOC'Y FOR SOC. WORK & RSCH. 369, 371, 373 (2020) (detailing that the police can cause collective traumatic events and that collective trauma “involves large-scale community-level events, often experienced directly (in person) and indirectly (through others or via media) by many members of the community” and noting that “[c]ollective racial trauma is also likely to be historical trauma”).

13. *MUST WATCH*, *supra* note 4 (emphasis added); cf. Angela Onwuachi-Willig, *The Trauma of the Routine: Lessons on Cultural Trauma from the Emmett Till Verdict*, 34 SOCIO. THEORY 335, 347–49 (2016) (explaining how cultural traumas can emerge out of a long history of subjugation, oppression, and discrimination against a group).

14. See, e.g., Miriam S. Gohara, *In Defense of the Injured: How Trauma-Informed Criminal Defense Can Reform Sentencing*, 45 AM. J. CRIM. L. 1 (2018); Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359 (2016); Heather Ellis Cucolo & Michael L. Perlin, *Promoting Dignity and Preventing Shame and Humiliation by Improving the Quality and Education of Attorneys in Sexually Violent Predator (SVP) Civil Commitment Cases*, 28 U. FLA. J.L. & PUB. POL'Y 291, 327 (2017); Hallie Neuman Love, *Lawyers Are at Risk for Secondary Traumatic Stress*, N.M. BAR BULL., Feb. 15, 2017, at 8.

15. Cucolo & Perlin, *supra* note 14, at 324 (noting also that “[i]nstead of asking, ‘What is wrong with you?’ a trauma-informed legal practitioner asks, ‘What happened to you?’” and then draws and applies the connection to their client’s case).

16. See Love, *supra* note 14, at 8.

more generally. Building on our prior work on race,<sup>17</sup> cultural trauma,<sup>18</sup> and civil rights lawyering,<sup>19</sup> we investigate the meaning of racial trauma for individual, group, and community clients and for their legal teams in civil rights and criminal cases while detailing the importance of establishing a trauma-informed practice for today's civil rights lawyers. As a starting point, we examine and analyze the use of racial trauma evidence that the legal team brought forward in *P.P. v. Compton Unified School District* under the Americans with Disabilities Act on behalf of students in the Compton Unified School District in California. In that case, lawyers argued that the school district violated the students' rights by failing to offer a whole-school, trauma-sensitive approach to education and learning.<sup>20</sup>

Our Article proceeds in three parts. In Part I, we explore why it is important for civil rights lawyers to be engaged in a trauma-informed practice. Thereafter, we examine the specific concepts of individualized racial, cultural, and complex trauma, providing the foundational background for understanding our subsequent analyses of the primary civil rights case study in which racial trauma evidence was employed. In Part II, we map the litigation of individual and community racial trauma in civil advocacy through an examination of *P.P. v. Compton Unified School District*. We assess the racial trauma-sensitive practices of the litigation team in navigating toward a landmark settlement. Finally, in Part III, we highlight the struggle to accommodate community violence-centered racial trauma advocacy in contemporary civil rights cases by applying our case study of the litigation in *P.P. v. Compton Unified School District* more broadly to the lawyering process and legal ethics. Often

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17. See Anthony V. Alfieri, Gideon in *White/Gideon in Black: Race and Identity in Lawyering*, 114 YALE L.J. 1459 (2005); Anthony V. Alfieri, (*Un*)Covering Identity in Civil Rights and Poverty Law, 121 HARV. L. REV. 805 (2008); Angela Onwuachi-Willig, *From Emmett Till to Trayvon Martin: The Persistence of White Womanhood and the Preservation of White Manhood*, 15 DU BOIS REV. 257 (2018); Onwuachi-Willig, *supra* note 1; Angela Onwuachi-Willig, *Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy*, 105 VA. L. REV. 343 (2019).

18. Mary Wood, 'Cultural Trauma' of Police, *Vigilante Killings Explored on Podcast: Boston University Law Dean Angela Onwuachi-Willig Discusses Impact of Violence on Black Americans*, UNIV. VA. SCH. L. (Apr. 23, 2021), <https://www.law.virginia.edu/news/202104/cultural-trauma-police-vigilante-killings-explored-podcast> [perma.cc/RXE2-9WXX] ("Cultural trauma occurs when a group experiences a 'tragic, horrific event,' she explains; one that forever changes the group, and how the group sees itself and understands the world. 'And then that group communicates that narrative to each other and to society.'"); see also Onwuachi-Willig, *supra* note 9, at 828–29; Onwuachi-Willig, *supra* note 13; cf. Angela Onwuachi-Willig, *The Fire This Time: Reflections on Recent Killings and Protests*, B.U. SCH. L.: RECORD (June 1, 2020), <http://www.bu.edu/law/record/articles/2020/dean-angela-onwuachi-willig-commentary-the-fire-this-time> [perma.cc/F34B-UWZZ] (discussing the group-based trauma of police killings of Blacks and repeated indictments and acquittals on black Americans).

19. See Angela Onwuachi-Willig & Anthony V. Alfieri, (*Re*)Framing Race in Civil Rights Lawyering, 130 YALE L.J. 2052 (2021) (book review); Alfieri & Onwuachi-Willig, *supra* note 6.

20. See generally Plaintiffs' Complaint, *supra* note 10.

overlooked, that ethical and professional struggle affects the form and substance of lawyer decisionmaking and discretion in contemporary civil rights cases.

### I. A TAXONOMY OF TRAUMA-INFORMED PRACTICE AND TRAUMAS

As more and more attorneys, particularly civil rights and antiracist lawyers, deepen their understanding of the various forms of trauma that can shape and affect the clients and communities they represent, that frequently influence such clients' and communities' trust and belief in the legal system, and that can have an impact on the relationships that they as attorneys develop with their clients, they also grow in their commitments to engaging in trauma-informed training, practice, and defense.<sup>21</sup> Indeed, trauma-informed practice is a growing trend within the legal profession, and its tenets are increasingly taught to law students through clinical programs in law schools.<sup>22</sup>

A trauma-informed practice involves placing "the realities of the clients' trauma experiences at the forefront" of attorney engagement with clients and then adjusting the attorney's "practice approach" based on their clients' trauma experiences.<sup>23</sup> As Professors Sarah Katz and Deeya Haldar explain in their article, *The Pedagogy of Trauma-Informed Lawyering in the Clinical Law Review*, a "trauma-informed perspective asks clients not 'What's wrong with you?' but instead, 'What happened to you?'"<sup>24</sup> In other words, trauma-in-

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21. See generally, e.g., Gohara, *supra* note 14 (discussing the importance of defense attorneys practicing trauma-informed legal services); Cucolo & Perlin, *supra* note 14 (discussing the different kinds of negative emotions defendants are experiencing during the legal process and how awareness of trauma and mental health law can positively impact the attorney-client relationship); Katz & Haldar, *supra* note 14 (explaining the terms "trauma" and "vicarious trauma" in relation to "trauma-informed practice" and how trauma-informed practice can be incorporated into clinical legal training).

22. See Katz & Haldar, *supra* note 14, at 361–63 (asserting that trauma-informed practice has gained traction in the last decade and "is an increasingly prevalent approach" and discussing pedagogical approaches to employ to teach students trauma-informed lawyering techniques); see also Samuel D. Hodge, Jr. & Lauren Williams, *Vicarious Trauma: Growing Problem Among Legal Professionals That May Become a More Prevalent Cause of Action*, 53 TEX. TECH L. REV. 511, 514 (2021) ("[T]here is a movement in the legal community to expand training to those working with traumatized clients.").

23. Katz & Haldar, *supra* note 14, at 361.

24. *Id.* at 363. Trauma-informed lawyering also involves "employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner." *Id.* at 361. In other words, trauma-informed lawyering involves developing practices and habits for avoiding "vicarious trauma," also known as "secondary trauma" or "compassion fatigue," for lawyers. *Id.* at 367–68; see also Marie-Jeanne Léonard, Daniel Saumier & Alain Brunet, *When the Lawyer Becomes Traumatized: A Scoping Review*, SAGE OPEN, July–Sept. 2020, at 1 (discussing the rates at which lawyers suffer from PTSD, secondary traumatic stress, and vicarious trauma). Vicarious trauma, which is distinct from burnout or the "toll that work may take over time," is "a state of tension or preoccupation with clients' stories of trauma." Katz & Haldar, *supra* note 14, at 368. This Article, however, does not directly delve into vicarious trauma for lawyers.



formed lawyers focus on learning and understanding the psychology and sociology of trauma, work on grasping the trauma experiences of their clients, engage in connecting those experiences with their clients' actions and responses to comprehend them within those contexts, and then deliver their services in a manner that encompasses a holistic perspective.<sup>25</sup>

Performing these tasks, however, requires understanding trauma in its many forms: collective, cultural, and individual traumas, including individual complex trauma and vicarious trauma. This Part provides a taxonomy of the traumas relevant to trauma-informed lawyering, beginning with individualized traumas and then moving on to group-based traumas. Section I.A examines psychological or individual trauma, extending the lens into complex trauma, which is individualized, but can happen collectively to people "living in particular zip codes."<sup>26</sup> Section I.B explores group-based or sociological traumas, beginning its analysis with collective trauma and ending it with cultural trauma. Section I.C then explicates how and why understanding these different forms of traumas are critical to ensuring effective civil rights lawyering.

#### A. *The Psychology of Trauma: From Post-Traumatic Stress to Complex Trauma*

People have suffered from psychological trauma when their internal and external coping mechanisms are inadequate to deal with the mental blow or blows they have experienced as a result of a harmful event.<sup>27</sup> In other words, psychologically traumatized individuals have suffered a blow to their psyche that is so afflictive that they "cannot react to it effectively."<sup>28</sup> These blows can come from either directly "experiencing, witnessing, anticipating, or being confronted with an event or events that involve actual or threatened death or serious injury, or threats to the physical integrity of one's self or others."<sup>29</sup>

There are no universally anticipated responses to traumatic incidents.<sup>30</sup> Indeed, the American Psychological Association has explained that individual responses to traumatic incidents can vary, with shock and denial being among the more common immediate reactions to traumatic incidents, and flashbacks, strained relationships, and even physical impacts like headaches being

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25. Katz & Haldar, *supra* note 14, at 363.

26. Gohara, *supra* note 14, at 16 ("[F]or many, living in particular zip codes equates with inescapable trauma . . .").

27. Katz & Haldar, *supra* note 14, at 364.

28. Kai Erikson, *Notes on Trauma and Community*, 48 AM. IMAGO 455, 459 (1991).

29. Katz & Haldar, *supra* note 14, at 364 (footnote omitted).

30. *Id.* at 367 (citing Richard P. Kluft, Sandra L. Bloom & J. David Kinzie, *Treating Traumatized Patients and Victims of Violence*, NEW DIRECTIONS FOR MENTAL HEALTH SERVS., Summer 2000, at 79, 81).

among the more common longer-term responses.<sup>31</sup> As the work of Dr. Cathy Caruth makes clear, “[t]o be traumatized is precisely to be possessed by an image or event.”<sup>32</sup> Trauma has a real physiological impact on an individual’s brain, resulting in what some refer to as a “flight, fight, freeze” response.<sup>33</sup> As Professors Katz and Haldar explain, trauma often appears in a disturbing pattern of recalled traumatic memory and stress. They explicate:

[A] traumatic experience becomes encoded as a traumatic memory and is stored in the brain via a pathway involving high levels of activity in the amygdala, making recall of the traumatic event highly affectively charged. Recall, either intentional or through inadvertent exposure to internal or external stimuli related to the trauma, leads to the release of stress hormones. For many individuals who have experienced trauma, specific conditioned stimuli may be linked to the traumatic event (unconditional stimulus) such that re-exposure to a similar environment produces recurrence of fear and anxiety similar to what was experienced during the trauma itself. Thus the physiological effects of trauma can manifest far after the traumatic incident occurs, as the amygdala does not always discriminate between real dangers and memory from a past dangerous situation.

In response to traumatic experiences, an individual may feel intense fear, helplessness, or horror.<sup>34</sup>

In essence, once a traumatic event becomes a memory, it may be retriggered by similar events or a similar environment in the future, which in turn reproduces the tension, angst, and/or terror from the initial event.<sup>35</sup> Because the initial trauma makes it difficult for the brain to distinguish between the traumatic event that really occurred and the similar, future circumstances that are reminding it of the past pain, the individual often remains subject to the vicious cycle of possibly reliving the hurt through sheer memory.<sup>36</sup> As sociologist Kai Erikson once wisely proclaimed, when we are traumatized, “our memory repeats to us what we haven’t yet come to terms with, what still haunts us.”<sup>37</sup>

Complex trauma is a form of individualized trauma that describes a person’s exposure to multiple or repeated, severe or pervasive traumatic events as

31. *Trauma*, AM. PSYCH. ASS’N, <https://www.apa.org/topics/trauma> [perma.cc/B95Z-DJEZ].

32. Cathy Caruth, *Introduction*, 48 AM. IMAGO 1, 3 (1991).

33. Katz & Haldar, *supra* note 14, at 366; *see also* Gohara, *supra* note 14, at 12–13 (“[T]raumatic experiences alter neurodevelopment.”).

34. Katz & Haldar, *supra* note 14, at 366 (footnotes omitted). Sociologist Jeffrey Alexander explains, “Traumatic feelings and perceptions . . . come not only from the originating event but from the anxiety of keeping it repressed. Trauma will be resolved, not only by setting things right in the world, but by setting things right in the self.” Alexander, *supra* note 7, at 5.

35. Katz & Haldar, *supra* note 14, at 366.

36. *Id.*

37. Erikson, *supra* note 28, at 458.

well as the long-term effects of this exposure.<sup>38</sup> Often, this complex trauma involves “repeated exposure to or victimization by violence, often coupled with severe environmental deprivation associated with endemic poverty.”<sup>39</sup> It disrupts an individual’s sense of safety, and when experienced during formative childhood years, it can endure throughout adulthood, igniting focus on mere survival and diminishing the “ability to think past the present moment, control impulses, or delay gratification.”<sup>40</sup>

Repeated exposure to violence and injustice, particularly during childhood, may not only limit children’s ability to fully learn and absorb lessons during their early years; it also can have lifelong effects that shape how they respond to the world around them, how they live and interact with others, and how they perceive the choices they have available to them or believe they have available to them as adults. In particular, being forced to be on guard at all times, to not trust anyone or any systems to ensure self-protection, and to repeatedly have to rebuild life and hope after constant abandonment or loss, narrows the future possibilities that children may see for themselves and often causes them to quite reasonably believe they may have no future at all.<sup>41</sup>

#### B. *The Sociology of Trauma: From Collective Trauma to Cultural Trauma*

Just as individuals can experience blows to their psyches and bodies that manifest into traumas, so, too, can communities or collectives. As Professor Erikson has explained, when a community or collective is devastated or damaged, “one can speak of a damaged social organism in almost the same way one would speak of a damaged body” or mind.<sup>42</sup> In explaining a concept he coined, “*collective trauma*,” Professor Erikson asserted that when entire communities experience a devastating event, the “basic tissues of social life” that previously tied the community together can be damaged, resulting in

a gradual realization that . . . an important part of the self has disappeared. . . . “I” continue to exist, though damaged and maybe even permanently changed. “You” continue to exist, though distant and hard to relate

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38. *Complex Trauma*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma> [perma.cc/HY9M-N2EJ]; Rachel Wamser-Nanney & Brian R. Vandenberg, *Empirical Support for the Definition of a Complex Trauma Event in Children and Adolescents*, 26 J. TRAUMATIC STRESS 671, 672 (2013); see also Gohara, *supra* note 14, at 2–3.

39. Gohara, *supra* note 14, at 2.

40. See *id.* at 15–16, 19–21.

41. See *id.* at 19–20.

42. Erikson, *supra* note 28, at 460; see also Liana Tuller, *Shared Emotion, Social Cohesion, and Narrative Frames: Conceptualizing Collective Trauma and Cultural Trauma in a Neighborhood Context* (2020) (unpublished manuscript) (on file with author) (describing the emotional-psychological framework and relational frameworks for collective trauma).

to. But “we” no longer exist as a connected pair or as linked cells in a larger communal body.<sup>43</sup>

In other words, when horrific events affect an entire community, the community may very well stop seeing itself as a community. Instead of one, connected community, there exist many damaged or permanently changed individuals who may live in the same area, but may not see themselves as tied together in any form of kinship.<sup>44</sup> Professor Erikson further noted that, while the devastation experienced by the community often strengthens bonds by creating a common identity among community members, it frequently does so because it has made the community feel separated or disassociated from the rest of society.<sup>45</sup> The community comes to see itself as having an “altered relationship to the rest of humankind . . . as marked, cursed.”<sup>46</sup>

When those with power and resources, including government entities, act in ways that show no concern for the communities most directly affected by traumatic events, community members are often left “feeling demeaned, diminished, devalued.”<sup>47</sup> As Professor Erikson explicates, “in the long run, the real problem is that the inhumanity people experience comes to be seen as a natural feature of human life rather than as the bad manners of a particular corporation,” a government, or any other powerful actor.<sup>48</sup> That indifference to the affected communities takes its toll, aggravating the traumas.<sup>49</sup>

That collective trauma can become layered by histories of racism. Indeed, “[c]ollective racial trauma is [often] historical trauma,” which is “a type of collective trauma that is ‘experienced over time and across generations by a group of people who share an identity, affiliation, or circumstance.’”<sup>50</sup>

Connected to the phenomena of collective trauma is the concept of cultural trauma, a theory of group-based trauma that was developed by cultural sociologists Jeffrey C. Alexander, Ron Eyerman, Bernhard Giesen, Neil J. Smelser, and Piotr Sztompka.<sup>51</sup> Building on Professor Erikson’s insights, these

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43. Erikson, *supra* note 28, at 460 (citation omitted).

44. *Id.* at 459–60.

45. *Id.* at 461 (“The point to be made here is not that calamity acts to strengthen the bonds linking people together—it does not, most of the time—but that the shared experience becomes almost like a common culture, a common language, a kinship among those who have come to see themselves as different.”).

46. *Id.* at 458.

47. *Id.* at 465.

48. *Id.* at 465–66.

49. Gohara, *supra* note 14, at 18.

50. First et al., *supra* note 12, at 373 (quoting Nathaniel Vincent Mohatt, Azure B. Thompson, Nghi D. Thai & Jacob Kraemer Tebes, *Historical Trauma as Public Narrative: A Conceptual Review of How History Impacts Present-Day Health*, 106 SOC. SCI. & MED. 128, 128 (2014)).

51. Alexander, *supra* note 7, at 1.

five cultural sociologists sought to explain when and under what circumstances disturbing incidents work to forever change a group, both in terms of the formation of group identity and the memory of the event and its meaning. While noting that no event in and of itself produces a cultural trauma, Alexander, Eyerman, Giesen, Smelser, and Sztompka developed a sociological framework for understanding when sufficiently disorienting events can lead groups to identify as a collective and “represent social pain as a fundamental threat to their sense of who they are, where they came from, and where they want to go” by constructing a cultural trauma narrative.<sup>52</sup>

As Professor Alexander would come to explain, such cultural trauma narratives emerge out of a process that begins with both a “claim” and a “carrier group” or “carrier groups,” meaning those who carry the responsibility of telling the story to the public and who, in fact, articulate the narrative to the public.<sup>53</sup> These narratives must contain four distinct components of what Professor Alexander calls a “master narrative” of cultural trauma, which consists of the following:

- the nature of the pain, which is the injury that the group endured as defined by the carrier group;
- the nature of the victim, which is the group of persons who were affected by the traumatizing pain;
- the relation of the trauma victim to the wider audience, which is the extent to which members of the audience for the narrative view themselves in relation to the immediately victimized group; and
- the attribution of responsibility, which is the person or entity that caused the trauma or that perpetrated the harm.<sup>54</sup>

In the end, as the five cultural sociologists make clear in their book, *Cultural Trauma and Collective Identity*, what is most critical in identifying and understanding a cultural trauma is whether the disorienting tragedy is being or has been effectively communicated as a trauma to the appropriate audience, whether the event is believed to have a permanent impact for the traumatized group or groups, and whether the situation is “regarded as threatening a society’s existence or violating one or more of its fundamental cultural pre-suppositions.”<sup>55</sup> The impact of cultural trauma narratives may also be meaningful in terms of the potential for social change.<sup>56</sup> Indeed, as Alexander explains,

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52. *Id.* at 10.

53. *Id.* at 11.

54. *Id.* at 12–15.

55. Neil J. Smelser, *Psychological Trauma and Cultural Trauma*, in CULTURAL TRAUMA AND COLLECTIVE IDENTITY, *supra* note 7, at 44.

56. See Onwuachi-Willig, *supra* note 13, at 346 (noting how the “post-verdict narrative of injustice” that emerged after the acquittal of J.W. Milam and Roy Bryant in the Till murder

because cultural trauma narratives have allowed members of wider publics to participate in and understand the pain of others,<sup>57</sup> they have actually broadened “the realm of social understanding and sympathy,” which has enabled carrier groups to attract those from outside the group to their movements and create social change.<sup>58</sup> By developing the talents to both understand and persuasively recite trauma narratives, law students and lawyers can build the capacity to create the type of structural changes in law, policy, and government that can help to bring their clients relief beyond the customized relief sought in individually litigated cases.

### C. *The Whys of Trauma-Based Practice*

Understanding trauma in all its forms—both psychological and sociological, individual and group—is a must for civil rights practice and practitioners because it enables lawyers to more fully represent their clients’ interests and obtain resolutions that can work to address their clients’ problems more holistically. Having a broad and deep understanding of trauma gives lawyers a view into the ways in which their clients may have lost basic trust in the very systems that are supposed to serve and protect them. As Professor Erikson has detailed, traumatized people (both individuals and groups) see the world through a different lens than those who have not suffered trauma. Traumatized people frequently come to see a bad event as more than a simple stroke of bad luck or misfortune. Instead, that bad luck becomes the definition of their existence, certain to meet them at every corner.<sup>59</sup> As Professor Erikson poignantly points out, at its worst, trauma can result not only in “a loss of confidence in the self, but [in] a loss of confidence in the surrounding tissue of family and community, in the structures of government, in the larger logics by which humankind lives,” and more.<sup>60</sup>

Understanding the impact of traumas on clients may help a lawyer recognize when a client is not being open or forthcoming during the interviewing, investigative, and counseling process because of a lack of trust or even impaired memory due to a trauma-induced blockage.<sup>61</sup> It may guide lawyers in assisting their clients through interactions with the legal system or any other governmental system that their clients may understandably be mistrustful of, and it may help to prevent lawyers from engaging in actions that may work to retraumatize their clients and their clients’ communities.<sup>62</sup>

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trial “helped ignite the Civil Rights Movement, which ultimately resulted in legislation like the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968”).

57. On empathy as a means to participate in the pain of others through criminal trial narratives, see Binny Miller, *George Floyd and Empathy Stories*, 28 *CLINICAL L. REV.* 281, 284 (2021) (observing that the theme underlying the criminal trial of Derek Chauvin was empathy).

58. See Alexander, *supra* note 7, at 24.

59. Erikson, *supra* note 28, at 466–67.

60. *Id.* at 470–71.

61. See Gohara, *supra* note 14, at 37.

62. See *id.* at 37–38.

Importantly, it may help the lawyers better convey the stories of their clients and their communities—to tell the narratives of the injuries, pains, and damages their clients have endured and why their clients should be compensated for such harms or why others must pay, whether monetarily or otherwise, for creating and effecting those harms. For example, consider the very powerful narratives that the prosecutors in Hennepin County were able to convey to jurors in the murder trial against Derek Chauvin—the white officer who murdered George Floyd, a forty-six-year-old African American father, son, brother, and partner, by kneeling on his neck and obstructing his ability to breathe for nine minutes and twenty-nine seconds on May 25, 2020—because they possessed an understanding of the individualized and group traumas that the witnesses and communities in their city had endured.<sup>63</sup> In doing so, the prosecutors conveyed not only the individual psychological traumatic harms that then seventeen-year-old Darnella Frazier suffered when she bravely filmed the horrific police murder of George Floyd on her cellphone, but also the collective, historical, and cultural trauma narratives of Blacks as lived and relived through repeated police violence, harassment, and brutality in communities of color; family and peer narratives of these traumatic events throughout generations; and lived and relived failures of the legal system to protect Blacks from such harms throughout history through Ms. Frazier’s testimony. Powerfully and depressingly, Ms. Frazier testified at trial:

When I look at George Floyd, I look at my dad. I look at my brothers. [CRYING] I look at my cousins, my uncles. Because they are all black. I have a black father. I have a black brother. I have black friends. And I look at that, and I look at how that could’ve been one of them. It’s been nights I stayed up, apologizing and apologizing to George Floyd for not doing more, and not physically interacting, and not saving his life.<sup>64</sup>

In summary, as lawyers who were representing the deceased George Floyd, his family, and the residents of Minneapolis, Minnesota, including those who witnessed former officer Chauvin murder Mr. Floyd, the Hennepin County prosecutors listened to and internalized all of the traumatic pain that the witnesses to the murder of George Floyd had suffered such that they were able to relay these individuals’ narratives of trauma, and along with them, related narratives of pain and trauma that Blacks as a whole have borne for decades, through racial trauma evidence that was admitted as testimony at trial.<sup>65</sup>

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63. See Onwuachi-Willig, *supra* note 9, at 825–26.

64. Washington Post, *Derek Chauvin Trial Continues with Witness Testimony for Second Day - 3/30 (Full Live Stream)*, YOUTUBE, at 3:11:45–3:12:32 (Mar. 30, 2021), <https://www.youtube.com/sZ92-geeYBo>.

65. See *Transcript: The Chauvin Trial and the Weight of Bearing Witness*, MSNBC (Apr. 9, 2021, 5:07 PM), <https://www.msnbc.com/podcast/transcript-chauvin-trial-weight-bearing-witness-n1263692> [perma.cc/CJK3-EJXG] (“It’s not just what they witnessed last Memorial Day that continues to haunt them, and us for that matter. There’s something more, the residue of

## II. RACIAL TRAUMA IN CIVIL RIGHTS LITIGATION

This Part extends from our previous work on race, cultural trauma, and civil rights to address the lawyering process and the legal ethics of emerging *community violence-centered racial trauma* litigation.<sup>66</sup> Unlike antecedent forms of community violence-centered litigation focused on property deprivation or tortious injury, for example, in the aftermath of the Tulsa Race Massacre of 1921,<sup>67</sup> the Compton school litigation pinpointed the experience of racial trauma for individuals, groups, and institutions in the context of education. Our account of the litigation proceeds in two sections. Section II.A introduces the pathbreaking trauma litigation theory in *P.P. v. Compton Unified School District*.<sup>68</sup> Section II.B sketches the factual contentions and legal claims undergirding the theory of community violence-centered racial trauma advanced in the litigation.

A. *The Compton School Litigation: A Case Study*

This Section considers the community violence-centered racial trauma litigation in the recent *P.P. v. Compton Unified School District* case where trauma-impacted students and teachers in Los Angeles brought a civil action

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generations of Black pain, and trauma, and death that has been passed down like a bad inheritance. And in revealing and reliving that pain for the world to see, these witnesses are carrying the most unfair burden, but a burden that Black folks have been forced to carry for a very long time.”); see also Noreen Nasir & Corey Williams, *Chauvin’s Trial Leaves Many Black Viewers Emotionally Taxed*, AP NEWS (Apr. 3, 2021), <https://apnews.com/article/ahmaud-arbery-trials-us-news-death-of-george-floyd-racial-injustice-20138097a2c3719d87187442ff3a7dac> [perma.cc/2KQK-N52X] (discussing the emotional toll of George Floyd’s death and the fear of yet another acquittal at the end of the trial for a police officer who took an unarmed African American man’s life).

66. For a discussion of racial trauma litigation in disability, education, and health-related civil rights cases, see Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 824 (2020); Benjamin C. Hattem, *Carceral Trauma and Disability Law*, 72 STAN. L. REV. 995 (2020); Craig Konnoth, *Medicalization and the New Civil Rights*, 72 STAN. L. REV. 1165, 1202–08 (2020); and Craig Konnoth, *Medical Civil Rights as a Site of Activism: A Reply to Critics*, 73 STAN. L. REV. ONLINE 104 (2020). See also Nancy E. Dowd, *Straight Out of Compton: Developmental Equality and a Critique of the Compton School Litigation*, 45 CAP. U. L. REV. 199 (2017); Aaron Lawson, *Straight Outta Compton: Witness the Strength of Disability Rights Taking One Last Stand for Education Reform*, 67 SYRACUSE L. REV. 551 (2017); Stephen C. v. Bureau of Indian Educ., No. 17-cv-08004, 2018 WL 1871457, at \*3–4 (D. Ariz. Mar. 29, 2018).

67. See Alfred L. Brophy, *When More Than Property Is Lost: The Dignity Losses and Restoration of the Tulsa Riot of 1921*, 41 LAW & SOC. INQUIRY 824 (2016); Eric J. Miller, *Republican, Rebellious Reparations*, 63 HOW. L.J. 363 (2020).

68. *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1098 (C.D. Cal. 2015).



against the Compton Unified School District (CUSD),<sup>69</sup> as well as its superintendent<sup>70</sup> and its Board of Trustees (collectively “the Individual Defendants”).<sup>71</sup> The CUSD is located in south-central Los Angeles County, geographically incorporating the City of Compton and, in part, the cities of Carson and Los Angeles as well.<sup>72</sup> The complaint in the civil action asserted statutory claims charging the CUSD and its superintendent and trustees with actions and omissions in violation of the Americans with Disabilities Act (ADA),<sup>73</sup> Section 504 of the Rehabilitation Act,<sup>74</sup> and U.S. Department of Education regulations governing location and notification protocols<sup>75</sup> and procedural safeguards<sup>76</sup> in the provision of free appropriate public education.<sup>77</sup> Originally filed on May 18, 2015, in the U.S. District Court for the Central District of California and later settled on January 28, 2021,<sup>78</sup> the class action complaint set forth detailed factual contentions describing the widespread community and school violence affecting families of color living in the City of Compton, burdening its district schools, and traumatizing its students and teachers; the impact of such traumas on the ability of CUSD students to concentrate, learn, and feel safe in the classroom; and the neglect of CUSD in addressing the trauma-induced needs of its students in ways that would enable them to be able to learn and grow as students.<sup>79</sup>

We describe these factual contentions in three segments. Section II.A.1 presents abridged trauma histories of the student and teacher plaintiffs in the litigation. Section II.A.2 reviews the litigation team strategy and the settlement outcome. Section II.A.3 summarizes the investigation of community and

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69. Plaintiffs’ Complaint, *supra* note 10, at 14, 19.

70. *Id.* at 19.

71. *Id.* at 19–20.

72. Press Release, Public Counsel, Landmark Federal Class Action Lawsuit Results in Innovative Trauma Programming (Feb. 24, 2021) [hereinafter Press Release], [http://www.publiccounsel.org/press\\_releases?id=0147](http://www.publiccounsel.org/press_releases?id=0147) [perma.cc/VB33-L9NG].

73. Plaintiffs’ Complaint, *supra* note 10, at 23–24, 71–72; *see* Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (findings and purpose).

74. Plaintiffs’ Complaint, *supra* note 10, at 22–23, 67–69; *see* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (nondiscrimination under federal grants and programs).

75. Plaintiffs’ Complaint, *supra* note 10, at 69; *see* 34 C.F.R. § 104.32 (location and notification).

76. Plaintiffs’ Complaint, *supra* note 10, at 70; *see* 34 C.F.R. § 104.36 (procedural safeguards).

77. Plaintiffs’ Complaint, *supra* note 10, at 70; *see* 34 C.F.R. § 104.33 (free appropriate public education).

78. *See* Press Release, *supra* note 72; Joint Status Report of the Parties, P.P. v. Compton Unified Sch. Dist., No. LA CV-15-3726 (PLAx) (C.D. Cal. Jan. 22, 2021).

79. The Plaintiffs alleged that the action was maintainable as a class action and moved to certify the class on July 17, 2015. Plaintiffs’ Complaint, *supra* note 10, at 1; Plaintiff’s Notice of Motion & Motion for Class Certification, P.P. v. Compton Unified Sch. Dist., No. LA CV-15-3726 (PLAx) (C.D. Cal. July 17, 2015).

school violence in the City of Compton and CUSD that gave rise to the litigation and the failures of CUSD in responding to the impacts of such violence on its students' abilities to learn, grow, and develop within its schools.

1. The Student Plaintiffs: Peter P., Kimberly C., Phillip W., Virgil W., and Donte J.

Represented by the Public Counsel Law Center and the law firm Irell & Manella (collectively "the Public Counsel team"),<sup>80</sup> the named Plaintiffs in the Compton school litigation included five CUSD students ("the Student Plaintiffs")—Peter P., Kimberly C., Phillip W., Virgil W., and Donte J.—and three CUSD teachers—Rodney Curry, Armando Castro II, and Maureen McCoy.<sup>81</sup> The students attended various elementary and middle schools, high schools, and alternative schools in the CUSD.<sup>82</sup> At the outset of the litigation in 2015, Peter P. was a seventeen-year-old student at Dominguez High School; Kimberly C. was an eighteen-year-old senior at Cesar Chavez Continuation School; Phillip W. was a fifteen-year-old student at Team Builders, an alternative high school; Virgil W. was a fifteen-year-old student at Dominguez High School; and Donte J. was a thirteen-year-old student at Whaley Middle School.<sup>83</sup>

To the Public Counsel team, the community violence-centered racial trauma experienced by Peter P., Kimberly C., Phillip W., Virgil W., and Donte J. permeated both CUSD neighborhoods and schools and included not just the physical and racialized police violence and the surrounding neighborhood violence that students endured within the CUSD area, but also the mental violence of being ignored and uncared for by their very own school system in terms of their learning and safety. Distilled here, the Student Plaintiffs' individual histories illustrate the pervasive impact of repeated and consistent violence on students who live in undervalued and overpoliced, yet still

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80. Plaintiffs' Complaint, *supra* note 10, at 73–74.

81. The three named teachers, all CUSD high school instructors, represented several schools and manifested a battery of secondary trauma symptoms. *Id.* at 54–57 ("[U]naddressed student trauma further destabilizes the CUSD community by contributing to secondary traumatic stress and burnout among teachers and school staff."). For example, Rodney Curry, a nineteen-year teacher at Dominguez High School, contemplated "leaving the teaching profession on multiple occasions when he felt that he could not endure losing another student." *Id.* at 56. Armando Castro II, an eight-year teacher at Cesar Chavez Continuation School, missed days of school "due to the stress of unaddressed student trauma." *Id.* And Maureen McCoy, a six-year teacher and a certified school psychologist at Centennial High School, "experienced significant health problems and was placed on disability leave by her doctor as a result of her attempts to meet the needs of CUSD students who have experienced trauma without the training, resources, or support to do so." *Id.*

82. *Id.* at 8–14.

83. *Id.*; Teresa Watanabe, *Compton Unified Sued for Allegedly Failing to Address Trauma-Affected Students*, L.A. TIMES (May 18, 2015, 2:46 PM) <https://www.latimes.com/local/lanow/la-me-ln-trauma-school-lawsuit-20150518-story.html> [perma.cc/9JZZ-Q743].

government-neglected, communities of color as well as the students' shared experiences of complex and collective traumas. When told in the actual voices of Peter P., Kimberly C., Phillip W., Virgil W., and Donte J., the individual narratives in the complaint are powerful, piercing, and palpable, giving readers a much fuller sense of the depth and intensity of the harms that CUSD's neglect imposes on its students as a whole.<sup>84</sup> However, despite how thorough, vivid, and compelling the team's pleading-encoded descriptions of the Student Plaintiffs' complex trauma were, they seldom conveyed the actual voices or written and oral narratives of the Student Plaintiffs, perhaps for tactical reasons. As a consequence, the pleadings ended up leaving less space for their readers and for the decisionmakers involved to fully comprehend and absorb the depths of the individualized and group-based traumas that were suffered by the Student Plaintiffs. Understandably, these omissions may be attributable to the difficulty of sociolegal narrative translation in federal civil action pleadings, the prerogatives of client preference and privacy, and the calibrations of litigation strategy within competing judicial, municipal government, and media arenas.<sup>85</sup> But whatever the rationale, the omissions renew the unsettled debate over the natural or necessary silencing of client voices in the lawyering process of civil rights and poverty law advocacy, the narrow constraints placed on the stories that can be told through the federal rules of procedure and routine litigation, and the call for a legal ethics of client storytelling in our civil and criminal justice systems, especially when the story tells individual and collective experiences of discrimination, subordination, and trauma.<sup>86</sup> Amid this ongoing debate, the collective experiences of discrimination, subordination, and trauma in the *P.P. v. Compton Unified School District* litigation stand out at the heart of the case.

In documenting the history of Peter P., for example, the Public Counsel team recounted his biological mother's drug abuse and her parental rights termination, the physical and sexual abuse that Peter P. suffered at the hands of his mother's boyfriends, the physical abuse that his siblings and his mother also endured, Peter P.'s foster placement at age five, and his two-month period of homelessness during which he slept on a school cafeteria roof.<sup>87</sup> The team also related multiple incidents where Peter witnessed or experienced violence

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84. See, e.g., Plaintiffs' Complaint, *supra* note 10, at 12 (quoting Phillip W. as asserting "I used to be happy and joyful, but now I can't be happy. I have to be serious and ready for anything," and noting that "his main goal is 'to make it past twenty-five.'").

85. See Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763 (1995); Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 YALE J.L. & HUMANS. 1 (2014).

86. See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107-47 (1991); Llezlie Green Coleman, *Disrupting the Discrimination Narrative: An Argument for Wage and Hour Laws' Inclusion in Antisubordination Advocacy*, 14 STAN. J. C.R. & C.L. 49 (2018).

87. Plaintiffs' Complaint, *supra* note 10, at 8-9.

(such as shootings and stabbings) and suffered school suspensions and expulsions.<sup>88</sup> Through Peter P.'s words, the team brought to life the traumatic effects of the abuse and violence that he encountered, revealing how they had grown into an intense sense of helplessness that made him wonder why he must even stay alive. Specifically, in paragraph nineteen of the complaint, the team quoted Peter P. as declaring: "Sometimes I pray to God, why do you still keep me here even after all the things I've been through? I have had so many chances to go to heaven but I'm still here. I thank God every day for waking up, but I regret waking up every day."<sup>89</sup>

Likewise, the Public Counsel team recollected Kimberly C.'s struggle enduring incidents of racism in elementary school, witnessing the deaths of classmates in middle school, and surviving a sexual assault on a public bus on her way home from school.<sup>90</sup> In so doing, they highlighted some of the traumatic effects of these incidents. Specifically, they noted how a teacher's denigration of Kimberly C.'s sexuality disrupted her learning by deepening her already suicidal feelings and resulting in a "flight" response that made her stop coming to class.<sup>91</sup> They also detailed how classroom flashbacks to the sexual assault she endured resulted in breakdowns that made it impossible for Kimberly W. to concentrate in class.<sup>92</sup> Similarly, in documenting the joint histories of Phillip W. and his twin brother Virgil W., the Public Counsel team recorded repeated incidents of traumatic violence and loss, including parental assault, neighborhood shootings, police detention, the violent death of at least one friend, and school suspensions and expulsions.<sup>93</sup> Much like the case of Peter P., the team included words from Phillip W. that showed that his trauma had already morphed into the type of fatalism, "a foreshortened sense of their own futures," that one might see in adults who have been subjected to repeated violence.<sup>94</sup> In paragraph twenty-nine of the complaint, then fifteen-year-old Phillip W. is quoted as saying: "When I was about twelve, I felt a click in my head and something changed. I used to be happy and joyful, but now I can't be happy. I have to be serious and ready for anything . . . [My main goal is] to make it past twenty-five."<sup>95</sup> In the same way, in documenting the history of thirteen-year-old Donte J., the team recalled his police arrest at gunpoint in

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88. *Id.*

89. *Id.* at 9; *see also* Katz & Haldar, *supra* note 14, at 366 (discussing the "flight, fight, freeze" responses of trauma).

90. Plaintiffs' Complaint, *supra* note 10, at 10.

91. *Id.* at 10.

92. *Id.* at 10–11; *see also* Gohara, *supra* note 14, at 19 (describing how repeated violence and victimization can disrupt students' learning, make it difficult for them to concentrate, impair their memories, among many other things).

93. Plaintiffs' Complaint, *supra* note 10, at 11–13.

94. *See id.* at 12; Gohara, *supra* note 14, at 19–20.

95. Plaintiffs' Complaint, *supra* note 10, at 12.

sixth grade, his on-campus and off-campus assaults, and his school suspension.<sup>96</sup> As in the case of Phillip W., the team painstakingly described the traumatic harms suffered by Donte J., specifically, how the traumas left him unable to focus and concentrate in class and thus unable to learn.<sup>97</sup>

Together, the histories of Peter P., Kimberly C., Phillip W., Virgil W., and Donte J. informed the Public Counsel team's development of a theory of community violence-centered racial trauma and steered its litigation strategy and tactics. The Public Counsel team did a superb job of working within the confines of the federal rules of practice and procedure to plead the children's claims, advocate on their behalf, and reach a positive result; however, those constraints also limited the narratives that the team could tell, including the traumas they could describe, and they also narrowed the remedies that could be pursued. In the next sections, we discuss the litigation strategies employed by the team as well as the impacts of narrow pleading and professional responsibility rules on the outcomes that could be achieved.

## 2. Litigation Strategy and Settlement

The Public Counsel team's litigation strategy involved early class certification and preliminary injunction gambits. Tactically aggressive, the team moved for class-wide relief on behalf of the Student Plaintiffs, coupled with injunctive and declaratory relief on behalf of other students and teachers, only two months after commencing the litigation and without the benefit of full discovery.<sup>98</sup> Unsurprisingly, both the Plaintiffs' motion for class certification and their motion for preliminary injunction confronted the oftentimes insurmountable, dual rule-based obstacles increasingly typical of modern class-wide, mandatory injunction cases in the field of civil rights.<sup>99</sup> Doctrinal in nature, the obstacles rise out of the procedural jurisprudence that federal courts have erected to circumscribe Rule 23, which governs class actions, and Rule 65, which governs injunctions, of the Federal Rules of Civil Procedure.<sup>100</sup> By

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96. *Id.* at 13–14.

97. *See id.* at 14.

98. Memorandum of Points & Auths. in Support of Motion for Preliminary Injunction at 1, *P.P. v. Compton Unified Sch. Dist.*, No. LA CV-15-3726 (PLAx) (C.D. Cal. July 9, 2015). For declaratory relief, the Plaintiffs sought a final declaration that the CUSD, again through its "actions and omissions and its policies and procedures," violated the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and U.S. Department of Education regulations. Plaintiffs' Complaint, *supra* note 10, at 72–73.

99. *See* Suzette M. Malveaux, *The Modern Class Action Rule: Its Civil Rights Roots and Relevance Today*, 66 U. KAN. L. REV. 325 (2017); *see also* Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1095–97 (2018).

100. FED. R. CIV. P. 23, 65.

tightening the prerequisites of class actions<sup>101</sup> (numerosity, commonality, typicality, and adequacy of representation)<sup>102</sup> and ratcheting up the evidentiary bar for injunctions<sup>103</sup> (likelihood of success on the merits and likelihood of irreparable harm),<sup>104</sup> federal courts have steadily hampered the ability of similarly aggrieved plaintiffs to obtain class-wide, injunctive relief in civil rights cases. Even where, as here, the litigation team conducts substantial pretrial investigation and gathers together a formidable corps of expert witnesses, class certification and mandatory injunction efforts may stagger under heavy evidentiary burdens of proof.

Nonetheless, on July 9, 2015, the student and teacher Plaintiffs sought a preliminary injunction ordering the CUSD and the individual Defendants “to train all CUSD teachers, administrators, and school-site staff regarding understanding and recognizing the effects of complex trauma, including its effects on development and the ability to learn, think, read, concentrate, and communicate, in accordance with research-based practices that have achieved success in school districts like CUSD.”<sup>105</sup> Remedial in design, the requested order targeted the “affirmative” programmatic implementation of “reasonable accommodations in the form of trauma-sensitive policies and procedures that will allow student class members an opportunity to receive an adequate public education.”<sup>106</sup> To that end, the Plaintiffs sought institutional reform directives encompassing “[c]omprehensive and ongoing training, coaching, and consultation for all adult staff—including teachers, administrators, counselors, and other staff—regarding trauma-informed methods and strategies for educating class members and fostering a healthy, supportive environment,” in addition to the “[i]mplementation of restorative practices . . . to prevent, address, and heal after conflict” and the “[e]mployment of appropriately trained counselors” to identify and assist students struggling with post-trauma mental health difficulties.<sup>107</sup>

On July 17, 2015, the Student Plaintiffs requested that the district court determine a class action to be the proper framework for their statutory claims under Section 504 of the Rehabilitation Act and Title II of the ADA and also

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101. See Brandon L. Garrett, *Aggregation and Constitutional Rights*, 88 NOTRE DAME L. REV. 593, 594–95, 615 (2012); A. Benjamin Spencer, *Class Actions, Heightened Commonality, and Declining Access to Justice*, 93 B.U. L. REV. 441, 442–44 (2013); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (employment discrimination).

102. FED. R. CIV. P. 23(a).

103. Frost, *supra* note 99, at 1095–97; Suzette M. Malveaux, *Class Actions, Civil Rights, and the National Injunction*, 131 HARV. L. REV. F. 56, 56 (2017).

104. FED. R. CIV. P. 65(b).

105. *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1126, 1133 (C.D. Cal. 2015) (order denying preliminary injunction) (quoting Memorandum of Points & Auths. in Support of Motion for Preliminary Injunction, *supra* note 98, at 1).

106. *Compton*, 135 F. Supp. 3d at 1134; Plaintiffs’ Complaint, *supra* note 10, at 72.

107. Plaintiffs’ Complaint, *supra* note 10, at 72–73.

grant their remedial claims for declaratory and injunctive relief.<sup>108</sup> For purposes of certification, they defined the class to encompass: “All present and future students in Compton Unified School District with trauma-induced disabilities, as defined under Section 504 of the Rehabilitation Act and Americans with Disabilities Act, who are, will be, or have been denied meaningful access to education . . . .”<sup>109</sup> Consonant with this definition and its temporal focus on current and prospective students, the Student Plaintiffs asserted that “[t]he class includes, but is not limited to, students with trauma-related conditions recognized by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5),’ including post-traumatic stress, anxiety, dissociative, conduct, somatoform, depressive, and substance-related and addictive disorders.”<sup>110</sup> The Student Plaintiffs also requested that the district court appoint the five named students—Peter P., Kimberly C., Phillip W., Virgil W., and Donte J.—as class representatives and the Public Counsel team as class counsel for the litigation.<sup>111</sup>

Predictably, on September 29, 2015, the district court denied the Plaintiffs’ motions for class certification<sup>112</sup> and a preliminary injunction.<sup>113</sup> This twin denial illustrates the modern challenges of seeking class-wide, mandatory injunctive relief. In denying the Student Plaintiffs’ motion for class certification without prejudice and in anticipating the renewal of their motion upon further development of the evidentiary record, the district court pointed to deficiencies regarding “numerosity and the named Student Plaintiffs’ status as members of the proposed class.”<sup>114</sup> In concluding that the Student Plaintiffs failed to meet their burden of establishing numerosity, the district court found that “[t]he current estimate of the proposed class requires more extrapolation than what is permissible for a good faith estimate of the class size.”<sup>115</sup> Equally significant, based on the initial evidentiary record, the district court found that the Public Counsel team failed to demonstrate that the named Student Plaintiffs satisfied “typicality” because “their membership in the proposed class” remained as yet “uncertain.”<sup>116</sup>

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108. P.P. v. Compton Unified Sch. Dist., No. LA CV-15-3726 (PLAx), 2015 WL 5752770, at \*4 (C.D. Cal. Sept. 29, 2015) (order denying class certification).

109. *Id.* (quoting Plaintiffs’ Notice of Motion & Motion for Class Certification, *supra* note 79, at 4–5).

110. *Id.* (quoting Plaintiffs’ Notice of Motion & Motion for Class Certification, *supra* note 79, at 5).

111. *Id.* at \*1, \*4; Plaintiffs’ Notice of Motion & Motion for Class Certification, *supra* note 79, at 4, 19–20.

112. *Compton*, 2015 WL 5752770, at \*1.

113. P.P. v. Compton Unified Sch. Dist., 135 F. Supp. 3d 1126, 1129 (C.D. Cal. 2015) (order denying preliminary injunction).

114. *Compton*, 2015 WL 5752770, at \*24.

115. *Id.* at \*1.

116. *Id.*

At the same time, in denying the motion for a preliminary injunction, the court reasoned that the Public Counsel team failed to show “that the law and facts clearly favor the mandatory injunction sought” by the Plaintiffs.<sup>117</sup> More troubling, the court added: “In the absence of class certification, the evidence presented as to each named Plaintiff does not clearly support a claim of trauma-induced disability that would satisfy a reasonable expert in the field.”<sup>118</sup> This passing allusion to the stringency of pretrial and trial procedures for admitting and gauging the sufficiency of expert witness testimony corroborating the Plaintiffs’ proffered theory of trauma-induced disability signaled a premature and skeptical rebuke of racial trauma claims in the Compton school litigation campaign.<sup>119</sup> Although the Public Counsel team made no reference to collective trauma or cultural trauma, the court’s rationale in its preliminary injunction order also revealed the limits of current federal pleading standards when it comes to remedying collective or group-related trauma claims, even in class action lawsuits.<sup>120</sup> Neither the rules nor available remedies make room for recognizing the harms of the kind of “altered relationship to the rest of humankind” that results from repeated neighborhood violence and racialized police violence over time.<sup>121</sup>

Subsequently, on January 25, 2021, after nearly six years of negotiation, the parties announced a settlement agreement in the form of a collaboratively developed Wellness Initiative, a multi-pronged *model of trauma-informed practices* “designed to address the academic, social emotional, attendance and behavioral needs of students.”<sup>122</sup> Programmatically innovative, the CUSD-wide Wellness Initiative concentrated on five key areas: retention and safety, bullying and violence prevention, mental health, educator and staff training, and student self-care behavior. On retention and safety, the Wellness Initiative established “Positive Behavior Intervention Strategies (PBIS) and restorative practices” devised to “keep students in school and create a safe and welcoming environment.”<sup>123</sup> On bullying and violence prevention, the Initiative introduced “[c]haracter education through an Anti-Bullying and Kindness” curriculum.<sup>124</sup> On mental health, the Initiative instituted “[s]chool-based Wellness Centers that provide mental health and counseling services for

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117. *Compton*, 135 F. Supp. 3d at 1129.

118. *Id.*

119. See Elizabeth M. Schneider, *The Changing Shape of Federal Civil Pretrial Practice: The Disparate Impact on Civil Rights and Employment Discrimination Cases*, 158 U. PA. L. REV. 517 (2010); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

120. See *supra* Section I.B (discussing and defining collective and cultural traumas).

121. Erikson, *supra* note 28, at 458; see also *supra* note 45 and accompanying text.

122. Press Release, *supra* note 71; see also Joint Status Report of the Parties, *supra* note 78. The parties voluntarily dismissed the case a few days later. See Docket Sheet, *P.P. v. Compton Unified Sch. Dist.*, No. LA CV-15-3726 (PLAx) (C.D. Cal. 2021).

123. Press Release, *supra* note 72.

124. *Id.*



the highest need students.”<sup>125</sup> On educator and staff training, the Initiative secured “[t]rauma-informed training and support for all educators and school staff,” including “a yearly book study.”<sup>126</sup> And on student self-care behavior, the Initiative emphasized “[t]eaching students skills to cope with their anxiety and emotions through the implementation of Social and Emotional Learning (SEL) Programs.”<sup>127</sup> Commenting on this landmark settlement, Mark Rosenbaum, the Director of Public Counsel’s Opportunity Under Law Project, remarked that the Wellness Initiative provided school assistance “to help address the trauma attendant to racism, poverty, police abuse, and bullying,” and described the settlement as “a template for schools everywhere that are serious about affording equal educational opportunities.”<sup>128</sup>

Despite the individual and institutional benefits of the Wellness Initiative accruing to CUSD students and teachers in need of *trauma-informed* academic, social, and emotional support services, the purpose and outcome of the Compton school litigation remain unresolved. Carefully aimed and prospectively oriented for the purpose of enacting district-wide, institutional reform, the Compton school litigation achieved its end goal for students and, to an extent, for their families. Still, while the achieved settlement result is remarkable and pathbreaking, much room remained for the pursuit of a larger, district-wide effort that could have required the implementation of school-based reform initiatives around allied issues of environmental and physical health, segregation, and equal access to educational resources, and to place neighborhood issues of race discrimination, community trauma, and socioeconomic distress at the purposive forefront. Indeed, the negotiated settlement could have accomplished even more by linking grassroots neighborhood organizing to a broader cluster of community health and safety issues adversely affecting students, parents, and families.

Again, from the perspective of institutional reform litigation, the outcome of the Compton school litigation campaign reflects an extraordinary result and an example of highly effective representation.<sup>129</sup> However, from the standpoint of community violence-centered racial trauma, the outcome reconfirms the limits of law reform litigation in attacking the root causes and rectifying the entrenched conditions of racial discrimination and subordination and poverty. Upon close inspection, none of the behavior intervention

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125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. In disclosing the interim outcomes of the Wellness Initiative with respect to academic performance, academic engagement, and conditions and climate indicators, the Joint Status Report of the Parties produced data showing “improvement in proficiency standardized testing by District students both in the areas of literacy (23% in 2015 vs. 38% in 2019) and mathematics (16% in 2015 vs. 31% in 2019),” significant “improvement in graduation rates in the last four years . . . moving from 78.4% in 2015 to 86.1% in 2019,” and “a dramatic change in the Conditions and Climate indicators in all of [the CUSD] schools as evidenced by the decrease in discipline referrals and suspensions.” Joint Status Report of the Parties, *supra* note 78, at 10–11.

strategies and restorative practices, character education and anti-bullying and kindness initiatives, school-based mental health and counseling services, trauma-informed educator and staff training courses, and student social and emotional coping and learning programs contained in the Compton school litigation settlement agreement directly addresses or ameliorates the intractable sources—race discrimination and subordination and poverty—of community violence and racial trauma within the City of Compton and in the adjacent cities of Carson and Los Angeles. The next section surveys the conditions underlying the incidence of community violence and racial trauma in the City of Compton.

### 3. Community Violence in Compton and the CUSD

The Public Counsel team grounded its community violence-centered racial trauma theory in a demographic, street-level analysis of the City of Compton and its public school district. Today, as in 2015, Compton stands “among the most socioeconomically distressed cities in Southern California,” marked by persistent “[v]iolence, poverty, and discrimination” and “attendant high rates of violent crime.”<sup>130</sup> In fact, the team reported that, in 2015, fully 26.3 percent of Compton residents lived below the federal poverty line, 93 percent of Compton school children were eligible for Free and Reduced Priced Lunch, and 7.8 percent of the Compton student population (1,751 students) were homeless.<sup>131</sup> Equally important, the team reported that the CUSD student population was 79 percent Latino and 19 percent Black.<sup>132</sup> Additionally, it highlighted instances of racialized police and quasi-police violence and brutality that CUSD students regularly suffered.<sup>133</sup> For example, in telling the story of Kimberly C., the team recounted how the simple act of returning a book to the library resulted in an altercation with a security guard at Dominguez High School that left Kimberly with “feelings of terror and serious injuries to [her] back” such that she “did not attend school for over a week.”<sup>134</sup> Similarly, in relaying the story of thirteen-year-old Donte J., the team explained how Donte, then a sixth grader, had been “arrested at gunpoint on the

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130. Plaintiffs’ Complaint, *supra* note 10, at 24–25, 27 (citing “[i]ncidents of shootings, beatings, robberies, and other violent acts . . . in the neighborhoods where the Student Plaintiffs and their peers reside and attend school” as well as “significant gang activity”); *see also Compton City, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/comptoncitycalifornia/IPE120220> [perma.cc/L88R-Z6LE] (reporting 20.5% persons in poverty); *California*, FBI: UNIF. CRIME REPORTING, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-8/table-8-state-cuts/california.xls> [perma.cc/QW7V-NBSX] (reporting 2019 California violent crime offenses by city).

131. Plaintiffs’ Complaint, *supra* note 10, at 31.

132. *Id.* at 32.

133. *See, e.g., id.* at 10, 13–14.

134. *Id.* at 10.

campus of Roosevelt Elementary . . . and taken to the station in handcuffs when police mistook him for someone else.”<sup>135</sup>

Highlighting these demographic measures of racialized poverty as well as the racialized violence that students may face from government officials within their own communities and schools, the Public Counsel team pointed to medical and social science research showing that children subjected to racism experience complex psychological trauma.<sup>136</sup> When subjected to chronic exposure, the team cautioned, “racism can lead to internalized devaluation, an assaulted sense of self, internalized voicelessness, and rage,” especially among black students who are disproportionately affected by punitive school disciplinary practices of suspension and expulsion.<sup>137</sup> Citing data from the 2013–2014 school year,<sup>138</sup> the team also noted that black students sustained 45 percent of the total CUSD disruption/defiance suspensions, even though they comprised only 19 percent of the student population as a whole.<sup>139</sup>

Accordingly, today as before, the CUSD confronts “under-resourced neighborhoods” plagued by “community violence” and serves vulnerable student populations “exposed to complex trauma.”<sup>140</sup> Among the most vulnerable across these populations are “high numbers” of at-risk “foster and homeless youth” and predominant groups of “students of color.”<sup>141</sup> Indeed, the CUSD “serves students who are disproportionately affected by racism and poverty, and are therefore particularly likely to be affected by complex

135. *Id.* at 13–14.

136. *Id.* at 32–33; *see also* Robert T. Carter & Jessica M. Forsyth, *A Guide to the Forensic Assessment of Race-Based Traumatic Stress Reactions*, 37 J. AM. ACAD. PSYCHIATRY L. 28 (2009); Bridget J. Goosby & Chelsea Heidbrink, *The Transgenerational Consequences of Racial Discrimination for African-American Health Outcomes*, 7 SOCIO. COMPASS 630 (2013).

137. Plaintiffs’ Complaint, *supra* note 10, at 33, 50, 98–103 (“One of the most common reactions by educators is to suspend, expel, or refer to police students experiencing complex trauma for behavior related to their trauma.”).

138. *Id.* at 34. Similarly, data from the 2019–2020 school year show that black students sustained 46.3% of the total CUSD suspensions, though they comprised only 17% of the student population. *See Suspension Data*, CAL. DEP’T EDUC. (Jan. 7, 2022), <https://www.cde.ca.gov/ds/ad/filesd.asp> [perma.cc/L87T-QER3].

139. Plaintiffs’ Complaint, *supra* note 10, at 34, 98–103.

140. *Id.* at 14, 19; *see also* CAL. DEP’T OF EDUC., CALIFORNIA HEALTHY KIDS SURVEY: COMPTON UNIFIED SECONDARY 2020–2021 MAIN REPORT 42–48 (2021), [https://data.calschls.org/resources/Compton\\_Unified\\_2021\\_Sec\\_CHKS.pdf](https://data.calschls.org/resources/Compton_Unified_2021_Sec_CHKS.pdf) [perma.cc/T2U7-DWSY]; *California*, *supra* note 130.

141. Plaintiffs’ Complaint, *supra* note 10, at 14; *see also* *Count of Matched Foster Students by District of Enrollment and Grade for 2019–20*, CAL. DEP’T EDUC. DATA REPORTING OFF., <https://dq.cde.ca.gov/dataquest/foster/fosterGrdEnrl.aspx?level=County&cds=19&year=2019-20> [perma.cc/C88R-W9W4] (reporting high count of matched foster students by Los Angeles County district enrollment and grade for 2019–20); *2020–21 Enrollment by Ethnicity and Grade*, CAL. DEP’T EDUC.: DATA QUEST, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cde=1973437&aggllevel=district&year=2020-21> [perma.cc/A64P-X94H] (reporting 2020–21 enrollment by ethnicity and grade to be predominantly Hispanic or Latino and Black).

trauma.”<sup>142</sup> Fundamentally then, in the CUSD and in the City of Compton, it is students of color, together with their families and neighborhoods, who suffer the continuing “expression and consequences of racism.”<sup>143</sup> By collecting and retelling the stories of these students, investigating the performance of their schools, and canvassing the conditions of their neighborhoods, the Public Counsel team constructed, in practical effect, a nascent theory of community violence-centered racial trauma.<sup>144</sup>

For the Public Counsel team, other school- and disability-based litigation campaign teams, and civil rights teams more generally, the next step forward is to extend the theory of community violence-centered racial trauma across a wider institutional and geographic landscape. Consider, for example, the terrain of environmental justice where Black and Latino communities have suffered generations of disproportionate health burdens.<sup>145</sup> Consider as well the criminal justice system and the trauma of continuing police and carceral violence, which could have been further explored in the complaint and lawsuit.<sup>146</sup> Each of these sites affords an opportunity to collaborate with communities in neighborhood-wide fact investigations and civil rights mobilizing campaigns around racial trauma.

### B. *A Theory of Community Violence-Centered Racial Trauma*

Based on evidence of district-wide racialized poverty and community violence, the Public Counsel team alleged that the Student Plaintiffs and class

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142. Press Release, *supra* note 72.

143. Plaintiffs’ Complaint, *supra* note 10, at 14, 19.

144. In revisiting “[t]he lives and stories of the struggles of American Indian families,” Professors Matthew Fletcher and Wenona Singel demonstrate that narratives of community violence and trauma “matter a great deal” in advocacy theory and practice. Matthew L.M. Fletcher & Wenona T. Singel, *Lawyering the Indian Child Welfare Act*, 120 MICH. L. REV. 1798 (2022). Fletcher and Singel remark that “[i]n the legal arena, the attorneys usually frame those stories and make them available to the judges, the agencies, and the public generally.” *Id.* As a result, they note “[h]ow these stories are told is especially important in the United States Supreme Court, where lawyers can win or lose a case depending on this framing.” *Id.*

145. On community violence-centered racial trauma investigations of environmental justice and public health across urban and rural communities, see, for example, Emily E. Harrison, *Odor in the Court! And It Smells Like Environmental Racism: How Big Pork Is Legally Abusing Poor Communities of Color in Eastern North Carolina*, 11 WAKE FOREST J.L. & POL’Y 433 (2021); Etienne C. Toussaint, *Black Urban Ecologies and Structural Extermination*, 45 HARV. ENV’T L. REV. 447 (2021).

146. Professor Karen Pita Loor points out that “the irrationality of the criminal system of policing and arrest exerts the heaviest tax on Black individuals.” Karen J. Pita Loor, *An Argument Against Unbounded Arrest Power: The Expressive Fourth Amendment and Protesting While Black*, 120 MICH. L. REV. 1609 (2022). Explicating the collateral consequences of police arrests in disparately affecting Black populations and their associated mental and physical health, Pita Loor mentions that an arrest record itself “acts as a barrier to securing employment, public housing and sometimes private tenancy, public benefits, educational access, and various professional licenses.” *Id.* at 1610.

members in the Compton school litigation experienced complex trauma, chronicling traumatic events that “profoundly” affected their “psychological, emotional, and physical well-being.”<sup>147</sup> More specifically, the team asserted that Peter P., Kimberly C., Phillip W., Virgil W., Donte J., and other similarly situated students were “routinely exposed to traumatic violence,”<sup>148</sup> stricken “by loss of or separation from caregiver, family member, or close friend,”<sup>149</sup> placed in the foster system in “particularly high numbers,”<sup>150</sup> beset by “extreme poverty, homelessness, and other socioeconomic hardship,”<sup>151</sup> subjected to the “dignitary harm of racism and discrimination,”<sup>152</sup> and forced to endure the “co-occurrence and prevalence of traumatic events.”<sup>153</sup> Both witnessed and experienced, this manifold violence inflicted “multiple, repeated, and sustained traumatic” episodes painstakingly documented by the Public Counsel team, episodes involving not merely “grief over the loss of family members and friends” or “the loss of a caregiver due to deportation, incarceration, or family separation,” but also grief integrally linked to “the causes and consequences of involvement in the foster system” as well as “extreme socioeconomic hardship and its attendant consequences, including homelessness; and discrimination and racism.”<sup>154</sup>

Constructing a theory of racial trauma from this multifaceted, community-saturating violence, the Public Counsel team alleged that trauma exposure of such scale and intensity affected brain development.<sup>155</sup> The team explained that a child’s experience of chronic or repeated trauma causes “material changes” in brain function and structure. Those material changes, in

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147. Plaintiffs’ Complaint, *supra* note 10, at 24, 25.

148. *Id.* at 25–29 (cleaned up).

149. *Id.* at 29–30 (“Children exposed to community violence are thus particularly vulnerable to complex trauma related to loss.”).

150. *Id.* at 30–31 (“Compton schools serve particularly high numbers of foster youth.”).

151. *Id.* at 31–32 (cleaned up).

152. *Id.* at 32–34.

153. *Id.* at 35 (cleaned up) (“Peter P. entered the entered the [sic] foster system due to violence and substance abuse in the home, and was further re-traumatized by the instability of the foster system, including changing placements and schools.”).

154. *Id.* at 24.

155. Relying on the Plaintiffs’ extensive medical expert testimony, the court reiterated:

The brain of a young person who has been exposed to complex trauma undergoes substantial neurobiological changes. The effect of these changes is to demonstrably impair the ability of the brain to store and retrieve information—impeding memory, concentration, and communication—and to regulate emotion and impulses. Psychological evaluations of the Student Plaintiffs have confirmed that the effects of the complex trauma the Student Plaintiffs have experienced substantially limit one or more life activities, including: learning, reading, concentrating, thinking, and/or communicating. Medical science gives every reason to believe that class members exposed to similar complex trauma will experience similar limitations.

turn, produce “demonstrable physiological impairments” that impair a child’s ability to perform a vital range of daily activities, such as “thinking, learning, reading, and concentrating.”<sup>156</sup> According to the team, this trauma-triggered physiological “rewiring” of a child’s brain result from the body’s stress response to trauma.<sup>157</sup>

In addition, the Public Counsel team alleged that the absence of trauma-sensitive practices prevented CUSD students affected by complex trauma from gaining meaningful access to education. The team maintained that the lack of trauma-sensitive practices forced students to “bear the physiological and psychological wounds of the traumatic experiences” inflicted by their families and neighborhoods “when they arrive in the classroom,”<sup>158</sup> wounds that impaired their verbal processing and communication,<sup>159</sup> cognitive development,<sup>160</sup> concentration,<sup>161</sup> goal setting and long-term planning,<sup>162</sup> classroom behavior and discipline,<sup>163</sup> and student attendance,<sup>164</sup> altogether producing “poor academic outcomes.”<sup>165</sup> Put bluntly by the team: “The science is clear: trauma causes palpable, physiological harm to a young person’s developing brain.”<sup>166</sup>

Moreover, the Public Counsel team alleged that educators who worked with trauma-impacted students experienced secondary or vicarious traumatic

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156. Plaintiffs’ Complaint, *supra* note 10, at 35–37 (“Decades of medical research have made clear that the brains of children who experience chronic or repeated traumas undergo material changes, creating demonstrable physiological impairments that impede the ability to perform daily activities, including thinking, learning, reading, and concentrating.”).

157. *Id.* at 37–43 (mentioning that the “wounds inflicted by trauma are . . . unmistakably revealed by brain imaging of trauma victims,” including “changes in the prefrontal cortex . . . of traumatized students”).

158. *Id.* at 43–45 (“Complex trauma also often induces behaviors due to loss of ability to emotionally self-regulate—including aggression, disproportionate reactivity, impulsivity, distractibility, or withdrawal and avoidance—that disrupt the learning environment and frequently lead to exclusionary school discipline measures or absence from school.”).

159. *Id.* at 45–46.

160. *Id.* at 47 (“Trauma also affects mental reasoning functions, including the analysis of cause-and-effect relationships. If the environment in which cognitive development occurs is unstable, unpredictable, and/or disordered, this can be reasonably expected to harm a student’s ability to process cause-and-effect relationships.”).

161. *Id.* at 47–48.

162. *Id.* at 48 (“Traumatized students also have a more difficult time setting and achieving goals, which are important skills for academic success.”).

163. *Id.* at 49–50.

164. *Id.* at 50–52 (“Some trauma-impacted students, particularly those who evoke avoidant responses, may avoid school altogether. . . . Exposure to trauma contributes to low student attendance rates in CUSD schools.”).

165. *Id.* at 52–53 (cleaned up) (“Academic research has consistently established that, without effective interventions, children who have experienced trauma are more likely to fall academically behind and less likely to graduate from high school.”).

166. *Id.* at 43.

stress and burnout themselves.<sup>167</sup> The team asserted that educator-specific secondary traumatic stress and burnout, if unaddressed, engenders “teacher and administrative turnover,” hence “creating an unstable, unpredictable, and frequently hostile environment,” which effectively “exacerbates the complex trauma experienced by the students.”<sup>168</sup> In particular, the team pointed out that the CUSD neither trained nor sensitized teachers or administrators to identify, assess, or consider the effect of complex trauma on students, nor furnished school-based instructor training in accepted methods of trauma intervention, though evidence demonstrates that such methods of intervention mitigate the adverse impact of trauma.<sup>169</sup> The team further noted that the CUSD neither notified parents of its statutory duty to accommodate the differential learning needs of trauma-impaired students, nor implemented restorative practice programs to promote healthy behaviors, nor addressed the stress-related, situational conflict and violence often associated with complex trauma, nor provided sufficient mental health support to satisfy even the minimal needs of trauma-impacted students.<sup>170</sup>

For remedial purposes, the Public Counsel team also alleged that whole school trauma-sensitive practices are effective and necessary to accommodate students affected by complex trauma.<sup>171</sup> The team cited innovative approaches developed and implemented by education and mental health professionals that deliver trauma-sensitive practices in schools<sup>172</sup> through means of trauma-

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167. *Id.* at 54–57; see also Hal A. Lawson et al., *Educators’ Secondary Traumatic Stress, Children’s Trauma, and the Need For Trauma Literacy*, 89 HARV. EDUC. REV. 421 (2019).

168. *Id.* at 54, 56–57 ([U]naddressed student trauma further destabilizes the CUSD community by contributing to secondary traumatic stress and burnout among teachers and school staff.”).

169. *Id.* at 4. The absence of school-based, trauma-impact teacher training implicates minimum labor standards statutes. For a discussion of civil rights advocacy and minimum labor standards legislation, see Daiquiri J. Steele, *Enduring Exclusion*, 120 MICH. L. REV. 1667 (2022) (arguing that securing compliance with minimum labor standards legislation and antiretaliation reform should form an integral part of the civil rights agenda). Professor Steele urges both civil rights lawyers and activists to “use minimum labor standards statutes (in addition to employment discrimination laws) to the maximum extent possible to prevent subordination and exploitations of members of protected classes.” *Id.* at 1691.

170. Plaintiffs’ Complaint, *supra* note 10, at 4–5.

171. *Id.* at 24, 57–58.

172. *Id.* at 58 (“[E]xperts agree that such trauma interventions effectively accommodate the disabling effects of trauma on learning in school by incorporation of the following core elements: (1) training and ongoing coaching of educators to recognize, understand, and proactively intervene to address the effects of complex trauma; (2) development of restorative practices to build healthy relationships, resolve conflicts peacefully, and avoid re-traumatizing students through the use of punitive discipline; and (3) consistent mental health support to appropriately meet diverse student needs.”).

sensitive staff training;<sup>173</sup> recognizing and understanding complex trauma;<sup>174</sup> creating a safe, positive, and predictable school environment;<sup>175</sup> implementing proven trauma interventions to build resilience;<sup>176</sup> designing restorative practices<sup>177</sup> “to build healthy relationships and resolve conflicts peacefully;”<sup>178</sup> and supplying mental health support “either in the form of one-on-one mental health counseling or group therapy.”<sup>179</sup> To elucidate appropriate interventions in the form of school-wide, trauma-sensitive practices that “bolster the resilience of young people” and “effectively accommodate the disabling effects of trauma,” the team emphasized “training educators to recognize, understand, and proactively recognize and address the effects of complex trauma, in part through building students’ self-regulation and social-emotional learning skills” and, moreover, “developing restorative practices to . . . avoid re-traumatizing students through the use of punitive discipline” and ensuring suitable mental health support to meet student needs.<sup>180</sup>

The Public Counsel team’s well-documented descriptions of community violence-centered racial trauma laid the groundwork for the student and teacher claims that the CUSD failed reasonably to accommodate students affected by complex trauma,<sup>181</sup> an apparent district-wide failure manifested by a lack of training “to recognize and respond appropriately to students who have been the victims of trauma,”<sup>182</sup> insufficient mental health support “to address student mental health needs related to complex trauma,”<sup>183</sup> and exclusionary discipline (such as suspension, expulsion, involuntary transfers, and law enforcement referrals) connected with the lack of appropriate trauma-

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173. *Id.* at 59 (“The core of a trauma-sensitive school is training and ongoing consultation and coaching for all adult staff including teachers, principals, counselors, and others to enable educators to (1) understand and respond appropriately to students who have been impacted by trauma; (2) create a safe, predictable, and bias-free school environment to establish conditions under which students are able to learn; (3) deliver proven trauma interventions such as building students’ self-regulation and social-emotional learning skills.”).

174. *Id.* at 59–60.

175. *Id.* at 60–61.

176. *Id.* at 61.

177. *Id.* at 62 (“A typical restorative justice approach operates at three levels and is integrated into a school’s system of staff training and mental health support: (1) school-wide practices to establish a safe and supportive campus; (2) practices to address conflict; and (3) intense intervention to help students in the school population that are in crisis.”).

178. *Id.* at 61–64.

179. *Id.* at 64–65 (“Mental health professionals must be available on site to implement appropriate interventions.”).

180. *Id.* at 3–4.

181. *Id.* at 65.

182. *Id.* at 65 (“CUSD currently provides no training to staff to enable them to recognize and respond appropriately to students who have been the victims of trauma.”).

183. *Id.* at 66 (“The number of mental health professionals in CUSD is grossly insufficient to address student mental health needs related to complex trauma in the district.”).



sensitive practices.<sup>184</sup> The team derived those claims from education, mental health, and medical research showing that “children who grow up in high-poverty neighborhoods characterized by minimal investment in schools, quality housing, after-school programs, parks, and other community resources are disproportionately likely to be exposed to trauma and complex trauma.”<sup>185</sup> That poverty-based research links trauma to “exposure to violence and loss, family disruptions related to deportation, incarceration and/or the foster system, systemic racism and discrimination, and the extreme stress of lacking basic necessities, such as not knowing where the next meal will come from or where to sleep that night.”<sup>186</sup> Trauma of this kind, according to the Public Counsel team, “occurs when overwhelmingly stressful events undermine a person’s ability to cope.”<sup>187</sup> That same research links complex trauma to “exposure to multiple persistent sources of violence, loss, and other adverse childhood experiences,” referencing both the underlying event and its adverse impact.<sup>188</sup> Complex trauma in this sense “describes children’s exposure to multiple traumatic events, often of an invasive, interpersonal nature, and the wide-ranging, long-term impact of this exposure.”<sup>189</sup>

In sum, the Public Counsel team claimed that complex trauma or, more accurately, community violence-centered racial trauma, “can have a devastating effect, including among children who do not exhibit symptoms sufficient to merit diagnosis of a clinically-significant trauma-related disorder,” and, without proper intervention, can be “a powerful predictor of academic failure.”<sup>190</sup> Significantly, the team noted, both for youth of color in general and

184. *Id.* at 67 (“CUSD schools lack appropriate trauma-sensitive practices, with the most obvious consequence being that CUSD schools continue to suspend and expel students in significant numbers for conduct related to the trauma they have endured, rather than addressing the source of that trauma.”).

185. *Id.* at 1. Plaintiffs’ complaint uses the terms “trauma” and “complex trauma” interchangeably. *Id.* at 1 n.1.

186. *Id.* at 1. The Public Counsel team added that:

Children in high-poverty neighborhoods are also overwhelmingly concentrated in schools that fail to meet the educational and mental health needs of trauma-affected students. Young people living in the communities with the fewest resources are thus both more likely to be exposed to trauma and less likely to receive the interventions needed to cope with that trauma.

*Id.* at 1–2.

187. *Id.* at 5 (citing Lenore C. Terr, *Childhood Traumas: An Outline and Overview*, 148 AM. J. PSYCHIATRY 10, 11 (1991), and JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 33 (1997)).

188. *Id.* at 1.

189. *Id.* at 5–6 (citing Bruce D. Perry & Ronnie Pollard, *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of Childhood Trauma*, 7 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 33, 36 (1998), and *Complex Trauma*, *supra* note 38).

190. *Id.* at 2–3. The Public Counsel team acknowledged that “[h]ow young people react to trauma depends on the age of the child, the severity of the trauma, their proximity to it, and their

LGBTQ youth of color in particular, the marginalizing conditions of poverty, racism, and homophobia not only exacerbate the experience and incidence of trauma but also heighten the sense of individual and group victimization.<sup>191</sup> The next Part examines racial trauma-sensitive lawyering process methods and legal ethics practices displayed in, and deduced from, the Compton school litigation as well as the limits placed on the lawyering performed and the remedies sought in this lawsuit as a result of these methods and practices.

### III. COMMUNITY VIOLENCE-CENTERED RACIAL TRAUMA LAWYERING AND ETHICS IN THE COMPTON SCHOOL LITIGATION

This Part extends our case study of the Public Counsel team's litigation in *P.P. v. Compton Unified School District* more broadly to encompass the lawyering process and the legal ethics of community violence-centered racial trauma advocacy in civil rights cases. Our account proceeds over two sections. The first section explores the purportedly race-neutral and largely trauma-insensitive form and content of conventional lawyering-process practices and legal ethics rules. The second section draws on the Compton school litigation for an applied analysis of the chief ethics rules governing communication, diminished capacity evaluation and counseling, conflicts of interest, and decisionmaking authority in civil rights cases founded on still inchoate theories of community violence-centered racial trauma.

#### A. Race-Neutral and Trauma-Insensitive Lawyering and Ethics

The race-neutral, trauma-insensitive form and content of conventional lawyering-process traditions and legal ethics rules constrained the efforts of the Public Counsel team to frame the Compton school litigation fully in terms of structural or systemic racism and associated community-wide violence. Both lawyering-process practices and legal ethics rules constrained alternative visions of race-conscious community advocacy by limiting the breadth of legitimate discourse—who speaks, how, and when, and on what subjects—and by narrowing the scope of permissible conduct—who may engage in fact-finding investigation and where and when they may give testimony—in judicial

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individual coping mechanisms." *Id.* at 2. The team also noted: "Most children exposed to violence, abuse, and neglect display symptoms of psychological trauma, and at least half develop 'significant neuropsychiatric symptomatology.' Other children will develop diagnosable mental health disorders as a result of exposure to trauma. . . . Children exposed to sudden and unexpected violence, such as *community violence*, are especially vulnerable." *Id.* at 7 (emphasis added) (footnotes omitted). For helpful discussion, see Steven P. Cuffe et al., *Prevalence of PTSD in a Community Sample of Older Adolescents*, 37 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 147 (1998); Karyn Horowitz, Stevan Weine & James Jekel, *PTSD Symptoms in Urban Adolescent Girls: Compounded Community Trauma*, 34 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1353 (1995); and Bradley D. Stein et al., *A Mental Health Intervention for Schoolchildren Exposed to Violence: A Randomized Controlled Trial*, 290 J. AM. MED. ASS'N 603 (2003).

191. Plaintiffs' Complaint, *supra* note 10, at 7.

and legislative forums. The Public Counsel team's frustrated efforts to integrate the concepts of structural racism, community-wide violence, and complex racial trauma into the statutory and regulatory framework of the ADA and Section 504 of the Rehabilitation Act and, equally, to marshal an evidentiary record sufficient to obtain class action certification and a preliminary injunction, demonstrate the limits of alternative race-conscious, trauma-sensitive advocacy narratives in the Compton school litigation and potentially elsewhere.<sup>192</sup>

### 1. Lawyering-Process Traditions

Lawyering-process traditions regulate the representative functions of advocacy, counseling, investigation and evaluation, and negotiation.<sup>193</sup> Even when skillfully performed, as exhibited by the Public Counsel team in the Compton school litigation, advocacy can falter against the weight of color-blind lawyering-process traditions and practices that erase or overlook race, ignore racism, and encourage legal teams to craft case narratives and client stories in professedly neutral, albeit highly racialized language that reifies white-supremacist tropes and images—for example, the prevalent tropes and images of Black and Latino family deviance and neighborhood disorder.<sup>194</sup> Discursively, in the Public Counsel team's pleadings and motions, the racially subordinating narratives and images used to describe Peter P., Kimberly C., Phillip W., Virgil W., and Donte J. at times imprinted *race-coded* stereotypes on their individual and collective identities, likely as a means of communicating a more straightforward and sympathetic narrative to the judge.<sup>195</sup> Elsewhere, we have argued that lawyer race coding in the pleading, trial, and

192. The Public Counsel team's frustration stems in part from the lack of a well-developed, contextually-situated difference-regarding approach to community violence-centered racial trauma. For a discussion of alternative, difference-regarding approaches to advocacy, see David Simson, *Most Favored Racial Hierarchy: The Ever-Evolving Ways of the Supreme Court's Superordination of Whiteness*, 120 MICH. L. REV. 1660 (2022) ("A more multifaceted understanding of race would recognize that 'the complex and socially embedded character of race' often calls for a highly contextually situated difference-regarding approach . . ." (quoting Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1, 66–67 (1991))).

193. MODEL RULES OF PRO. CONDUCT pmb1. 1–3 (AM. BAR ASS'N 2020).

194. See Onwuachi-Willig & Alfieri, *supra* note 19, at 2085. Professors Fletcher and Singel expose a similar process in contested Indian Child Welfare Act cases where "the plaintiff or petitioner owns almost all of the procedural advantages." Fletcher & Singel, *supra* note 144, at 1791. Fletcher and Singel explain that these types of procedural advantages "allows the petitioner to control the narrative" in such cases. *Id.* Typically heard in state court Indian child welfare matters, that "narrative almost always is non-Indian parties claiming that Indian custodians and potential foster parents are terrible, tragic perhaps, but still terrible." *Id.* Excavating "a state court system where few officials and judges are Indian," Fletcher and Singel show "this narrative fits the historical legacy that demonizes Indian people and Indian tribes." *Id.*

195. Fletcher and Singel also reveal "how the statutory structure of child welfare laws enables lawyers and courts to exploit deep-seated stereotypes about American Indian people rooted

appeal of civil rights litigation diminishes client agency, dignity, and power, and also obscures the community-wide violence of structural racism infecting the public spheres of education, employment, health care, housing and the built environment, and transportation in cities like Compton, Los Angeles, Boston, and Miami.<sup>196</sup>

Colorblind lawyering-process traditions codified in the classroom and clinical pedagogy of legal education very often reproduce seemingly race-neutral, quasi-scientific, and technical skill-oriented practices that fail to accommodate visions of structural racism and community violence-centered racial trauma. That failure decontextualizes clients and uproots communities from their shared racialized trauma histories, discounting the foundational structures of racism and the essentializing, intractable operations of racial violence in culture and society in the United States. Decontextualizing clients and communities from the deep structures of racial violence and trauma deforms our understanding of client identity, dilutes the organized expression of community power, and often invites the unguided discretion of paternalistic decisionmaking by lawyers in speaking for clients and communities in civil rights advocacy.<sup>197</sup>

## 2. Legal Ethics Regimes

Like conventional lawyering-process traditions, dominant legal ethics regimes hinder alternative visions of civil rights advocacy by restricting the range of legitimate discourse and by constricting the ambit of permissible conduct. Discourse here refers to the communications between and among lawyers, clients, courts, and others (such as families, affinity groups, and communities) engaged in interviewing, fact investigation, counseling, negotiation, and advocacy regarding inequality and unequal justice. Conduct here refers to the actions and omissions (such as client and community inclusion or exclusion) of lawyers in litigation or transactions concerning equity in education, health care, and housing. The colorblind, trauma-insensitive ethics rules promulgated by the American Bar Association (ABA) regulate both lawyer discourse and conduct. Informed by race-neutral norms, the rules evolved out of the 1908 Canons of Professional Ethics (Canons),<sup>198</sup> the 1969 Model

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in systemic racism to undermine the enforcement of the rights of Indian families and tribes.” *Id.* at 1755.

196. See Onwuachi-Willig & Alfieri, *supra* note 19, at 2085–96. Our intertwining of the public spheres of education, employment, health care, housing and the built environment, and transportation into a “unified framework of rights” is repeated in legal anthropology. See, e.g., Jeffrey Omari, *Civil Rights in Times of Uncertainty (The Anthropocene)*, 120 MICH. L. REV. 1578 (2022). Omari comments that such a unified rights “framework would regard civil, political, environmental, and public health rights on equal footing and therefore essential to the vast environmental and public health threats presented in the Anthropocene.” *Id.*

197. See Onwuachi-Willig & Alfieri, *supra* note 19, at 2085–96.

198. CANONS OF PRO. ETHICS (AM. BAR ASS’N 1908).

Code of Professional Responsibility (Model Code),<sup>199</sup> and the 1983 Model Rules of Professional Conduct (Model Rules)<sup>200</sup> and their subsequent amendment.<sup>201</sup>

As we pointed out in prior work, the Canons make no mention of color, race, bias, or discrimination, referencing “prejudice solely in terms of ‘popular prejudice against lawyers as a class.’”<sup>202</sup> The Model Code too makes no suggestion of color, race, or discrimination, alluding to bias only in relation to an “‘unpopular cause’ and to the ‘judgment’ of a trial judge” and thinly tying prejudice to “the right of a client and to the appeal to jury passion that oversteps the bounds of ‘legitimate argument.’”<sup>203</sup> Except in the recent harassment-tailored amendment to Rule 8.4,<sup>204</sup> the Model Rules as well make no citation to color, race, bias, or discrimination and they only note prejudice sparingly “in terms of the effect of trial publicity, the protection of client interests, and the impartiality of proceedings before a tribunal” while also decoupling prejudice from race and bias.<sup>205</sup>

Similarly, the Canons, Model Code, and Model Rules make no explicit mention of client trauma or trauma-sensitive lawyer practice. The Canons, for example, make no allusion to client trauma, mentioning only client “poverty.”<sup>206</sup> The Model Code likewise makes no statement of client trauma; instead, it references “illiterate”<sup>207</sup> or “incompetent”<sup>208</sup> clients and clients operating “under disability”<sup>209</sup> or hampered by a “mental condition or age.”<sup>210</sup>

199. MODEL CODE OF PRO. RESP. (AM. BAR ASS’N 1969).

200. MODEL RULES OF PRO. CONDUCT (AM. BAR ASS’N 1983).

201. AM. BAR ASS’N, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982–2013, at x–xiii (Art Garwin ed., 2013) (tracing chronology of amendments from 1977 to 2013).

202. Onwuachi-Willig & Alfieri, *supra* note 19, at 2087 (footnote omitted).

203. *Id.* (footnotes omitted).

204. Previously, we explained that the ABA acted in 2016 to amend Model Rule 8.4 expressly “to prohibit ‘conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.’” *Id.* at 2086 (footnote omitted); *see also* ABA Comm. on Ethics & Pro. Resp., Formal Op. 493, at 14 (2020) (“Model Rule 8.4(g) prohibits a lawyer from engaging in conduct related to the practice of law that the lawyer knows or reasonably should know is harassing or discriminatory.”).

205. Onwuachi-Willig & Alfieri, *supra* note 19, at 2087–88.

206. *See* CANONS OF PRO. ETHICS Canon 12 (AM. BAR ASS’N 1908).

207. MODEL CODE OF PRO. RESP. EC 7-11 (AM. BAR ASS’N 1980).

208. MODEL CODE OF PRO. RESP. EC 7-11 to -12 (AM. BAR ASS’N 1980).

209. MODEL CODE OF PRO. RESP. EC 7-12 (AM. BAR ASS’N 1980).

210. MODEL CODE OF PRO. RESP. EC 7-11 (AM. BAR ASS’N 1980).

The Model Rules, by comparison, reference both client “diminished capacity”<sup>211</sup> and client “mental impairment”<sup>212</sup> but omit any explicit reference to trauma. In essence, the Canons, Model Code, and Model Rule all fail at acknowledging and incorporating trauma-centered lawyering. Indeed, contrary to a trauma-informed perspective, they allow only for the conclusion that something is “wrong” with the client and never hint at asking the question: “What happened to you, client?”<sup>213</sup> The next section searches the current Model Rules for textual elements from which to construct a race-conscious, trauma-sensitive ethics and practice regime in support of a larger vision of community violence-centered racial trauma lawyering in civil rights cases.

### B. *Community Violence-Centered Racial Trauma Lawyering and Ethics*

Long central to the ideology and rhetoric of colorblind, racial formalism,<sup>214</sup> which is now customary among local, state, and national bar associations and regulatory agencies and interwoven within the American Law Institute’s Restatements of the law governing lawyers<sup>215</sup> and the common law of agency, contract, and tort,<sup>216</sup> the race-neutral, trauma-insensitive language of the ABA ethics rules governs mandatory and permissive lawyer and law firm conduct. In civil rights cases, for example, the Compton school litigation, race-neutral,

211. MODEL RULES OF PRO. CONDUCT r. 1.2 cmt. 4, 1.4 cmt. 6, 1.14(b)–(c), 1.16 cmt. 6 (AM. BAR ASS’N 2020).

212. MODEL RULES OF PRO. CONDUCT r. 1.14(a) (AM. BAR ASS’N 2020).

213. Katz & Haldar, *supra* note 14, at 361.

214. An upshot of liberal legalism, racial formalism construes “discrimination as bias; that is to say, a distortion of institutional procedures.” Kimberlé Williams Crenshaw, *Race Liberalism and the Deradicalization of Racial Reform*, 130 HARV. L. REV. 2298, 2316 (2017). In the liberal project, Crenshaw explains, “[b]ias, once identified, could be managed through embracing neutral practices—ideally through a colorblind prism—rather than normalizing the practice of measuring racial progress through substantive benchmarks.” *Id.*

215. Likewise wedded to the rhetoric of colorblind, racial formalism, the American Law Institute’s Restatement (Third) of The Law Governing Lawyers notes “the limited reach of the professional-disciplinary regulations” and the “constraints and limitations on lawyers when serving as advocates” enforced by other federal and state laws. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 105 (AM. L. INST. 2000). Unlike earlier ABA ethics regimes embodied by the Canons and the Model Code, the American Law Institute concedes that “an area of increasing public concern are actions by lawyers (as well as others) in the course of litigation that violate laws against discrimination on the grounds of race, sex, and the like in proceedings.” *Id.*; see also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 56, 74, 76, 100, 102 (AM. L. INST. 2000) (citing several state ethics rules prohibiting discrimination in the practice of law as well as federal and state race discrimination cases).

216. Similarly fastened to the lexicon of colorblind, racial formalism, the American Law Institute’s Restatement (Third) of Agency shows meager interest in an alternative race-conscious ethic of practice and professionalism beyond passing citation to federal civil rights statutes and cases. See, e.g., RESTATEMENT (THIRD) OF AGENCY §§ 2.04, 5.03, 3.11, 6.11, 7.07 (AM. L. INST. 2006); RESTATEMENT (SECOND) OF AGENCY §§ 7, 8, 26, 27, 166, 212, 213, 215, 216, 217C, 227, 228, 229, 230, 275, 387, 395, 396 (AM. L. INST. 1958); RESTATEMENT (FIRST) OF AGENCY §§ 82, 343 (AM. L. INST. 1933).

trauma-insensitive ethics rules shape our common understanding or shared conception of lawyer roles, duties, and responsibilities, particularly with respect to client communication, evaluation, counseling, and decisionmaking. That conventional or dominant conception of lawyer role and function informs the ethical and professional standards of conduct that guide and regulate our behavior inside and outside the courtroom, including how we communicate and consult with clients; how we evaluate and counsel clients where there may be evidence of diminished capacity as well as evidence of diminished environment or circumstances; how we construe and resolve conflicts of interest between or among clients, other persons, and law firms; and how we allocate of decisionmaking authority between lawyers and clients. For civil rights lawyers in the Compton school litigation and elsewhere, the three-fold task is, first, to map the regulatory form and content of race-neutral, trauma-insensitive ethics rules; second, to learn to question and contest, rather than reflexively comply with, the commands, ratifications, or recommendations of such rules; and third, to extract and reconfigure relevant textual elements of the rules from which to construct an alternative race-conscious, trauma-sensitive ethics and practice regime in support of a larger vision of community violence-centered racial trauma advocacy. We turn first to the duty of communication under Model Rule 1.4.

### 1. Communication

Model Rule 1.4 governs client-lawyer communication. Facially race-neutral and trauma-insensitive, the rule contains two parts. Subdivision (a) mandates that lawyers *shall* promptly inform clients of any decision or circumstance requiring their informed consent<sup>217</sup> and reasonably consult with clients about the means to accomplish their objectives.<sup>218</sup> The comment accompanying the rule explicates communication in terms of facilitating client participation in the lawyering process, finding reasonable lawyer-client communication to be necessary for effective client participation.<sup>219</sup> The comment

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217. Under the Model Rules, informed consent by its terms “requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.” MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 18 (AM. BAR ASS’N 2020) (citing Model Rule 1.0(e)). Situational in application, “[t]he information required depends on the nature of the conflict and the nature of the risks involved.” *Id.* (“When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney–client privilege and the advantages and risks involved.”).

218. MODEL RULES OF PRO. CONDUCT r. 1.4(a)(1)–(2) (AM. BAR ASS’N 2020).

219. MODEL RULES OF PRO. CONDUCT r. 1.4 cmt. 1 (AM. BAR ASS’N 2020).

further notes that client decisionmaking participation in representation requires prior and prompt lawyer action in conducting means-oriented consulting and in securing consent.<sup>220</sup>

In addition, subdivision (b) of the rule mandates that lawyers *shall* explain matters to their clients to the extent reasonably necessary to permit informed decisions.<sup>221</sup> Establishing a link between lawyer explanation and client participation in the process of representation, the comment stresses that the clients should have sufficient information to participate intelligently in decisions concerning both the means and ends of the representation.<sup>222</sup> Pronouncing informed participation as a “guiding principal,” the comment observes that lawyers should fulfill reasonable client expectations for information consistent with their best interests<sup>223</sup> and the nature of the representation.<sup>224</sup> Notably, in an indication of a potentially implied conception of trauma sensitivity, the comment acknowledges that adherence to an adult-based, client standard of *full information* communication and consultation may be impracticable, and inappropriate when counseling children or clients suffering from diminished capacity.<sup>225</sup>

In this implied respect, lawyer trauma-sensitive counseling and advocacy may sometimes flow from a determination of a client’s diminished capacity. Nothing in the language, structure, or legislative history of Model Rule 1.4, however, suggests that the lawyer determination of a client’s diminished capacity functions as a condition precedent for trauma-sensitive communication. Further, nowhere does the rule suggest that an often forcefully contested determination of this sort should function as an ethical prerequisite for trauma-sensitive communication. To enlarge the ambit of its everyday use, trauma-sensitive communication must be unfastened from the limiting and controverted evaluative framework of diminished capacity. Broadly conceived, the practice of trauma-sensitive communication *can* and *should* operate independently of a predicate finding of diminished capacity, though an evidence-based determination of diminished capacity may properly give rise to client-situated, trauma-sensitive communication.

On this wider view, diminished capacity no longer serves as a necessary condition for trauma-sensitive communication, though at times it may prove to be of value in mapping out a course of counseling and advocacy for children, adolescents, and adults. Rather, trauma-sensitive communication is the

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220. *Id.* cmts. 2–3.

221. MODEL RULES OF PRO. CONDUCT r. 1.4(b) (AM. BAR ASS’N 2020).

222. MODEL RULES OF PRO. CONDUCT r. 1.4 cmt. 5 (AM. BAR ASS’N 2020) (“Adequacy of communication depends in part on the kind of advice or assistance that is involved.”).

223. *Id.* Engrafted on Model Rule 1.4, the best interest duty affords paternalistic justification to a lawyer for delaying or withholding the transmission of information to a client in circumstances “when the client would be likely to react imprudently to an immediate communication.” *Id.* cmt. 7 (“[A] lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client.”).

224. *Id.* cmt. 5.

225. *Id.* cmt. 6 (emphasis added) (citing Model Rule 1.14).



starting point for civil rights campaigns founded on claims of community violence-centered racial trauma and norms of client and community participation. To truly and fully serve the client, civil right lawyers must start with a comprehensive understanding of “what happened to” the client, including not only the individual psychological traumas the client has endured, but also the collectively and culturally traumatized communities from which the client has come and lives. Without commitments to the communication-based norms of informed client and community participation in rights education outreach, organization, and mobilization, prophylactic and ameliorative community violence-centered racial trauma campaigns are unlikely to gain momentum or sustain support.

Model Rules 1.1 and 1.3 embed the participatory norm animating the mandatory communication, consultation, and explanatory duties of Model Rule 1.4 into the concepts of lawyer competence<sup>226</sup> and diligence.<sup>227</sup> By any measure of ethical and professional conduct, the Public Counsel team plainly discharged its duties of competence and diligence in the Compton school litigation. In vigorously doing so over a six-year span, the work of the team simultaneously implicated the duties and responsibilities of client communication, consultation, and explanation in representing both the named CUSD students and their teachers. Yet, because the rules of competence, diligence, and communication occupy a race-neutral and trauma-insensitive stance, it is unclear how the team *could have* or *should have* communicated, consulted, and explained a theory of community violence-centered racial trauma to its clients, expert and lay witnesses, and adversaries, or to courts, legislative and administrative bodies, and the media.

Transforming the race-neutral, trauma-insensitive stance of conventional lawyering-process traditions and legal-ethics rules into a more race-conscious, trauma-sensitive posture grounded in the cultural and social history of

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226. Like Rule 1.4, Rules 1.1 and 1.3 appear facially race-neutral and trauma-insensitive. Model Rule 1.1 mandates that a “lawyer shall provide competent representation to a client,” adding that “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2020). The comment to Rule 1.1 defines competence in terms of several “relevant factors,” including “the relative complexity and specialized nature of the matter,” the “general experience” and “training” of the lawyer in the field, and “the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.” *Id.* cmt. 1. Despite this highly contextual, multifactor determination, the comment insists that a “lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar.” *Id.* cmt. 2. Neither special training nor prior experience is required because the lawyer presumably possesses the “most fundamental,” transcendent “legal skill” of discernment, which “consists of determining what kind of legal problems a situation may involve.” *Id.*

227. Model Rule 1.3 provides: “A lawyer shall act with reasonable diligence and promptness in representing a client.” MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS’N 2020). The comment to Rule 1.3 interprets diligence in terms of “commitment and dedication to the interests of the client” coupled “with zeal in advocacy upon the client’s behalf.” *Id.* cmt. 1.

a community and its clients requires the daily *reimagination* of civil rights advocacy, especially the core conduct of lawyer communication, counseling, evaluation, and negotiation. Reimagination turns on the willingness and ability of advocates to reflect critically on their racially-inflected role, function, and behavior, and, where appropriate, to transform that role, function, and behavior in order more effectively to represent the interests of clients and communities of color. In civil rights campaigns like the Compton school case, critical reflection involves questioning how a team of advocates of the caliber of the Public Counsel team *can* and *should* communicate and perform its role as a community-based advocacy partner in the circumstances of district-wide law reform litigation.

Critical interrogation of the Compton school litigation opens up a wide range of lawyering process and legal ethics questions. For example, how *can* and *should* lawyers communicate with clients about community violence and racial trauma in interviewing? How *can* and *should* lawyers consult with clients and lay and expert witnesses about community violence and racial trauma in mounting fact investigations, hearings, and trials? How *can* and *should* lawyers *explain* community violence and racial trauma in client advising and counseling? And again, what of adversaries, courts, legislatures, and the media? How *can* and *should* lawyers communicate and defend a theory of community violence-centered racial trauma in negotiations with private and state actors, in trial and appellate courtrooms, in policymaking forums, or in the public square of pitched debates? To search out these questions and reach actionable answers for law students in the classroom and lawyers in the field jointly working toward a larger vision of community violence-centered racial trauma advocacy, consider diminished capacity evaluation and counseling under Model Rules 1.14 and 2.1.

## 2. Diminished Capacity Evaluation and Counseling

Model Rules 1.14 and 2.1 govern diminished capacity evaluation and counseling.<sup>228</sup> Both rules appear facially race-neutral but implicitly trauma-sensitive. Model Rule 1.14 contains two parts germane for our purposes. Subdivision (a) mandates that lawyers *shall* maintain a *normal* client-lawyer relationship when reasonably possible, even in the case of trauma-impacted adolescent youth, when age or mental impairment diminish the capacity of a client to make adequately considered decisions.<sup>229</sup> In addition to this command, under the rule when lawyers reasonably believe that age- or impairment-related diminished capacity puts clients at risk of substantial physical, financial, or other harm absent affirmative, remedial action, subdivision (b)

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228. See MODEL RULES OF PRO. CONDUCT r. 1.14(a), 2.1 (AM. BAR ASS'N 2020).

229. MODEL RULES OF PRO. CONDUCT r. 1.14(a) (AM. BAR ASS'N 2020).

permits lawyer intervention in the form of reasonably necessary protective action in consultation with nonclients and, where appropriate, in collaboration with an appointed guardian ad litem, conservator, or guardian.<sup>230</sup>

Although predicated on preserving the *normal* workings of the client-lawyer relationship, the comment to Rule 1.14 concedes that age- and impairment-related diminished mental capacity may preclude the maintenance of an *ordinary* client-lawyer relationship whether or not the affected clients retain the ability to understand, deliberate upon, and reach conclusions about matters affecting their own well-being.<sup>231</sup> That recognition, the comment makes clear, in no way vitiates the ethical obligation to treat clients with attention and respect.<sup>232</sup> However, neither Rule 1.14 nor its accompanying comment elaborates on the meaning of client-centered attention and respect. Furthermore, neither the rule nor the comment to the rule makes clear how, when, and where to connect client-specific attention and respect to a vision of community violence-centered racial trauma advocacy.

Consider client attention and respect against the regulatory background of Rule 1.14 and the normative backdrop of community violence-centered racial trauma advocacy. In evaluating a client's diminished capacity, in this case, the ability of Peter P., Kimberly C., Phillip W., Virgil W., and Donte J. to understand, deliberate upon, and reach conclusions about matters affecting their own well-being, the comment to Rule 1.14 encourages the lawyer to "consider and balance" several factors.<sup>233</sup> According to the comment, lawyers "should" consider and balance three factors. The first factor pertains to the ability of clients to articulate reasoning leading up to their decisions, including the variability of their states of mind and the ability to appreciate the consequences of their decisions.<sup>234</sup> A second factor relates to the substantive fairness of such decisions.<sup>235</sup> A third factor refers to the consistency of such decisions with the known long-term commitments and values of clients themselves.<sup>236</sup>

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230. MODEL RULES OF PRO. CONDUCT r. 1.14(b) (AM. BAR ASS'N 2020). Subdivision (c) of the rule adds: "Information relating to the representation of a client with diminished capacity is protected by Rule 1.6." MODEL RULES OF PRO. CONDUCT r. 1.14(c) (AM. BAR ASS'N 2020) ("When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests."). See also MODEL RULES OF PRO. CONDUCT r. 1.14 cmt. 8 (AM. BAR ASS'N 2020) ("When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative.").

231. MODEL RULES OF PRO. CONDUCT r. 1.14 cmt. 1 (AM. BAR ASS'N 2020).

232. *Id.* cmt. 2.

233. *Id.* cmt. 6.

234. *Id.* ("In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.").

235. *Id.*

236. *Id.*

Despite enumerating an array of generalizable factors—articulated reasoning, substantive fairness, and value consistency—for lawyer consideration and balancing, the comment prescribes no precise method of consideration or exact jurisprudence of balancing to ascertain a client’s diminished capacity, or otherwise to interact with a client burdened by diminished capacity, that could be used in the Compton school litigation or in civil rights litigation campaigns elsewhere. Instead, the comment urges lawyers to evaluate the quality of a client’s reasoning, the coherence and consequentialist logic of the decisionmaking, the substantive merit of the decision measured by an unspecified yardstick of fairness, and the normative coherence of that decision and its compatibility with a client’s publicly or privately espoused long-term, value-based commitments. At every step, that evaluation affords unchecked opportunities for unguided lawyer discretion and the displacement of client decisionmaking authority. Such unchecked opportunities can leave clients vulnerable to the potentially unexamined bias of their lawyers, including lawyers’ biases about what may seem coherent and logical based on their own experiences and assumptions as opposed to their clients’ realities. Only the third factor regarding an assessment of the consistency of a decision with the known long-term commitments and values of the client recognizes and affirms the centrality of client-centered norms to the decisionmaking process and its outcome for purposes of diminished capacity evaluation and client-lawyer trauma-sensitive counseling.

By relying on the term *known* without specifying the evidentiary source (documentary/testimonial, public/private, direct/inferential) or the custodian (lawyer, client, or guardian) of that knowledge, the diminished capacity assessment prescribed by Rule 1.14 suffers from a kind of epistemological uncertainty. In the Compton school litigation, for example, how *can* or *should* the Public Counsel team ascertain when their clients’ decisions are consistent with their *known* long-term commitments and values? The answer seems surprisingly indeterminate. Indeed, what are the commitments and values of the Student Plaintiffs and their families? How is the Public Counsel team to elicit and confirm information about those commitments and values from the Student Plaintiffs or others? What distinguishes their short- and intermediate-term commitments and values from their long-term commitments and values? And how is the Public Counsel team to discover or determine when their short-term commitments and values evolve into intermediate- or long-term commitments and values? Rule 1.14 offers little guidance. As a consequence, the diminished capacity assessment recommended by the rule suffers from a kind of temporal vagueness. Again, in the Compton school litigation, how *can* or *should* the Public Counsel team ascertain when their clients’ decisions are consistent with their known *long-term commitments* and values? Once more, the answer seems unexpectedly indeterminate.

Model Rule 2.1 enlarges this vague, multipronged assessment by additionally mandating the lawyer exercise of *independent professional judgment*

and the corresponding duty to render *candid advice*.<sup>237</sup> In rendering such candid advice, the rule permits a lawyer to “refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”<sup>238</sup> The comment to Rule 2.1 reinforces this discretion, remarking on the propriety of lawyer reference to relevant moral and ethical considerations in giving advice and counsel.<sup>239</sup> Further, admitting that certain matters may implicate nonlegal questions braided across other professional domains, the comment to the rule extends lawyer counseling discretion to recommending *consultation* with experts in other fields, for example psychiatry, clinical psychology, and social work.<sup>240</sup> The scope of this advisory discretion lies bounded only by a lawyer’s *straightforward advice* and *honest assessment*.<sup>241</sup>

The work of the Public Counsel team in the Compton school litigation implicates the duties and responsibilities of client diminished capacity evaluation and counseling. In spite of a mutual posture of race neutrality, both Model Rules 1.14 and 2.1 offer trauma-sensitive room to maneuver for lawyers seeking to practice local forms of community violence-centered racial trauma advocacy in civil rights cases. The launching point of that advocacy practice stems from the lawyer’s obligation to treat the client with full *sociocultural attention* and *racial respect*. Sociocultural attention requires an acknowledgment and an understanding of a client’s community-specific social and cultural history. Racial respect requires an appreciation of the often complex, multilayered dimensions—caste, class, color, ethnicity, gender, and sexuality—of a client’s racial identity.

Crucial to the evaluation of a client’s diminished capacity, sociocultural attention and racial respect affirm and sometimes augment the ability of clients like Peter P., Kimberly C., Phillip W., Virgil W., and Donte J. to comprehend, deliberate upon, and reach conclusions about litigation matters affecting their own well-being in the Compton school litigation. When candidly facilitated and honestly assessed, that lawyer-aided evaluation process entails the accepted features of articulated reasoning, measured consequences, calculated fairness, and overall consistency with clients’ espoused long-term commitments and values, values which may entwine moral, economic, social, and political considerations relevant to their distinct situations. In law reform campaigns like the Compton school litigation, that already difficult evaluation process may be further complicated by the risk of conflicts of interest between and among current and former clients, third persons, and the lawyers and the law firms staffing the litigation team. Such conflicts of interest may impinge on this evaluation and counseling process and the larger lawyering process of fostering a community violence-centered racial trauma advocacy initiative in

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237. MODEL RULES OF PRO. CONDUCT r. 2.1 (AM. BAR ASS’N 2020).

238. *Id.*

239. *Id.* cmt. 2.

240. *Id.* cmt. 4.

241. *Id.* cmt. 1.

Compton and in impoverished communities of color elsewhere. To better grasp the risk and potential impact of conflicts of interest in the Compton school litigation and in civil rights cases more generally, consider Model Rule 1.7.

### 3. Conflicts of Interest

Also facially race-neutral and trauma-insensitive, Model Rule 1.7 contains two parts. Subdivision (a) of the rule prohibits the lawyer representation of a client if the representation involves a concurrent conflict of interest, unless the representation proves permissible under the consentability and waiver provisions of subdivision (b).<sup>242</sup> Under subdivision (a), a concurrent conflict of interest exists in circumstances of direct adversity and material limitation. A direct adversity conflict exists if the representation of one client will be *directly adverse* to the representation of another client.<sup>243</sup> A material limitation conflict, by comparison, exists if there is a *significant risk* that the representation of one or more clients will be *materially limited* by the lawyer's responsibilities to another client, a former client or a third person or, alternatively, by a personal interest of the lawyer and associated law firm.<sup>244</sup>

Applied here, subdivision (a) prohibits the joint client representation of the kind illustrated by the Public Counsel team's simultaneous representation of multiple CUSD students and teachers in the Compton school litigation *if* and *when* the representation involves a prohibited concurrent conflict of interest.<sup>245</sup> As it stands, the Compton school litigation record provides little or no evidence that the Public Counsel team's representation of one CUSD student client will be *directly adverse* to either another CUSD student client or a CUSD teacher client, or that the team's representation of one CUSD teacher client will be *directly adverse* to another CUSD teacher client. Absent evidence of direct adversity between or among the CUSD students and teachers, a concurrent conflict of interest exists under subdivision (a) in this case if there is a significant risk that the team's representation of one or more of the CUSD students and teachers will be materially limited by its responsibilities to another CUSD student or teacher client.<sup>246</sup>

Evidence of a significant risk that the Public Counsel team's representation of at least one or more of the CUSD student clients in fact may be materially limited by its responsibilities to another CUSD student client springs from the district court's denial of the Student Plaintiffs' motion for class certification, specifically its findings that the team failed to demonstrate that each named Student Plaintiff satisfied the typicality requirement of Rule 23(a)(3)

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242. MODEL RULES OF PRO. CONDUCT r. 1.7(a) (AM. BAR ASS'N 2020).

243. *Id.*

244. *Id.*

245. *Id.*; see *supra* notes 79–80 and accompanying text.

246. MODEL RULES OF PRO. CONDUCT r. 1.7(a) (AM. BAR ASS'N 2020).

and, moreover, failed to “clearly support a claim of trauma-induced disability that would satisfy a reasonable expert in the field.”<sup>247</sup> Because of the predicate nature of the Rule 23(a)(3) requirement that the claims of the representative parties stand *typical* of the claims of the class, the failure to satisfy that precondition undercuts the status of the five named Student Plaintiffs—Peter P., Kimberly C., Phillip W., Virgil W., and Donte J.—as representative parties sufficiently situated to “fairly and adequately protect the interests of the class.”<sup>248</sup> The court’s additional finding that the five named Student Plaintiffs may lack evidence to “clearly support a claim of trauma-induced disability that would satisfy a reasonable expert in the field” casts further doubt on their standing as representative parties.<sup>249</sup>

Notwithstanding court-indicated evidence of the existence of a significant risk of a material limitation conflict, subdivision (b) of Rule 1.7 permits the Public Counsel team to represent the CUSD students and teachers in the circumstances of the Compton school litigation if the team meets four consentability or waiver conditions.<sup>250</sup> The first of the four conditions requires that the team lawyers reasonably believe that they will be able to provide competent and diligent representation to each affected CUSD student and teacher client.<sup>251</sup> The second condition confirms that the team representation is not prohibited by law.<sup>252</sup> The third condition certifies that the team representation does not involve the assertion of a claim by one CUSD student or teacher client against another CUSD student or teacher client represented by the team in the same litigation or other proceeding before a tribunal, such as a federal or state court.<sup>253</sup> The fourth condition demands that each affected CUSD student and teacher client gives informed consent, confirmed in writing.<sup>254</sup> Here, even in the case of a significant, material limitation-based risk of a concurrent conflict of interest suggested by the court’s preliminary class action certification findings, subdivision (b) permits the Public Counsel team’s representation of one or more of the CUSD students and teachers through party joinder if the team reasonably believes that its lawyers will be able to provide competent and diligent representation to each affected client, and each affected client gives informed consent, again confirmed in writing.<sup>255</sup>

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247. P.P. v. Compton Unified Sch. Dist., 135 F. Supp. 3d 1126, 1129 (C.D. Cal. 2015) (order denying preliminary injunction).

248. FED. R. CIV. P. 23(a)(4).

249. *Compton*, 135 F. Supp. 3d at 1129.

250. MODEL RULES OF PRO. CONDUCT r. 1.7(b) (AM. BAR ASS’N 2020).

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. In the Compton school litigation, the second and third consentability or waiver conditions of Rule 1.7(b) are inapposite here.

In this instance, the permissibility of the Public Counsel team's representation pivots on the amplifying instructions of the comment to Rule 1.7. The comment to the rule construes conflicts of interest in terms of general principles of loyalty and independent judgment, both "essential elements" and sources of tension in the client-lawyer relationship.<sup>256</sup> Procedurally, the resolution of a material limitation conflict of interest risk of the sort arguably presented here requires civil rights litigation teams like the Public Counsel team to engage in a three-step, joinder-related analysis. The threshold step in that analysis demands "clearly" identifying the client or clients at issue.<sup>257</sup> Having expressly formed attorney-client relationships with the Public Counsel team in the Compton school litigation,<sup>258</sup> the named CUSD student and teacher Plaintiffs stand readily identifiable as clients.

The second step in standard conflicts-of-interest analysis involves determining whether a conflict of interest in fact exists.<sup>259</sup> The comment to Rule 1.7 explains that a material limitation conflict of interest arises when "there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests."<sup>260</sup> In this case, a material limitation conflict of interest exists if there is a significant risk to the Public Counsel team's ability to consider, recommend, or carry out an appropriate course of action, for example, in seeking interim relief in the form of a temporary restraining order or in negotiating a partial settlement, for the named CUSD student and teacher Plaintiffs will be materially limited as a result of the team's competing responsibilities to proposed class members, to third persons in the guise of client-affiliated families or client-associated groups, or to other institutional law reform or litigation team-based organizational interests.

The Compton school litigation record shows scant evidence of a significant risk of a concurrent client material limitation conflict or a significant risk of a third person- or litigation team-based material interest conflict. Where a civil rights litigation record bears evidence of a significant risk of material limitation, the presence of that risk may render a conflict nonconsentable and, thus prohibited, "meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent."<sup>261</sup> Here, sufficient evidence of a concurrent client material limitation conflict risk might very well make the conflict nonconsentable, prohibiting the Public Counsel team from properly asking the CUSD student and teacher

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256. MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 1 (AM. BAR ASS'N 2020).

257. *Id.* cmt. 2.

258. On the attorney-client relationship between the CUSD student and teacher Plaintiffs and the Public Counsel team, see Press Release, *supra* note 72.

259. MODEL RULES OF PRO. CONDUCT r. 1.7 cmt. 2 (AM. BAR ASS'N 2020).

260. *Id.* cmt. 8.

261. *Id.* cmt. 14.



Plaintiffs for their informed consent or waiver agreement and from providing representation on the basis of their consent or agreement. To the extent that the Public Counsel team represents more than one CUSD student and teacher client, “the question of consentability must be resolved as to each client.”<sup>262</sup>

The third step in conflicts-of-interest analysis entails deciding whether the representation as a whole may be undertaken despite the existence of a conflict, that is, whether the conflict is itself consentable.<sup>263</sup> If the representation of an identifiable client or clients in a potential conflict situation, as here and frequently elsewhere in civil rights litigation campaigns, is properly consentable, then the litigation team must consult with the materially affected clients and obtain their informed consent.<sup>264</sup> That consent must be confirmed in writing.<sup>265</sup>

In co-plaintiff joinder and class action settings like the Compton school litigation, the linchpin of consentability rests on the determination that “the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest.”<sup>266</sup> The comment to Rule 1.7 observes that a conflict of interest may arise in simultaneous party representation settings, as here potentially, because of a substantial discrepancy in party testimony, because of positional incompatibility in relation to an opposing party, or because of substantially different claim or liability settlement possibilities.<sup>267</sup> The key to the common representation in the Compton school litigation, whether by party joinder or class action, hinges on the Public Counsel team’s “equal duty of loyalty” to each CUSD student and teacher client and its corresponding duty to inform each student and teacher client of “anything bearing on the representation that might affect that client’s interests and the right to expect that the lawyer will use that information to that client’s benefit.”<sup>268</sup>

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262. *Id.*

263. *Id.* cmt. 2.

264. *Id.*

265. *Id.*

266. *Id.* cmt. 15.

267. *Id.* cmt. 23. The comment adds:

When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter.

*Id.* cmt. 25.

268. *Id.* cmt. 31 (“The lawyer should, at the outset of the common representation and as part of the process of obtaining each client’s informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other.”).

Earlier, in recounting the Compton school litigation, we pointed to the Public Counsel team's proposed class definition of the Student Plaintiffs "consisting of current and future students enrolled in CUSD who have experienced or will experience complex trauma that substantially limits major life activities, including learning, reading, concentrating, thinking, and/or communicating, and who have not received reasonable accommodations that would enable them to receive the benefits of CUSD's educational programs."<sup>269</sup> In support of its motion for certification of the proposed class, the team asserted extant "questions of law and/or fact common to the entire student class that predominate over any individual question."<sup>270</sup> The common questions of fact and law encompassed six subject areas: first, "[w]hether the effects of complex trauma can substantially limit one or more of a student's major life activities, including learning, reading, concentrating, thinking, and communicating;" second, "[w]hether such interference with education-related life activities impairs a student's ability to receive the benefits of a public education;" third, "[w]hether students affected by complex trauma enrolled in schools in CUSD are denied the benefits of a public education at least in part due to the effects of experiencing complex trauma;" fourth, "[w]hether students affected by complex trauma enrolled in schools in CUSD are denied the benefits of a public education solely by reason of their trauma;" fifth, "[w]hether accommodations exist that can be reasonably implemented by Defendants to ensure that students with complex trauma do have meaningful access to a public education;" and sixth, "[w]hether Defendants have failed to consistently implement such accommodations."<sup>271</sup>

In addition, the Public Counsel team maintained that "[e]ach student member of the class has claims that are typical of the claims of the class," insofar as "[t]he Student Plaintiffs and the student class members have all experienced complex trauma that substantially limits major life activities, including learning, reading, concentrating, thinking, and/or communicating," and, moreover, "are denied benefits of a public education."<sup>272</sup> Further, the team asserted that "[t]he class is so numerous that joinder of all members of individual actions by each class member is impracticable."<sup>273</sup> Lastly, the

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269. Plaintiffs' Complaint, *supra* note 10, at 20.

270. *Id.*

271. *Id.* at 21.

272. *Id.*

273. *Id.* With respect to numerosity, the Public Counsel team added:

Because CUSD serves a student population that is highly likely to be exposed to complex trauma, including violence, loss of a loved one, removal from home and placement in the foster system, homelessness and extreme socioeconomic hardship, and discrimination, the class constitutes a significant percentage of students of the approximately 26,000 students enrolled in CUSD.

*Id.* at 21–22.

Public Counsel team declared that “[t]he Student Plaintiffs will fairly and adequately protect the interests of the class.”<sup>274</sup>

The district court’s decision, on September 29, 2015, to deny the Student Plaintiffs’ motion for class certification,<sup>275</sup> albeit without prejudice and in anticipation of the renewal of the motion upon further development of the evidentiary record, highlights possible conflict-of-interest-related deficiencies concerning “numerosity” as to the named Student Plaintiffs’ “status” as members of the proposed class,<sup>276</sup> and, moreover, “typicality” as to the named Student Plaintiffs’ “uncertain” membership in the proposed class.<sup>277</sup> In this way, the work of the Public Counsel team in the Compton school litigation implicates the conflict-of-interest duties and responsibilities of loyalty and independent judgment under Model Rule 1.7. By atomizing, disaggregating, and erasing the collective experience of racial identity, community violence, and complex trauma among students in Compton and in its school district, the race-neutral and trauma-insensitive form and substance of Rule 1.7 burdens the Public Counsel team’s efforts to meet the class action requisites of numerosity and typicality and, by extension, adequacy of representation. Taking up those burdens in accordance with the decisionmaking authority given to lawyers under Model Rule 1.2 needlessly reproduces lawyer-client hierarchical relationships of agency and power, marginalizing client voices and reinforcing lawyer dominance in litigation narratives. The next section illustrates the mechanics of that rule-based reproduction of hierarchy as well as methods tailored to advance toward an alternative race-conscious, trauma-sensitive ethic and vision of community violence-centered racial trauma advocacy.

#### 4. Decisionmaking Authority

On its face, Model Rule 1.2 appears race-neutral and trauma-insensitive as well. Composed of four parts, Rule 1.2 establishes a lawyer’s mandatory duty to “abide by a client’s decisions concerning the objectives of representation” and the correlative duty to “consult with the client as to the means by which they are to be pursued.”<sup>278</sup> The comment to the rule demarcates the contours of client-lawyer decisionmaking authority by granting “the client the ultimate authority to determine the purposes to be served by legal representation,” yet restraining that authority “within the limits imposed by law and the lawyer’s professional obligations.”<sup>279</sup> Founded on the positive law duty of civil

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274. *Id.* at 22.

275. *P.P. v. Compton Unified Sch. Dist., No. LA CV-15-3726 (PLAx)*, 2015 WL 5752770, at \*1 (C.D. Cal. Sept. 29, 2015) (order denying class certification).

276. *Id.* at \*24.

277. *Id.* at \*1.

278. MODEL RULES OF PRO. CONDUCT r. 1.2(a) (AM. BAR ASS’N 2020).

279. MODEL RULES OF PRO. CONDUCT r. 1.2 cmt. 1 (AM. BAR ASS’N 2020). Under Model Rule 3.1, a lawyer’s professional obligations include the good faith duty to assert meritorious

obedience and the tradition of lawyer independence, those countervailing limits are reinforced by the professional norms of lawyer discretion and deference. Deeply ingrained in the profession and instilled by legal education, discretionary norms permit the lawyer to “take such action as is impliedly authorized to carry out the representation,” but mandates that the lawyer merely *consult* with the client regarding the *means by which the client’s objectives are to be pursued*.<sup>280</sup>

In fixing the parameters of client-lawyer decisionmaking authority, the ABA Center for Professional Responsibility explains that Rule 1.2 “gives the client ultimate authority over the objectives, but somewhat less authority over the means employed.”<sup>281</sup> Both the scope and allocation of this rule-given authority are in this way uncertain. In fact, the ABA concedes “[j]ust how much authority a client has regarding ‘means’ is not entirely clear.”<sup>282</sup> More vexing, the ABA admits that it is not “always possible to distinguish between whether a particular decision,” for example a decision to engage in race-conscious, trauma-sensitive methods of client communication, client diminished-capacity evaluation, or client conflicts-of-interest counseling, actually “relates to the ‘objectives’ or to the ‘means’” of representation.<sup>283</sup> In civil rights cases like the Compton school litigation, this regulatory ambiguity permits lawyers, however well-intentioned, to define race-conscious, trauma-sensitive methods of client communication, evaluation, and counseling not as *ends* in themselves but merely as instrumental *means* employed to pursue client objectives. Defining race-conscious, trauma-sensitive methods of practice instrumentally within the ambit of lawyer professional authority and control diminishes their

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claims and contentions. Model Rule 3.1 provides: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.” MODEL RULES OF PRO. CONDUCT r. 3.1 (AM. BAR ASS’N 2020). The comment to Rule 3.1 predicates this good-faith obligation on the duty of an advocate “to use legal procedure for the fullest benefit of the client’s cause.” *Id.* cmt. 1. The comment warns that filing an action or defense or taking similar action on behalf of a client “is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery.” *Id.* cmt. 2. Nonetheless, the comment instructs lawyers to “inform themselves about the facts of their clients’ cases and the applicable law and determine that they can make good faith arguments in support of their clients’ positions.” *Id.* (“Such action is not frivolous even though the lawyer believes that the client’s position ultimately will not prevail.”).

280. MODEL RULES OF PRO. CONDUCT r. 1.2 cmt. 1 (AM. BAR ASS’N 2020) (emphasis added).

281. CTR. FOR PRO. RESP., AM. BAR ASS’N, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 34 (Ellen J. Bennett & Helen W. Gunnarsson eds., 9th ed. 2019).

282. *Id.*

283. *Id.* (“The distinction between ‘objectives’ and ‘means’ is often expressed as the difference between decisions that directly affect the ultimate resolution of the case or the substantive rights of the client and decisions that are procedural or tactical in nature. The client generally has control over the former, and the lawyer over the latter.”).

normative force and reproduces the power discrepancy of client-lawyer hierarchy in means-end decisionmaking.

To its credit, the ABA Standing Committee on Ethics and Professional Responsibility recognizes that “Rule 1.4(b) requires the lawyer to give the client explanations sufficient to enable the client to make informed decisions about the representation.”<sup>284</sup> At the same time, the ABA acknowledges that the Rule 1.2(a) mandate commanding a lawyer to consult a client about the *means*—advocacy, counseling, or negotiation—of representation “was tempered in 2002 with the addition of the provision that a ‘lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.’”<sup>285</sup> Embedded in the text of Rule 1.2(a) at the recommendation of the ABA Ethics 2000 Commission,<sup>286</sup> that provision seeks “to avoid any implication that a lawyer must always consult to obtain authority to act.”<sup>287</sup> This lawyer-regarding proviso stems from the Commission’s belief that “the right balance between respect for the lawyer’s expertise and the preservation of the client’s autonomy” should allow lawyers to exercise professional discretion on behalf of clients, subject to the requisite consultation dictated by Rule 1.4(a)(2), while “leaving open the possibility that a client might revoke such implied authority.”<sup>288</sup> Again, on this valence, the lawyer judgment to depart from or employ standard race-neutral, trauma-insensitive methods of practice turns on professional discretion instead of a normative obligation derived from a larger vision of community violence-centered racial trauma advocacy.

In the Compton school litigation and in community violence-centered racial trauma litigation campaigns more generally, the means and ends of representation are of equal import. In civil rights representation, race-conscious, trauma-sensitive advocacy is in fact a *means* of ensuring the equal treatment of economically and politically disenfranchised clients and communities in both our criminal and civil justice systems. Simultaneously, race-conscious, trauma-sensitive advocacy is an empowering, individual- and group-affirming endpoint or objective in itself. Bound up with the growing recognition of the centrality of racial identity, structural violence, and complex trauma to the lawyering process and to legal ethics, the emerging practice of race-conscious, trauma-sensitive advocacy rejects both the *normal* client deference to the professional authority of lawyers rotely justified by their *special knowledge and*

284. ABA Comm. on Ethics & Pro. Resp., Formal Op. 491, at 8 (2020).

285. CTR. FOR PRO. RESP., *supra* note 281, at 35 (quoting MODEL RULES OF PRO. CONDUCT r. 1.2(a) (AM. BAR ASS’N 2020)).

286. See ETHICS 2000 COMM’N, *Model Rules of Professional Conduct as Adopted by ABA House Of Delegates, February 2002 - Center for Professional Responsibility*, AM. BAR ASS’N (May 21, 2021), [https://www.americanbar.org/groups/professional\\_responsibility/policy/ethics\\_2000\\_commission/e2k\\_redline](https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_redline) [perma.cc/JTY7-CUL7].

287. CTR. FOR PRO. RESP., *supra* note 281, at 35.

288. AM. BAR ASS’N, *supra* note 201, at 55, 59.

*skill* and the expected client submission to the technical, legal, and tactical decisionmaking discretion of lawyers in favor of a tentative, but far more empowering vision of client-lawyer collaboration and community dialogue in opposition to racial violence.<sup>289</sup>

#### CONCLUSION

This Article builds on our previous work on race, cultural trauma, and civil rights to address the lawyering process and the legal ethics of emerging *community violence-centered racial trauma* litigation. By tracking the lines of the pioneering litigation in *P.P. v. Compton Unified School District*, parsing its student and teacher trauma histories, revisiting its strategy and outcome, assessing its investigation of community violence, and studying its factual contentions and legal claims, we have been able to discern the outline of a broadly applicable theory of community violence-centered racial trauma in civil rights advocacy. Driven by the search for an alternative, race-conscious vision of the lawyering process and legal ethics in civil and criminal justice systems alike, the theory of community violence-centered racial trauma in civil rights law advocacy opens a new path for our common work.

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289. MODEL RULES OF PRO. CONDUCT r. 1.2 cmt. 2 (AM. BAR ASS'N 2020) (citing Model Rule 1.16(b)(4)).

