

COMMUNITY-BASED RESEARCH CAN BE A TOOL IN THE FIGHT AGAINST STRUCTURAL RACISM

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ABSTRACT

Drawing parallels from design theory and climate change research, this Article explores the complexities of how law “sees” structural

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racism. Emphasizing the “wicked” nature of this social problem, the Article critically examines the roles of researchers and lawyers as they interact with disadvantaged and overburdened communities, underscoring how much existing power dynamics and systemic inequalities hamper their work. The Article proposes that these actors embrace a new paradigm of collaborative, nonextractive research practices to restructure the power dynamics of knowledge production.

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INTRODUCTION

In design theory, a wicked problem is one that has no clear solution or endpoint.¹ Applying this notion to climate change, Yale researchers led by Ben Cashore coined the term “super-wicked problem” to reflect additional layers of complexity and indeterminacy associated with

meteorological impacts on particle- and gas-phase air pollutant concentrations, and their cumulative effects on respiratory health. She collaborates with multidisciplinary groups including residents of Southeast Queens, to address environmental justice issues mainly focused on improving air quality and the quality of life.”

¹ Horst W. J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 POL’Y SCIS. 155, 160–61 (1973) (explaining that “wicked” in this context does not mean “ethically deplorable” but “tricky” or “vicious” and not amenable to engineering solutions); see also Robert Farrell & Cliff Hooker, *Design, Science and Wicked Problems*, 34 DESIGN STUDS. 681, 688 (2013); Marshall W. Kreuter et al., *Understanding Wicked Problems: A Key to Advancing Environmental Health Promotion*, 31 HEALTH EDUC. & BEHAV. 441, 442 (2004).

addressing the ongoing climate crisis.² According to Cashore and his associates, the mark of a “super-wicked problem” is not only that it has no clear solution, but that those who are creating the problem are also the ones tasked with solving it.³ And because there are no clear answers, those same problem creators/solvers get to decide what “solving” means in the relevant context.⁴

Applying these insights about wicked problems to structural racism, it becomes clear that everyone participates in perpetuating structural racism, even those struggling to name and eliminate it. This inherent contradiction is particularly problematic for researchers studying how structural racism impacts frontline communities,⁵ as well as lawyers bringing impact litigation on behalf of those frontline communities. So much scholarly work endorses the idea that social justice research and practices should not be extractive and should help build toward liberation rather than oppression.⁶ But what does it mean to take that seriously? How do we structure nonextractive interactions between academics and the vulnerable communities that too often wind up on the losing end of global extractive processes?

This Article suggests that doing nonextractive research, what some have called liberation science,⁷ involves transformation starting from the earliest stages of the research process to upend implicit hierarchies of knowledge and power. Part I of this Article explains the concept of wicked problems and documents the embedded wicked problem of structural racism. Part II focuses on decision makers like scientists and lawyers, showing how their actions are enmeshed in this wicked problem and how that

² Kelly Levin et al., *Overcoming the Tragedy of Super Wicked Problems: Constraining Our Future Selves to Ameliorate Global Climate Change*, 45 POL’Y SCIS. 123, 124 (2012); see also Richard Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 CORNELL L. REV. 1153, 1159–61 (2009) (applying this notion to climate legislation).

³ Levin et al., *supra* note 2, at 124.

⁴ *Id.*

⁵ Frontline communities are those most affected by climate change, environmental degradation, and inequity at a higher rate than those who are more insulated from these problems—they are literally on the frontlines of the problem. Those living in frontline communities are frequently people of color, and/or those with lower income. See, e.g., Climate Equity Act, S. 4153, 116th Cong. § 205 (2020) (as introduced in the senate by Kamala Harris).

⁶ Will Mason & Patrick Williams, *CiviAct: Negotiating ‘Fields of Paradox’ in Anti-Racist University Community Partnerships*, 15 METHOD. INNOV. 363, 365–66 (2022) (musing on the challenges of avoiding extractive research); Roni Strier, *Fields of Paradox: University–Community Partnerships*, 86 HIGHER ED. 155, 158–60 (2013) (outlining the challenges of these collaborations).

⁷ See, e.g., *Liberation Science: Using Liberation Pedagogies and Knowledge Systems to Build Communities of Resistance to Address Environmental and Climate Injustices*, 17 ENV’T J. (forthcoming 2024).

reality limits the effectiveness of their actions. Part III begins to describe how we might do things differently. Drawing from medicine, public health, and law, this part offers examples of research that defies the conventional parameters of academic research and shows how research can be a tool for surfacing and addressing structural racism. Part IV concludes with some thoughts about how these principles can be incorporated into legal and medical education.

I. STRUCTURAL RACISM IS A (SUPER)WICKED PROBLEM

The phrase “wicked problem” has two meanings, both of which apply to structural racism. In common parlance, “wicked” means evil or morally wrong.⁸ Many are familiar with the multiple ways the Judeo-Christian Bible condemns those labeled wicked, ranging from the Book of Proverbs’ caution that “the Lord’s curse is on the house of the wicked”⁹ to Isaiah’s prophecy that God will punish “the wicked for their iniquity,”¹⁰ to the Psalms’ multiple predictions of horrible fates awaiting “the wicked.”¹¹ This is the meaning most associate with the word “wicked” (except, of course, those who live in Boston).¹²

There is a broad cultural consensus that racism is wicked in this sense—it can involve evil or morally wrong conduct.¹³ Indeed, this is the popular vision of racism: individuals holding invidious beliefs about the racialized “other,” manifesting those beliefs through racist and

⁸ *Wicked*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/wicked> [<https://perma.cc/FU6L-99XJ>].

⁹ *Proverbs* 13:15. *Proverbs* 10:16 similarly declares “the earning of the wicked are sin and death,” and *Proverbs* 14:11 adds that “the house of the wicked will be destroyed.”

¹⁰ *Isaiah* 13:11.

¹¹ See, e.g., *Psalms* 11:5–6 (“The Lord examines the righteous but the wicked, those who love violence, he hates with a passion. On the wicked he will rain fiery coals and burning sulfur; a scorching wind will be their lot.”); *Psalms* 37:17–20 (“For the power of the wicked will be broken . . . the wicked will perish . . . they will be consumed, they will go up in smoke.”); *Psalms* 55:23 (“But you, God, will bring down the wicked into their pit of destruction; men of bloodshed and deceitful people will not live out half their days . . .”).

¹² Emily Collins, *11,000 Readers Tested Their Knowledge of Boston Slang. Here’s Where They Disagree*, BOSTON.COM (Feb. 8, 2023), <https://www.boston.com/community/11000-readers-split-boston-slang-wicked-pissa/> [<https://perma.cc/26EG-CU3X>].

¹³ See, e.g., *Poll: Majority of Americans Say Racial Discrimination is a Big Problem*, NPR (June 21, 2020), <https://www.npr.org/2020/06/21/881477657/poll-majority-of-americans-say-racial-discrimination-is-a-big-problem> [<https://perma.cc/MDG5-K5R6>]. It is worth noting that this poll was conducted in the direct aftermath of the racist murder of George Floyd by white police officer Derek Chauvin. Ray Sanchez & Eric Levenson, *Derek Chauvin Sentenced to 22.5 Years in Death of George Floyd*, CNN (June 25, 2021), <https://www.cnn.com/2021/06/25/us/derek-chauvin-sentencing-george-floyd/index.html> [<https://perma.cc/99SY-JHCC>].

discriminatory actions.¹⁴ There is no question that modern society is replete with this kind of wicked behavior—with individuals holding racist beliefs that lead them to discriminatory and oppressive actions.¹⁵ Examples are far too numerous to mention, but they include all the direct micro- and macroaggressions that racialized individuals routinely experience.¹⁶

However, to design theorists, the term “wicked” has a second meaning, which also has relevance to the problems of racism, this time on a structural level. The evocative term “wicked problem” was coined by design theorist Horst Rittel and urban planner Melvin Webber to distinguish a certain kind of intractable problem from the more typical “tame” problems that engineers and scientists routinely face.¹⁷ The parameters of the problem are what makes a problem wicked, as opposed to tame. Indeed, Rittel and Webber explained that “wicked” in this context does not mean “ethically deplorable” but “tricky” or “vicious” and not amenable to engineering solutions.¹⁸ By contrast, tame problems, however difficult or complex, have clear definitions and endpoints.¹⁹ In other words, for tame problems, there is agreement on what the problem is²⁰ and what solving it

¹⁴ See, e.g., *McClesky v. Kemp*, 481 U.S. 279, 279 (1987) (rejecting claims that Georgia’s record of racially disparate imposition of death sentences violated the Eighth amendment because the petitioner could not demonstrate acts of overt racism in his case). This attitude is perhaps best captured in the insistence on racial color blindness as a solution to racism. See generally *Parents Involved in Cmty. Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007). It is frequently expressed by white people who insist that they “don’t see race.” Zach Stafford, *When You Say You “Don’t See Race” You’re Ignoring Racism, Not Helping to Solve It*, *GUARDIAN* (Jan. 26, 2015), <https://www.theguardian.com/commentisfree/2015/jan/26/do-not-see-race-ignoring-racism-not-helping> [<https://perma.cc/Z5EL-ERUL>]; Evan P. Apfelbaum et al., *In Blind Pursuit of Racial Equity*, 21 *PSYCH. SCI.* 1587, 1588 (2010) (showing that race blind policies make underreporting of racism more likely). For a detailed explanation of American racism, see Steven O. Roberts & Michael T. Rizzo, *The Psychology of American Racism*, 76 *AM. PSYCH.* 475 (2020). To learn more, see EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS* (6th ed., 2022); BEVERLY D. TATEM, *WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA?* (1997).

¹⁵ A quick look at the Department of Justice’s hate crimes statistics underscores how prevalent these actions are. *Hate Crimes: Facts and Statistics*, U.S. DEP’T. JUST., <https://www.justice.gov/hate-crimes/hate-crime-statistics> [<https://perma.cc/9HW6-PYGJ>].

¹⁶ For a definition of racialized microaggression and a description of its impacts, see Derald Wing Sue et al., *Racial Microaggressions in Everyday Life*, 67 *AM. PSYCH.* 271, 272–75 (2007); see also Peggy Cooper Davis, *Law as Microaggression*, 98 *YALE L.J.* 1559, 1559–60 (1989) (analyzing law through the lens of racialized microaggressions).

¹⁷ Rittel & Webber, *supra* note 1, at 160–61.

¹⁸ *Id.*

¹⁹ *Id.*; see also Bayard L. Catron, *On Taming Wicked Problems*, 3 *DIALOGUE* 13, 14 (1981).

²⁰ See Joseph C. Bentley, *From Wicked to Tame and Vice Versa*, *CHALLENGE TAMING WICKED PROBS.* (June 2, 2017), <http://tamingwickedproblems.com/from-wicked-to-tame-and-vice-versa/> [<https://perma.cc/N6HX-AYC2>].

means.²¹ This kind of tame problem typically involves identifying and obtaining missing information to develop possible solutions.²² These solutions can be assessed for their abilities to achieve the defined endpoint, and then accepted or rejected accordingly.²³ In short, tame problems are amenable to the conventional tools of scientific and policy analysis.

Wicked problems, by contrast, are open ended and intractable.²⁴ These problems are marked by complexity and uncertainty. They typically involve an intricate interplay between social, economic, and environmental factors.²⁵ This makes wicked problems exceptionally challenging to address.

Rittel and Weber identified four basic attributes of a wicked problem. First, the problem itself is constantly changing.²⁶ Key information is not only often unknown but frequently unknowable.²⁷ There is no way to draw clear lines separating wicked problems from their specific contexts. As a result, the very process of trying to solve wicked problems dialectically reshapes the identification of the problem.²⁸ Second, because of their complexity and ever-changing nature, wicked problems are not amenable to linear, causal-chain reasoning.²⁹ There are no definitive solutions to wicked problems, only answers that seem more or less desirable³⁰ based on competing values and priorities.³¹ Third, there is no clear endpoint and no obvious solution to a wicked problem.³² This means there is no way to completely solve it. Finally, every wicked problem is unique and embedded in a specific context.³³ This means that there can be little extrapolation between wicked problems, and the learning curve must be repeated anew for each such problem.³⁴ As a result, addressing wicked problems forces decision makers to grapple with the positionality of stakeholders asserting

²¹ Tom Ritchey, *Wicked Problems: Modelling Social Messes with Morphological Analysis*, 2 ACTA MORPHOLOGICA GENERALIS 1, 2 (2013).

²² Farrell & Hooker, *supra* note 1, at 681–82; Kreuter et al., *supra* note 1, at 442.

²³ Kreuter et al., *supra* note 1, at 442–43; Brian W. Head & John Alford, *Wicked Problems: Implications for Public Policy and Management*, 47 ADMIN. & SOC. 711, 714 (2013).

²⁴ Brian W. Head, *Wicked Problems in Public Policy*, 3 PUB. POL'Y 101, 101 (2008).

²⁵ Head & Alford, *supra* note 23, at 715–16.

²⁶ Rittel & Webber, *supra* note 1, at 161.

²⁷ *Id.* at 160–62.

²⁸ *Id.* at 164–66.

²⁹ *Id.* at 161.

³⁰ *Id.* at 163.

³¹ *Id.*

³² *Id.* at 163.

³³ *Id.* at 164–65.

³⁴ *Id.* at 163.

competing claims rooted in divergent interests and values, while simultaneously navigating multiple governance structures nested in various kinds of uncertainty.³⁵

Racism—more specifically, structural racism—clearly qualifies as a wicked problem.³⁶ Because multiple vectors of marginalization, oppression, and inequality converge into structural racism, even framing the problem appropriately is difficult. Rather than a single problem, structural racism is a constellation of intersecting problems that influence a wide array of policies, practices, and pathways throughout society.³⁷ Intricate social and economic feedback loops allow structural racism to endure and adapt over time, ultimately affecting all aspects of economic, social, and legal existence. While a commitment to equity and justice is necessary for addressing structural racism, there is no definitive solution or endpoint at which the problem is solved. Indeed, structural racism is perhaps better characterized as a problem amenable to redress or alleviation rather than a solution.³⁸ This lack of a clear endpoint compounds the psychological difficulties inherent in translating a sometimes-nominal commitment to equality, equity, or fairness into policies that respond to the structural nature of racialized inequality. In short, the wicked nature of structural racism introduces multiple barriers to effective, responsive action.

As a team of Yale School of Forestry researchers pointed out a decade ago while writing about climate change, Rittel and Webber's

³⁵ Stephanie House-Niamke & Adam Eckerd, *Institutional Injustice: How Public Administration Has Fostered and Can Ameliorate Racial Disparities*, 53 ADMIN. & SOC'Y 305, 314 (2021).

³⁶ I am not the first to make this observation. See, e.g., Saerim Kim, et al., *Social Equity for Wicked Problems: Achieving Racial Equity in Homeless Service Provision*, PUB. MGMT. REV., Aug. 2023, at 1, https://www.researchgate.net/publication/373284881_Social_equity_for_wicked_problems_achieving_racial_equity_in_homeless_service_provision [https://perma.cc/QRR3-YNRR]; Nicholas C. Kawa et al., *Training Wicked Scientists for a World of Wicked Problems*, 8 HUMS. SOC. SCI. COMM. 189 (2021); Amanda NeMoyer et al., *Gathering Diverse Perspectives to Tackle "Wicked Problems": Racial/Ethnic Disproportionality in Educational Placements*, 65 AM. J. CMTY PSYCH. 44 (2020); Heather Came & Derek Griffith, *Tackling Racism as a "Wicked" Public Health Problem: Enabling Allies in Anti-Racism Praxis*, 199 SOC. SCI. & MED. 188 (2018); Marcelle Burns & Jennifer Nielson, *Dealing with the 'Wicked' Problem of Race and the Law: A Critical Journey for Students (and Academics)*, 28 LEGAL ED. REV. 1 (2018).

³⁷ Structural racism refers to the complex patterns and practices that confer social benefits on some groups and impose burdens on others based on racialized identity. William M. Wiecek, *Structural Racism and the Law in America: An Introduction*, 100 KY. L. REV. 1, 6–8 (2012). It encompasses mutually reinforcing vectors of discrimination in housing, education, employment, health care, and criminal justice combine to create drastic inequalities in life opportunities. Zinzi D. Bailey et al., *Structural Racism and Health Inequities in the USA: Evidence and Interventions*, 389 LANCET 1453, 1453 (2017) (discussing structural racism reinforces discriminatory beliefs, values, and distribution of resources).

³⁸ Brian W. Head, *Forty Years of Wicked Problems Literature: Forging Closer Links to Policy Studies*, 38 POL'Y & SOC'Y 180, 183 (2019).

wicked-problem concept fails to capture the full magnitude of the challenge. These researchers instead coined the term “*super-wicked*” to reflect what they perceived as additional confounding factors inherent to climate change.³⁹ Specifically, they noted that in addition to the wicked characteristics described above: (1) time is running out, (2) those who caused the problem are also the ones tasked with solving it, (3) the central authority needed to address the problem does not exist, and (4) irrational discounting pushes responses out into the future.⁴⁰

This second super-wicked factor, that those who created the problem are tasked with solving it, is particularly relevant to issues of structural racism. The descendants (both familial and intellectual) of those who created and benefited from *de jure* and *de facto* systems of racialized oppression are all too often the ones with the power to define the problem and its possible solutions.⁴¹ Yet, their interests frequently lie elsewhere. Thus, we see regular political assaults on diversity, equity, and inclusion initiatives, particularly in schools.⁴²

II. LAWYERS AND SCIENTISTS ARE ENMESHED IN WICKED PROBLEMS

When Barack Obama was elected the forty-fourth president of the United States, some claimed that the United States became a “post-racial society.”⁴³ By that, they meant that the United States had moved beyond

³⁹ Levin et al., *supra* note 2, at 124.

⁴⁰ *Id.*; see also Lazarus, *supra* note 2, at 1159.

⁴¹ Tom Lassiter et al., *Slavery’s Descendants: America’s Family Secret*, REUTERS (June 27, 2023), <https://www.reuters.com/investigates/special-report/usa-slavery/> [<https://perma.cc/G9EA-9VJP>] (documenting that more than 100 sitting members of congress, two supreme court justices, and eleven sitting governors are descendants of slaveholders).

⁴² Shaun Harper, *Why Politicized Attacks on DEI in Schools are Occurring, and How They’re Bad for America*, FORBES (June 9, 2023), <https://www.forbes.com/sites/shaunharper/2023/06/09/why-politicized-attacks-on-dei-in-schools-are-occurring-and-how-theyre-bad-for-america/?sh=51b2dc1e14c7> [<https://perma.cc/K2KK-TS33>]. Florida, Texas, and Oklahoma have outlawed DEI efforts in schools. Marcela Rodrigues, *5 Things to Know about Texas’ DEI Ban*, DALLAS MORNING NEWS (Feb. 27, 2024), <https://www.dallasnews.com/news/education/2024/02/27/5-things-to-know-about-texas-dei-ban/#:~:text=More%20than%2070%20bills%20have,public%20colleges%20and%20other%20agencies> [<https://perma.cc/2FQ9-NN4E>].

⁴³ See, e.g., John McWhorter, *Racism is Over in America*, FORBES (Dec. 30, 2008), https://www.forbes.com/2008/12/30/end-of-racism-oped-cx_jm_1230mcwhorter.html?sh=36d3bb1349f8 [<https://perma.cc/X72W-H9DY>] (claiming that racism is no longer a serious problem in America); Shelby Steele, *Obama’s Post-Racial Promise*, L.A. TIMES (Nov. 5, 2008), <https://www.latimes.com/opinion/opinion-la/la-oe-steele5-2008nov05-story.html> [<https://perma.cc/2LPC-XGV3>] (characterizing Obama as a post-racial

racism, or reached a stage in which racism was no longer a major social problem.⁴⁴ This narrative sought to recharacterize structural racism as a tame problem amenable to a fixed-solution endpoint. A series of Supreme Court decisions have unfortunately adopted this approach.

A. JUDICIAL FIAT CANNOT TAME A WICKED PROBLEM

In *Grutter v. Bollinger*, the court upheld racial preferences in law school admissions as a remedy for past *de jure* and *de facto* racialized exclusion.⁴⁵ Yet, the majority opined that these racial preferences in college admissions would no longer be necessary within a relatively short time period (twenty-five years).⁴⁶ Writing in dissent, Justices Rehnquist, Scalia, Kennedy, and Thomas agreed that “race-conscious programs must have reasonable durational limits.”⁴⁷ Neither the majority nor the dissent connected this desired affirmative action endpoint to achieving a specific level of change in the world—only to the passage of time. What is this call for an endpoint specified solely by the passage of time? It is an attempt to tame the wicked problem of discrimination in higher education by judicial fiat alone.

A decade later, in *Shelby County v. Holder*, the court again used the passage of time to declare a thorny racial discrimination problem tamed, this time striking down preclearance under the Voting Rights Act.⁴⁸ Most recently, in *Students for Fair Admissions v. Presidents and Fellows of Harvard College*, the court complained that “Harvard’s view about when [race-based admission will end] doesn’t have a date on it” and relied on this lack of a declared endpoint to find their admissions programs

candidate); Michael Crowley, *Post-Racial*, NEW REPUBLIC (Mar. 12, 2008), <https://newrepublic.com/article/64482/post-racial> [<https://perma.cc/47FJ-4NYU>] (characterizing Obama as a post-racial candidate). By contrast, Ibram X. Kendi called the myth of post-racial America “the most sophisticated racist idea ever produced.” Ibram X. Kendi, *Our New Post-Racial Myth*, ATLANTIC (June 22, 2021), <https://www.theatlantic.com/ideas/archive/2021/06/our-new-postracial-myth/619261/> [<https://perma.cc/PZN7-3ALQ>].

⁴⁴ *Post-Racial*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/post-racial> [<https://perma.cc/3EH6-GPVL>]. In a recent CBS poll, 52% of respondents believed that racism was either not a problem in America today or was a minor problem. Jennifer de Pinto, *CBS News Poll Finds Most Black American See More Opportunities Than Parents but Feel More Needs to Be Done*, CBS NEWS (Feb. 16, 2024) <https://www.cbsnews.com/news/opinion-poll-black-americans-opportunity-racial-diversity-02-16-2024/> [<https://perma.cc/H8JY-KP9L>].

⁴⁵ 539 U.S. 306, 343–44 (2003).

⁴⁶ *Id.* at 343.

⁴⁷ *Id.* at 386.

⁴⁸ 570 U.S. 529, 557 (2013).

unconstitutional.⁴⁹ In these decisions, an inherent attribute of the wicked problem of structural racism—the lack of a clear endpoint—perversely became the justification for denying that there is a problem at all. These decisions prevent the Constitution, and the law more generally, from seeing or acknowledging that, despite the passage of time, structural racism still exists and that its continued existence harms us all.⁵⁰

The court had earlier deployed similar reasoning—using inherent aspects of wicked problems to prevent law from “seeing” structural racism to eviscerate parts of the Civil Rights Act. For example, in *Guardians Ass’n v. Civil Servo Comm’n of New York City*, the Supreme Court rejected the structural nature of racism, ruling that private individuals could not recover damages under Title VI of the Civil Rights Act without a demonstration of invidious and personalized racial animus.⁵¹ In 2001, the court similarly closed off the possibility of private actors suing to enforce disparate impact regulations promulgated under Title VI, finding no private right of action.⁵² With these two rulings, the Supreme Court declared that the Civil Rights Act no longer saw many allegations of structural racism.

Rather than squarely engaging with structural racism in all its wicked complexity, these decisions simply declared the problem tamed and solved.⁵³ In this fashion, structural racism is invisibilized behind a façade of colorblind neutrality.⁵⁴ Yet, as Justice Jackson wrote in dissent in *Students for Fair Admissions*, “deeming race irrelevant in law does not make it so in life.”⁵⁵

⁴⁹ 600 U.S. 181, 213 (2023).

⁵⁰ JAMES C. SCOTT, *SEEING LIKE A STATE* 11 (1998) (explaining that in order to “see” complex problems, states must first standardize and generalize to makes these problems legible—in other words, refashioning wicked problems as tame ones by reducing complexity and uniqueness).

⁵¹ 463 U.S. 582, 600 (1983).

⁵² *Alexander v. Sandoval*, 532 U.S. 275, 275 (2001).

⁵³ Pretending that a wicked problem is instead a tame one is a pitfall that multiple theorists have flagged as a mistake. See Rittel & Webber, *supra* note 1, at 161–62 (cautioning that when tame solutions are applied to wicked problems, the solutions trigger additional problems); see also E. Jeffrey Conklin, *Wicked Problems & Social Complexity*, in *DIALOGUE MAPPING: BUILDING SHARED UNDERSTANDING OF WICKED PROBLEMS* 3, 21–22 (2006) (offering similar cautions).

⁵⁴ The word “invisibilized” signals an active process of erasing the lived experiences and voices of vulnerable people. Marion Borderon et al., *The Risk of Invisibilization of Populations and Places in Environment-Migration Research*, 8 *HUMS. & SOC. SCI. COMM.* 1, 5 (2021); Gary Craig, *Invisibilizing ‘Race’ in Public Policy*, 33 *CRITICAL SOC. POL.* 712, 718 (2013) (describing this phenomenon in the United Kingdom).

⁵⁵ 600 U.S. 181, 407 (2023) (Jackson, J., dissenting).

B. STRUCTURAL RACISM REMAINS STRUCTURAL

Regardless of what the Supreme Court says, lawyers, scientists, and policymakers find themselves enmeshed in the wicked problem of structural racism. This wicked problem persists in governmental and institutional policies even in the absence of individual actors expressing invidious racial views.⁵⁶ Every day, every choice is an opportunity to perpetuate or disrupt that system. Prosecutors make daily decisions about whether and how to charge defendants, and other lawyers accept or reject clients and make choices that shape the contours of impact litigation. Doctors make decisions about health, illness, and treatment. Scientists pitch and conduct research projects. Each one of these activities involves decisions embedded in systems steeped in structural racism.⁵⁷

For example, Black people caught up in the criminal justice system are more likely to be charged with more (or more serious) criminal counts, more likely to be convicted, and, once convicted, more likely to be given lengthy sentences.⁵⁸ Black patients are more likely than white patients to have their pain minimized rather than treated⁵⁹ and their ailments

⁵⁶ Of course, even when decisionmakers actually express racialized animus, courts have still been reluctant to find that those comments establish the kind of invidious discrimination that meets the test laid out by the Supreme Court. *See, e.g., R.I.S.E. v. Kay*, 768 F. Supp. 1142, 1144 (E.D. Va. 1991) (ignoring racially insulting comments made by decisionmakers who steered a landfill into a historically Black neighborhood).

⁵⁷ And that is not to mention the economic choices about who gets a home or car loan and on what terms. Maura L. Scott et al., *Revealing and Mitigating Racial Bias and Discrimination in Financial Services*, J. MKTG. RES., May 2023, at 1, 1–2, <https://journals.sagepub.com/doi/10.1177/00222437231176470> [<https://perma.cc/QB4F-L35C>]. How houses are differentially valued, who gets hired and promoted, and a myriad of other decisions that both reflect and perpetuate structural racism. Devah Pager & Hana Shepard, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 ANN. REV. SOC. 181, 197 (2008).

⁵⁸ M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Criminal Sentencing*, 122 J. POL. ECON. 1320, 1343–45 (2014) (attributing the racial disparities in sentencing Black and White defendants with the same records who commit the same offense to racialized disparities in how prosecutors charge these defendants); Benjamin Muller et al., *Surest Way to Face Marijuana Charges in New York: Be Black or Hispanic*, N.Y. TIMES (May 13, 2018), <https://www.nytimes.com/2018/05/13/nyregion/marijuana-arrests-nyc-race.html> [<https://perma.cc/PLT3-6H4L>]; *Demographic Differences in Sentencing*, U. S. SENT'G COMM'N (Nov. 14, 2017), <https://www.ussc.gov/research/research-reports/demographic-differences-sentencing> [<https://perma.cc/KL8D-5WXX>] (reporting that Black men received sentences 19% longer than similarly situated white men); *see also* Nick Wing, *When the Media Treats White Suspects and Killers Better than Black Victims*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/media-black-victims_n_5673291 [<https://perma.cc/7CT8-8MWS>].

⁵⁹ Antionette Schoenthaler & Natasha Williams, *Looking Beneath the Surface: Racial Bias in the Treatment and Management of Pain*, 5 JAMA NETWORK OPEN 1, 1 (2022), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2793179> [

underdiagnosed.⁶⁰ Black women are three times as likely as white women to die in childbirth.⁶¹ The reasons for these disparities are rooted in the very structural racism that the Supreme Court decisions described above erased (or invisibilised).

Unfortunately, academic research often becomes an extractive process that perpetuates rather than alleviates the problems of structural racism.⁶² It is not uncommon for researchers from relatively privileged institutions to parachute into an overburdened community bearing already-formulated research priorities, questions, and methodologies.⁶³ Expecting enthusiastic (but frequently uncompensated) cooperation from residents, these researchers then mine the community for data responsive to those preformed research questions.⁶⁴ The work is often described as research *on* or *about* the community rather than research *with* the community, and

HVVC]; Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PNAS 4296, 4296 (2016).

- ⁶⁰ A. James Mamary et al., *Race and Gender Disparities Are Evident in COPD Underdiagnoses Across All Severities of Measured Airflow Obstruction*, 5 CHRONIC OBST. PULM. DIS. 177, 177 (2018) (documenting significant underdiagnosis of Black men with COPD); Leila R. Zelnick et al., *Association of the Estimated Glomerular Filtration Rate With vs. Without a Coefficient for Race With Time to Eligibility For Kidney Transplant*, 4 JAMA NETWORK OPEN 1, 1–2 (2014), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2775076> [<https://perma.cc/3P4T-XPJT>]; see generally Darshali A. Vyas et al., *Hidden in Plain Sight-Reconsidering the Use of Race Correction in Clinical Algorithms*, 383 NEW ENG. J. MED. 874, 879 (2020) (describing how race adjustments deter clinicians from offering clinical services to certain patients, thereby “baking inequity into the system”).
- ⁶¹ Anuli Njoko et al., *Listen to the Whispers Before They Become Screams: Addressing Black Maternal Morbidity and Mortality in The United States*, 11 HEALTHCARE 438, 438 (2023).
- ⁶² Adam J. Gaudry, *Insurgent Research*, 26 WICAZO SA REV. 113, 113 (2011) (writing about research on indigenous communities and proposing an alternative vision in which the researchers owe their primary responsibility to the researched community and the research participants).
- ⁶³ *Id.* (complaining about researchers whose interest in a disadvantaged community is limited to the opportunity the researchers see for their own personal advancement); Bisalo O. Ojikutu et al., *Building Trust in Covid-19 Vaccines and Beyond Through Authentic Community Investment*, 111 AM. J. PUB. HEALTH 366, 366 (2021) (criticizing the structural choices that relegated the Black and Brown communities most at risk of Covid to the periphery of vaccine development and testing by excluding them from early-stage planning and consultation). This is a significant issue between Global North and Global South researchers as well, one that raises allegations of colonialism in science. Beryne Odeny & Raffaella Bosurgi, *Time to End Parachute Science*, 19 PLOS MED 1, 1–2 (2022), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1004099> [<https://perma.cc/AX5M-HYZZ>]; Editorial, *Closing the Door on Parachutes and Parasites*, 6 LANCET GLOB. HEALTH E593, E593 (2018).
- ⁶⁴ For a roadmap on avoiding this kind of exploitation, see Asha de Vos, *Slowing Parachutes, Strengthening Science*, 4 CONSERV. SCI. & PRAC. 1, 1 (2022), <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/csp2.12709> [<https://perma.cc/8SWS-9VM2>] (emphasizing listening to local concerns and sharing data as part of conservation biology project planning); Paris V. Stefanoudis et al., *Turning the Tide of Parachute Science*, 31 CURRENT BIOLOGY R184, R185 (2021) (identifying the need for research to meet local needs as part of marine biology research).

for a reason.⁶⁵ The targeted communities are viewed as the subject of research rather than partners in the research process or intended recipients of the findings.⁶⁶

In this all-too-typical research model, the targeted community has no role in formulating the research priorities, shaping the research questions, analyzing the research data, or validating the conclusions drawn about them and their experience.⁶⁷ Instead, researchers make all those choices based on their own interests and priorities, typically rooted in abstract disciplinary norms and personal career objectives, which may or may not coincide with the subject community's needs and desires.

Data are gathered and analyzed to advance knowledge (and not incidentally academic careers) through publication in academic journals. But whose knowledge is advanced? The publications themselves are frequently enclosed behind expensive paywalls that keep them beyond the reach of community members.⁶⁸ Their customary writing style and language practices present another barrier—academic articles are typically laden with disciplinary jargon and other language inaccessible to lay readers.⁶⁹ In the publish-or-perish world of academia, these publications can become an end in themselves.⁷⁰ For example, the H-index, the most widely used assessment of research impact, focuses exclusively on the number of citations a publication receives in other academic journals.⁷¹ Even though

⁶⁵ KATE CHATFIELD ET AL., TRUST, RESEARCH WITH, NOT ABOUT COMMUNITIES 6 (2018), <https://www.globalcodeofconduct.org/wp-content/uploads/2018/07/TRUST-Community-Participation-in-Research.pdf> [<https://perma.cc/9CC2-HTZD>]. Gerald López made this point more than thirty years ago. Gerald López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608 (1989) (advising that lawyers must know how to work with, not just on behalf of, subordinated people).

⁶⁶ CHATFIELD ET AL., *supra* note 65, at 28–29.

⁶⁷ Ojikutu et al., *supra* note 63, at 367.

⁶⁸ See, e.g., LaToya E. Eaves, *Power and the Paywall: A Black Feminist Reflection on the Socio-Spatial Formations of Publishing*, 118 GEOFORUM 207, 208 (2021) (decriing unequal access to the knowledge embodied in scholarly publications as a manifestation of structural racism).

⁶⁹ Gaudry, *supra* note 62, at 116 (noting the role that peer-review plays in reinforcing this process and emphasizing how disciplinary jargon makes such publications inaccessible to the lay public); see also Jill Lapore, *The New Economy of Letters*, CHRON. HIGHER ED. (Sept. 3, 2013), <https://www.chronicle.com/article/the-new-economy-of-letters/> [<https://perma.cc/WJ5V-TUKZ>] (making the point that scholars typically write for other scholars).

⁷⁰ This reality was perhaps best expressed by Drexel Law Professor Rachel Lopez when she stated that “the law is hoarded by the powerful.” Rachel Lopez, *Participatory Law Scholarship*, 123 COLUM. L. REV. 1795, 1802 (2023) (describing how legal scholarship can mystify and exclude).

⁷¹ A researcher's H-index is the number of publications by a researcher that have received h or more citations. J.E. Hirsch, *An Index to Quantify an Individual's Scientific Research Output*, 102 PNAS 16569, 16569 (2005). For example, a researcher with an H-index of 7 has written seven papers that have received at least seven citations. The researcher may have written many more publications that have received fewer citations. Ironically, one of the most cited articles about the validity

decisions about hiring, tenure, funding, and promotion frequently rest on impact index scores,⁷² these impact scores do not define impact in the form of actual, real world changes.⁷³

Community members frequently have no access to the data generated through academic research, even when the research identifies grave problems within their community. That means they frequently have no way to use that research to build a path for change. Using research in this fashion is rarely part of the researchers' agenda, and it is even more rarely funded as part of the research project. Indeed, researchers frequently police a bright line between research and policy implementation as part of a very specific vision of neutrality and academic integrity.

Moreover, current presumptions about what counts as expertise and whose participation is necessary can have significant negative ramifications that go beyond issues of inclusion and empowerment. Failing to involve a wide array of diverse stakeholders in the initial stages of defining the problems ensures that critical aspects of the problem are likely to be missed. One of the clearest examples of how excluding community participants led to policy failure comes from the world of agricultural biotechnology. When designing the original regulatory scheme for genetically engineered *Bt* crops,⁷⁴ Environmental Protection Agency (EPA) scientists assumed that adoption of the new technology would be spotty, and therefore concerns about rapid evolution of pest resistance to *Bt* would not be an issue.⁷⁵ However, their assumption was spectacularly incorrect—the earliest adoptions were clustered into large contiguous patches.⁷⁶ Only

of the H-index is behind a paywall. *E.g.*, Lutz Bornmann & Hans-Dieter Daniel, *What Do We Know About the H-Index*, 58 J. ASS'N INFO. SCI. & TECH. 1381 (2007) (charging 42 dollars to download).

⁷² Alison Abbott, *Metrics, Do Metrics Matter?*, 465 NATURE 860, 860 (2010).

⁷³ The index is also vulnerable to manipulation. Emilio Delgado et al., *The Google Scholar Experiment: How to Index False Papers and Manipulate Bibliometric Indicators*, 65 J. ASS'N INFO. SCI. & TECH. 446, 453 (2014). Scholars from the Global South complain that use of H-index scores reifies intellectual colonialism and marginalizes scholars from the Global South. Gabriel Nakamura et al., *Three Pathways to Better Recognize the Expertise of Global South Researchers*, NPJ BIODIVERSITY (Aug. 21, 2023), <https://www.nature.com/articles/s44185-023-00021-7.pdf> [<https://perma.cc/5CQL-QBAF>]; Danny Haelewaters et al., *Ten Simple Rules for Global North Researchers to Stop Perpetuating Helicopter Research in the Global South*, 17 PLOS COMP. BIOL. 1, 6 (2021), <https://journals.plos.org/ploscompbiol/article?id=10.1371/journal.pcbi.1009277> [<https://perma.cc/4GMK-DV8S>]. This last article reiterates many of the same issues described here as problems with research in marginalized communities on a global scale. *See generally id.*

⁷⁴ *Bt* crops have been genetically engineered by addition of genes from the *Bacillus thuringiensis* (*Bt*) bacteria. As a result, these crops produce proteins that are toxic to certain agricultural pests. Rebecca Bratspies, *The Illusion of Care: Regulation, Uncertainty, and Genetically Modified Food Crops*, 10 N.Y.U. ENV'T L.J. 297, 304–06 (2002).

⁷⁵ For a detailed exploration of this issue, see *id.* at 332–37.

⁷⁶ *Id.* at 335.

after their predictions were confounded did the EPA hold open-ended consultation with growers.⁷⁷ Grower after grower explained that adoption was based on localized experience with recent pest infestations and, more importantly, on the choices made by neighboring growers. As one grower succinctly explained: “If my neighbor is planting *Bt*, I’d better plant it too, otherwise I get the corn borers.”⁷⁸ Had farmers been recognized as critical stakeholders with expertise to contribute, they would have been included in the earliest discussions about designing a regulatory strategy, and the agency would have foreseen this problem.

Genuine, open-ended consultation is a necessary precondition for addressing wicked problems, but all too often, it is skipped on the belief that such processes are either too time consuming, too burdensome, or unnecessary.⁷⁹ Instead, what should be an open exchange dwindles into a one-way flow of information and performative checklists.⁸⁰ For example, when New York City launched its Million Trees Campaign, no draft plan was released in order to avoid “having to spend a significant amount of time debating the options in public meetings.”⁸¹ Public outreach instead did what it frequently does—focused on generating public “buy-in” for a plan that had already been written in private by self-identified experts.⁸² There was virtually no opportunity for the public to weigh in on the goals or methods of this highly touted, publicly funded initiative.⁸³

When early-stage, authentic consultation is skipped at the problem-formation stage, the solutions that emerge frequently fail in the crucible of the real world. Indeed, the main criticism of splashy tree-planting campaigns is that the trees frequently perish.⁸⁴ Trees need support and

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ ICLEI, THE PROCESS BEHIND PLANYC 1, 25 (2010), http://s-media.nyc.gov/agencies/planyc2030/pdf/iclei_planyc_case_study_201004.pdf [<https://perma.cc/ZMC5-47A2>].

⁸⁰ *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 92 (4th Cir. 2020) (noting that “environmental justice is not *merely* a box to be checked” and finding that treating it as such produced a legally flawed analysis) (emphasis added).

⁸¹ ICLEI, *supra* note 79, at 25.

⁸² *Id.* at 19, 24–26.

⁸³ NY METRO CHAPTER OF THE AMERICAN PLANNING ASSOCIATION, RESPONSE TO THE BLOOMBERG ADMINISTRATION’S PLANYC 2030 LONG-TERM SUSTAINABILITY PLANNING PROCESS AND PROPOSED GOALS 1, 3 (2007), https://www.nyplanning.org/wordpress/wp-content/uploads/2016/05/PlaNYC_2030_response_final_3-14-07.pdf [<https://perma.cc/TLJ3-VSTU>].

⁸⁴ See, e.g., Sami Kent, *Most of 11m Trees Planted in Turkish Project ‘May Be Dead’*, GUARDIAN (Jan. 30, 2020), <https://www.theguardian.com/world/2020/jan/30/most-of-11m-trees-planted-in-turkish-project-may-be->

maintenance, especially in their early years.⁸⁵ When tree-planting campaigns neither consider nor address the concerns of local residents who are then expected to care for the trees, the campaigns fail.⁸⁶

However, there is some good news. When campaigns are designed with transparency and inclusivity from the very beginning, the results that emerge are worth the effort. Learning from New York City's earlier tree-planting mistakes, the NYC Urban Forest Agenda emphasized consultation and collaboration from its inception.⁸⁷ As a result of its intentional inclusion processes, the forestry plan it produced is sustainable and prioritizes both science and equity.⁸⁸

III. DOING THINGS DIFFERENTLY IN RESEARCH AND LAW

If we want things to be different, we must actually do things differently! And doing things differently needs to begin at the earliest phases of defining the social problems that lawyers, scientists, and doctors address. Wicked problems are multifaceted and ever changing. They require diverse perspectives, expertise, and resources at the earliest stages of problem identification to generate effective solutions. Collaboration is essential. This is not an easy or rapid process. Communities of color and poor communities often have good reasons to mistrust researchers whose interests in their situations are tied largely to the availability of grant funding.⁸⁹ Building trust takes time, effort, and intention.

A. RETHINKING OLD ASSUMPTIONS

One place to start is with research that lays the ground for social change. Radical research, paired with social-change lawyering, can be a

dead#:~:text=The%20ministry%20of%20agricul-
ture%20and,70%25%2C%E2%80%9D%20said%20Durmu%C5%9F [https://perma.cc/UYT3-9XX7].

⁸⁵ Jibreel Cooper, *Street Care 101*, BROOKLYN BOTANICAL GARDEN (Aug. 4, 2023), https://www.bbg.org/article/street_tree_care_101 [https://perma.cc/F3EL-J6WE].

⁸⁶ Lalisa Duguma et al., *From Tree Planting to Tree Growing: Rethinking Ecosystem Restoration Through Trees*, 15–17 (ICRAF, Working Paper No. 304, 2020), <https://apps.worldagroforestry.org/downloads/Publications/PDFS/WP20001.pdf> [https://perma.cc/V9AJ-VL4P].

⁸⁷ NYC URBAN FOREST TASK FORCE, NYC URBAN FOREST AGENDA: TOWARD A HEALTHY, RESILIENT, EQUITABLE AND JUST NEW YORK CITY 1, 33 (2023), <https://forestforall.nyc/wp-content/uploads/2021/06/NYC-Urban-Forest-Agenda-.pdf> [https://perma.cc/B5F6-D7H4].

⁸⁸ *Id.* at 32–36.

⁸⁹ Vickie L. Shavers et al., *Racial Differences in Factors That Influence the Willingness to Participate in Medical Research Studies*, 12 ANN. EPIDEM. 248, 248 (2002).

way to surface the wicked nature of these problems—to make them legible and therefore potentially amenable to new kinds of resolutions.

For example, in the past few years, US healthcare professionals phased out a race-based assessment of vulnerability to kidney disease that left Black Americans more than three times more likely to suffer kidney failure.⁹⁰ Kidney function is assessed by estimating glomerular filtration rate (eGFR) from blood levels of creatinine, a waste product filtered by the kidneys.⁹¹ The eGFR thus indicates how well a person's kidneys are working, with a higher eGFR signifying better kidney function. A 1998 study found that Black people had higher blood creatinine levels.⁹² Even though the authors noted that it was unclear whether this difference represented normal physiological differences or a higher level of kidney disease, the authors recommended that levels of concern for kidney disease be graduated based on race.⁹³ Relying on flawed studies that Black people had more muscle mass than white people, a widely used algorithm for assessing kidney function assigned Black patients an automatic 16 percent increase in their eGFR.⁹⁴ Lab reports for eGFR results provided two eGFR standards—one labeled [if Black].⁹⁵ Thus, there were functionally two different levels of concern—one, [if Black], and another, more sensitive level for everyone else.⁹⁶

Use of this [if Black] eGFR level to assess kidney function meant that Black patients with blood creatinine levels that would raise red flags in white patients were less likely to be diagnosed with kidney disease, or

⁹⁰ Prabhdeep Uppal et al., *The Case Against Race-Based GFR*, 8 DELA J. PUB. HEALTH 86, 90 (2022); Cynthia Delgado et al., *A Unifying Approach for GFR Estimation: Recommendations of the NKF-ASN Task Force on Reassessing the Inclusion of Race in Diagnosing Kidney Disease*, 32 J. AM. SOC. NEPHROL. 2994, 2994 (2021).

⁹¹ *Blood Test: eGFR (Estimated Glomerular Filtration Rate)*, AM. KIDNEY FUND. (Nov. 10, 2023), <https://www.kidneyfund.org/all-about-kidneys/tests/blood-test-egfr> [<https://perma.cc/E5CC-XMK3>].

⁹² C. A. Jones et al., *Serum Creatinine Levels in the US Population: Third National Health and Nutrition Examination Survey*, 32 AM. J. KIDNEY DIS. 992, 994 (1998).

⁹³ *Id.* at 998.

⁹⁴ NAT'L KIDNEY FOUND., FREQUENTLY ASKED QUESTIONS ABOUT GFR ESTIMATES 1, 6 (2014), https://www.kidney.org/sites/default/files/docs/12-10-4004_kbb_faqs_aboutgfr-1.pdf [<https://perma.cc/UTX9-8SX6>] (relying on a flawed study); Andrew S. Leavy et al., *A New Equation to Estimate Glomerular Filtration Rate*, 150 ANN. INT'L MED. 604, 605 (2009) (describing the formula with its [if Black] adjustment).

⁹⁵ The algorithm developers justified these outcomes with explanations like black people release more creatinine into their blood because they are more muscular. Leavy et al., *supra* note 94.

⁹⁶ Jones et al., *supra* note 92, at 993–94.

were diagnosed with earlier-stage disease.⁹⁷ Race became the reason to presume a specific Black individual with a low eGFR nevertheless faced a low disease risk, even though Black Americans overall suffer from kidney disease at much higher rates than their non-Black counterparts.⁹⁸ The results for individual health were devastating. In practice, use of this [if Black] coefficient meant that Black patients with kidney disease were forced to wait an additional two years compared to white patients before becoming eligible for kidney transplants.⁹⁹

The fact that medical schools now produce many more Black doctors steeped in the lived experience of their families and communities has altered the unquestioning acceptance of these kinds of existing practices, opening space to more directly interrogate racialized assumptions that were previously unquestioned.¹⁰⁰ By bringing a sociological understanding of race to medicine, kidney experts like Dr. Nwamaka Eneanyu, Dr. Susanne Nicholas, Dr. Mallika Mendu, and others challenged this treatment protocol.¹⁰¹ They documented the way this [if Black] coefficient elided how unequal environmental exposures, unequal access to healthcare, and racially discriminatory health policies compounded the kidney disease risks that Black Americans faced.¹⁰² Their research galvanized change. Faced with the prospect that their profession might be

⁹⁷ Susanne B. Nicholas, *Testing Kidney Function with Race-Free Values Offers a Better Health Picture*, UCLA HEALTH (Sept. 20, 2022), <https://www.uclahealth.org/news/kidney-function-race-free-egfr-values> [<https://perma.cc/TD6A-K2U7>] (describing the consequences of this [if Black] adjustment for a hypothetical patient); Vanessa Grubb, *Precision in GFR Reporting*, 15 CLIN. J. AM. SOC. NEPHROL. 1201, 1201 (2020).

⁹⁸ Kirsten L. Johansen, *US Renal Data System 2020 Annual Data Report: Epidemiology of Kidney Disease in the United States*, 77 AM. J. KIDNEY DIS. A7, A7–A8 (2021) (noting that rates of end stage renal disease were more than 2.5 times higher among Black Americans than white Americans).

⁹⁹ Zelnick et al., *supra* note 60.

¹⁰⁰ NOOR CHADHA ET AL., INST. FOR HEALING AND JUST. IN MED., TOWARD THE ABOLITION OF BIOLOGICAL RACE IN MEDICINE 3 (2020), <https://belonging.berkeley.edu/toward-abolition-biological-race-medicine-8> [<https://perma.cc/FM5R-XRS7>] (calling out medicine for framing racial health disparities in terms of biological difference and individual behavior rather than structural racism).

¹⁰¹ These researchers started from the position that race is a social construct. Nwamaka Denise Eneanya et al., *Reconsidering the Consequences of Using Race to Estimate Kidney Function*, 322 JAMA 113, 113 (2019) (pointing out that human genome studies have shown there are no inherent biological differences between races, and that the studies reporting Black people had greater muscle mass were flawed); *see also* Salman Ahmad et al., *Examining the Potential Impact of Race Multiplier Utilization in Estimated Glomerular Filtration Rate Calculation on African-American Care Outcomes*, 36 J. GEN. INTERNAL MED. 464, 464 (2020) (documenting the treatment disparities associated with the [if Black] coefficient).

¹⁰² Nicholas, *supra* note 97; *see also* Neil R. Powe, *Black Kidney Function Matters: Use or Misuse of Race?*, 324 JAMA 737, 738 (2020).

systematically harming Black kidney patients, the American Society of Nephrology and the National Kidney Foundation established a joint task force to remove racial bias from eGFR guidelines. Advocates for change like Drs. Eneanyu and Nicholas, along with Dr. Mallika Mendu, were appointed members.¹⁰³ The task force recognized the role structural racism plays in inequitable medical treatment, and noted the importance of challenging racist assumptions throughout all aspects of medicine.¹⁰⁴ In 2021, the task force issued a report recommending a new formula for calculating eGFR, one that eliminated the [if Black] coefficient.¹⁰⁵ Within six months, many testing laboratories had already changed their eGFR practices.¹⁰⁶ Better, more equitable care for all patients has been the result.¹⁰⁷

¹⁰³ Dr. Eneanyu explained the issue: “eGFR scores inform many clinical decisions; guidelines recommend a chronic kidney disease diagnosis at less than 60, a specialist referral at less than 30, and placement on a transplant list at less than 20. If we “correct” Black patients’ scores, we refer them for care too late.” Karen Brooks, *Filtering Bias Out of Kidney Testing*, PENN MED. MAG., Winter 2021, at 9. Other researchers documented that use of race coefficients in diagnosing kidney disease risked providing a lower level of care to those racialized as Black. Rouvick M. Gama et al., *Estimated Glomerular Filtration Rate Equations in People of Self-Reported Black Ethnicity in the United Kingdom: Inappropriate Adjustment for Ethnicity May Lead to Reduced Access to Care*, 16 PLOS ONE 1, 1–2 (2021), <https://pubmed.ncbi.nlm.nih.gov/34383841/> [<https://perma.cc/JDW5-2W72>].

¹⁰⁴ Cynthia Delgado et al., *Reassessing the Inclusion of Race in Diagnosing Kidney Disease: An Interim Report from the NKF-ASN Task Force*, 78 AM. J. KIDNEY DISEASES 103, 111 (2021). However, the Task Force rejected the blunt kind of race-blind decision-making that the Supreme Court endorsed, emphasizing that race-blind approaches could instead exacerbate health inequities by eliding the way that structural and individual racism impacts patient care. See also Luisa N. Borrell, *Race and Genetic Ancestry in Medicine—A Time for Reckoning with Racism*, 384 NEW ENG. J. MED. 474, 475 (2021) (laying out these concerns); Nancy Krieger, *Embodying Inequality: A Review of Concepts, Measures, and Methods for Studying Health Consequences of Discrimination*, 29 INT’L J. HEALTH SERVS. 295, 335 (1999). Thus, the Task Force called for race-conscious rather than race-based medicine. Jessica P. Cerdeno et al., *From Race-Based to Race-Conscious Medicine: How Anti-Racist Uprisings Call Us To Act*, 396 LANCET 1125, 1126 (2020). Importantly, the task force included Black kidney patients. See *What the New eGFR Calculation Means for Your Kidney Disease Diagnosis and Treatment*, NAT’L KIDNEY FOUND. (Oct. 4, 2022), <https://www.kidney.org/newsletter/what-new-egfr-calculation-means-your-kidney-disease-diagnosis-and-treatment> [<https://perma.cc/368Z-SN7U>].

¹⁰⁵ Delgado et al., *supra* note 90, at 3011; see also Leslie A. Inker et al., *New Creatinine- and Cystatin C-Based Equations to Estimate GFR Without Race*, 385 NEW ENG. J. MED. 1737, 1737 (2021) (listing Dr. Eneanya as second listed author); Chi-Yuan Hsu et al., *Race, Genetic Ancestry and Estimating Kidney Function in CKD*, 385 NEW ENG. J. MED. 1750, 1759 (2021).

¹⁰⁶ Jonathan R. Genzen et al., *Reported Awareness and Adoption of 2021 Estimated Glomerular Filtration Rate Equations Among US Clinical Laboratories, March 2022*, 328 JAMA 2060, 2060–62 (2022).

¹⁰⁷ Anthony N. Muir et al., *Effect of Adopting the New Race-Free 2021 Chronic Kidney Disease Epidemiology Collaboration Estimated Glomerular Filtration Rate Creatinine Equation on Racial Differences in Kidney Disease Progression Among People with Human Immunodeficiency Virus: An Observational Study*, 76 CLINICAL INFECTIOUS DISEASES 461, 465 (2023).

B. PARTNERING WITH COMMUNITIES TO PRODUCE KNOWLEDGE DIFFERENTLY

Producing scientific or academic knowledge need not re-exploit already overburdened communities. Community-based participatory research offers a completely different model rooted in a different vision of knowledge creation.¹⁰⁸ By including marginalized communities as full partners from the very beginning, this kind of research can amplify marginalized voices and build community skills, solidarity, and power.¹⁰⁹ These practices allow for better, more inclusive problem statements, which, in turn, open new solution pathways. Some academics are already developing research collaborations that go beyond the walls of the academy.¹¹⁰ Often these collaborations are committed to a kind of mutual learning that evolves with the changing nature of wicked problems.¹¹¹

The late Dr. Steve Wing was among the best-known and most effective practitioners of this kind of research. An epidemiologist¹¹² by training, Wing “studied topics that other scientists wouldn’t touch, and he did so in collaboration with the people most affected.”¹¹³ He collaborated with, and published with, North Carolina community members suffering devastating environmental and health impacts from a form of industrial livestock production called CAFOs (Concentrated Animal Feeding

¹⁰⁸ Nina Wallerstein & Bonnie Duran, *The Conceptual, Historical, and Practice Roots of Community Based Participatory Research and Related Participatory Traditions*, in COMMUNITY BASED PARTICIPATORY RESEARCH FOR HEALTH 27, 27 (2002).

¹⁰⁹ This is a description that will be familiar to community lawyers, who work alongside marginalized communities, viewing them as vital partners for problem-solving. See, e.g., Karen Tokarz et al., *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 364 (2008) (identifying core components of community lawyering, including: 1) working collaboratively with community groups to identify and address issues; 2) focusing on community empowerment, and social and economic justice; and 3) fostering systemic and structural change).

¹¹⁰ One remarkable example is the participatory legal scholarship collaboration between Drexel Law Professor Rachel López and Terrell Carter and Kempis Songster, two incarcerated co-authors. Terrell Carter, Rachel López & Kempis Songster, *Redeeming Justice*, 116 NW. U. L. REV. 315, 315–16 (2021). The group wrote together about the right to redemption. *Id.*

¹¹¹ VALERIE A. BROWN ET AL., TACKLING WICKED PROBLEMS THROUGH THE TRANSDISCIPLINARY IMAGINATION 296 (2010).

¹¹² Epidemiologists are public health workers who study patterns and causes of illness. See *Occupational Outlook Handbook: Epidemiologists*, BUREAU LAB. STAT. (Sept. 6, 2023) <https://www.bls.gov/ooh/life-physical-and-social-science/epidemiologists.htm> [https://perma.cc/YDF7-J5QX]. They typically hold degrees beyond the college level (either a Masters of Public Health or a PhD). *Id.* Many also have medical degrees. *Id.*

¹¹³ Virginia T. Guidry, *In Memoriam: Steve Wing*, 125 ENV’T HEALTH PERSPS. A1, A1 (2017).

Operations).¹¹⁴ The team began by documenting the structural racism that steered this noxious polluting infrastructure into Black communities.¹¹⁵ They then documented the disproportionate health burdens this industry placed on Black North Carolinians¹¹⁶ and how it negatively impacted quality of life.¹¹⁷ Wing also wrote about the connection between how his collaborators were exposed to environmental hazards from industrial hog farms and wider manifestations of structural racism.¹¹⁸ Wing's liberation science explicitly confronts the wicked nature of the structural racism behind disproportionate impacts and seeks to deploy academic research in service of solving the social and environmental problems faced by marginalized communities.¹¹⁹ This kind of research flows naturally into action. It offers a vision of research success anchored in real world impacts, rather than in the number of times an article is downloaded or cited.¹²⁰ Thus, community-based research shifts the measure of research success away from its impact on the researcher's influence within academic circles to its impact on the community's lived experience.

¹¹⁴ The defining characteristic of a CAFO is the high number of animals raised in a very small space. See *CAFOs*, N.C. ENV'T. JUST. NETWORK, <https://ncejn.org/cafos/> [<https://perma.cc/P3ZY-J9RP>]. These operations produce enormous amounts of waste, and there is very little regulation governing what happens to that waste. *Id.* In North Carolina, it is typically channeled into open-pit lagoons and then sprayed onto fields as fertilizer. *Id.* The accompanying stench and airborne particulates dramatically impact the health and quality of life for those forced to live in proximity to these operations. *Id.*

¹¹⁵ Steve Wing et al., *Environmental Injustice in North Carolina's Hog Industry*, 108 ENV'T HEALTH PERSPS. 225, 225–26 (2000).

¹¹⁶ Steve Wing et al., *Air Pollution from Industrial Swine Operations and Blood Pressure of Neighboring Residents*, 121 ENV'T. HEALTH PERSPS. 92, 94 (2013); Leah Schinasi et al., *Air Pollution, Lung Function, and Physical Symptoms in Communities Near Concentrated Swine Feeding Operations*, 22 EPIDEMIOLOGY 208, 210 (2011).

¹¹⁷ Christopher D. Heaney et al., *Relation Between Malodor, Ambient Hydrogen Sulfide, and Health in a Community Bordering a Landfill*, 111 ENV'T. RES. 847, 851–52 (2011); Steve Wing et al., *Integrating Epidemiology, Education, and Organizing for Environmental Justice: Community Health Effects of Industrial Hog Operations*, 98 AM. J. PUB. HEALTH 1390, 1395 (2008); Steve Wing et al., *Air Pollution and Odor in Communities Near Industrial Swine Operations*, 116 ENV'T HEALTH PERSPS. 1362, 1362 (2008).

¹¹⁸ Steve Wing, *Whose Epidemiology, Whose Health?*, 28 INT'L J. HEALTH SERVS. 241, 247–51 (1998).

¹¹⁹ See generally STEVEN H. EMERMAN ET AL., *LIBERATION SCIENCE: PUTTING SCIENCE TO WORK FOR SOCIAL AND ENVIRONMENTAL JUSTICE* (2012); see also The Center for Community Engagement, *Environmental Justice, and Health 2022 Conference Day 2: Environmental Justice and Liberation Science*, YOUTUBE (Aug. 12, 2022), <https://www.youtube.com/watch?v=O780NMHGjPc>. Two of the participants, Luz Guel and Dawn Roberts-Semple are members of the community research coalition described *infra* Part IV.

¹²⁰ See *How to Measure Researcher Impact*, N.C. STATE U. LIBRS., <https://www.lib.ncsu.edu/measuring-research-impact/your-impact> [<https://perma.cc/QLF2-FRX3>] (explaining how research impact is conventionally assessed).

Wing's collaborative, community-based research led to successful litigation brought by Black North Carolinians against Smithfield, a global hog-producer conglomerate.¹²¹ In rapid succession, the plaintiffs won five jury verdicts, obtaining millions of dollars in damages.¹²² In a decision upholding the nuisance verdict and the company's liability for compensatory and punitive damages, the Fourth Circuit found that there was evidence from which the jury could conclude that the company exhibited "wanton or willful disregard of the neighbors' rights to enjoyment of their property."¹²³ Writing in concurrence, Judge Wilkenson explicitly called out the structural racism at the core of the industry's practices:

At the end of all this . . . lies an uncomfortable truth: these nuisance conditions were unlikely to have persisted for long—or even to have arisen at all—had the neighbors . . . been wealthier or more politically powerful. . . . It is well-established—almost to the point of judicial notice—that environmental harms are visited disproportionately upon the dispossessed—here on minority populations and poor communities.¹²⁴

This decision was a huge victory for the coalition of community groups, advocates, and scientists. However, it did not tame the structural racism that allowed this problem to develop. Indeed, demonstrating exactly how wicked problems evolve and persist, the North Carolina legislature responded to the structural racism these lawsuits revealed by using its power to block any future lawsuits. The legislature amended the state's Right to Farm Act to all but exempt hog farms from nuisance law,¹²⁵ thereby making future nuisance suits against hog farmers virtually impossible.¹²⁶ The Biden Administration recently rejected petitions brought on behalf of these same community groups advocating for stronger regulation

¹²¹ McKiver et al. v. Murphy-Brown LLC, 980 F.3d 937, 947–48 (4th Cir. 2020).

¹²² Barry Yeoman, *Here are the Rural Residents Who Sued the World's Largest Hog Producer Over Waste and Odors—and Won*, FOOD & ENV'T REP. NETWORK (Dec. 20, 2019), <https://thefern.org/2019/12/rural-north-carolinians-won-multimillion-dollar-judgments-against-the-worlds-largest-hog-producer-will-those-cases-now-be-overturned/> [https://perma.cc/Z9P7-4CZY].

¹²³ *McKiver et al.*, 980 F.3d at 969. Despite upholding the liability for punitive damages, the court remanded for recalculation, determining that improper evidence had been admitted. *Id.* at 974.

¹²⁴ *Id.*

¹²⁵ The 2018 amendments to the Right to Farm Act prohibited any nuisance suit not brought within one year of a farm beginning operation, and exempted hog farms from any nuisance liability unless they were first cited for state civil or criminal penalties. N.C. GEN. STAT. § 106-701 (2018).

¹²⁶ The 2017 Amendments to the Right to Farm Act limited damages for this kind of nuisance to reductions in the fair market value of land. *Id.* § 106-702.

of hog farms.¹²⁷ Instead, the EPA announced that it was “launching a comprehensive evaluation of potential areas for improvement” of the Clean Water Act regulatory requirements for these CAFOs.¹²⁸ This fight continues.

C. LAWYERS CAN BE PART OF THESE COLLABORATIONS: A PERSONAL EXAMPLE

Perhaps the best news about this kind of participatory, community-led research is that just about anyone can do it. All it takes is a little humility, a little chutzpah, and a willingness to veer slightly out of one’s lane. With the requisite boldness and flexibility, communities and researchers can team up to seek answers to the pressing questions marginalized communities have about their own situations.¹²⁹

As an example, we (the authors) share our own experience building a collaborative research group and bringing environmental justice litigation. Our multiyear environmental justice collaboration for Jamaica, Queens, began in 2020 with a Zoom chat message. The Eastern Queens Alliance was hosting a webinar, “Environmental Justice Unwrapped,” featuring “father of environmental justice” Dr. Robert Bullard, legendary environmental justice organization WEACTION founder and leader Peggy Shepard,¹³⁰ and CUNY law professor Rebecca Bratspies.¹³¹ Community Leader

¹²⁷ Letter from Radhika Fox, Office of Water Assistant Administrator, U.S. EPA, to Food & Water Watch (Aug. 15, 2023), <https://www.foodandwaterwatch.org/wp-content/uploads/2023/08/Final-Response-to-2017-CAFO-Petition6863.pdf> [<https://perma.cc/73UU-BBJH>].

¹²⁸ *Id.*

¹²⁹ See generally Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821, 879 (2021) (recognizing community groups as sites of expert knowledge production, and arguing that legal scholars should produce legal scholarship in solidarity with social movements).

¹³⁰ *Peggy Shepard*, WE ACTION ENV’T JUST., <https://www.weaction.org/person/peggy-shepard/> [<https://perma.cc/7ATA-WQZW>].

¹³¹ Eastern Queens Alliance, Inc., *Environmental Justice Unwrapped*, FACEBOOK (Jul. 23, 2020), <https://www.facebook.com/watch/?v=793925594745414>. The Eastern Queens Alliance is a grass roots environmental justice group that fights for quality of life in the too often overlooked parts of South East Queens, including Jamaica. *A Federation of Civic Organizations*, E. QUEENS ALL., INC. <https://easternqueensalliance.org/> [<https://perma.cc/Z8HQ-3XJN>]. Dr. Bullard is the author of eighteen books about environmental justice, including *DUMPING IN DIXIE: RACE CLASS AND ENVIRONMENTAL QUALITY* (1990), which is generally considered the first book in the field. *About Our Founder*, BULLARD CTR. ENV’T & CLIMATE JUST., <https://www.bullardcenter.org/about/our-founder> [<https://perma.cc/YCD6-83MT>]. Peggy Shepard co-founded WE ACTION and serves as its executive director. WE ACTION ENV’T JUST., *supra* note 130. She is the co-chair of the White House Environmental Justice Advisory Committee, the Chair of the New York City Environmental Justice Advisory Board and is a former chair of the National Environmental Justice Advisory Council. *Id.*

and Queens Solid Waste Advisory Board member Andrea Scarborough sent a chat message to Professor Bratspies saying, “We are having trouble with a waste transfer station, can we talk?” At the same time, high school teacher Danielle Dubro-Hammer also sent a chat message looking for opportunities for her students to get involved in environmental justice advocacy in their community.

Thus began a collaboration that rapidly expanded to include representatives from multiple local civic associations, public health specialists Luz Guel and Dr. Maida Galvez,¹³² and York College environmental scientist Dr. Dawn Roberts-Semple.¹³³ The common goal was to pool our talents and skills to improve the quality of life for a community overburdened by negative impacts from waste-transfer stations, including odor, noise, leachate, and particulate pollution.

There were many phone and Zoom meetings dedicated to building trust and to establishing a meaningful, mutual-learning collaboration. In a process facilitated by Luz Guel, we developed our understanding of community-based participatory research (CBPR) and identified the principles that would guide our environmental justice advocacy collaboration.¹³⁴ While many scholars have articulated CBPR principles in academic terms,¹³⁵ we chose to rely on the principles developed by the National Black Leadership Initiative on Cancer because their work was more clearly grounded in community building.¹³⁶ These principles include: (1) We are family; (2) It takes a village; (3) Come as you are; (4) Just stand (recognize the cyclical nature of research and knowledge); (5) Focus on health, wholeness, and healing; (6) Go tell it to the mountains (recognizing

¹³² Maida P Galvez, MD, MPH, MOUNT SINAI, <https://profiles.mountsinai.org/maida-p-galvez> [<https://perma.cc/6TBX-7SCE>].

¹³³ Dr. Roberts-Semple Profiled in GeoScience Publication, YORK COLLEGE/CUNY, <https://www.york.cuny.edu/news/2021/dr-roberts-semple-profiled-in-geoscience-publication> [<https://perma.cc/FBS6-KQ5X>].

¹³⁴ Selina Smith et al., *Community Based Participatory Research Principles for the African American Community*, 5 J. GA. PUB. HEALTH ASS'N 52, 52 (2015).

¹³⁵ Barbara A. Israel et al., *Review of Community-Based Research: Assessing Partnership Approaches to Improve Public Health*, 19 ANN. REV. PUB. HEALTH 173, 173 (1998). We wound up collaborating with Prof. Amy Schulz on a Spark magazine article describing our collaboration. Rebecca Bratspies et al., *No Sacrifice Zones in Research Either!*, MEDIUM (June 5, 2022), <https://medium.com/national-center-for-institutional-diversity/no-sacrifice-zones-in-research-either-e41321520f3b> [<https://perma.cc/FU43-R3TV>]. This article then morphed into a Zoom seminar on equitable research partnerships sponsored by the National Center for Institutional Diversity at the University of Michigan. National Center for Institutional Diversity, *Equitable Virtual and Hybrid Researcher-Community Partnerships*, YOUTUBE (Nov. 1, 2022), https://www.youtube.com/watch?app=desktop&v=_utDonQU7f4.

¹³⁶ Smith et al., *supra* note 134, at 53–55.

the role of community in spreading knowledge); and (7) We shall overcome, someday.¹³⁷ Together with the Jemez Principles for Democratic Organizing,¹³⁸ these were the values we used to shape our research, and we continue to use them as criteria against which we measure our work. By satisfying these criteria, we hoped to engage in research that was not only community-based and participatory but also laid the groundwork for transformative social change.

With a seed grant from the Icahn School of Medicine at Mount Sinai and research support from CUNY law student Jill Sigman,¹³⁹ we began to build both our legal and our policy case. We submitted information requests under New York's Freedom of Information Law.¹⁴⁰ We then combed through permits and years of inspection reports, sorted out complex state and local regulatory regimes, and gathered first-person testimony about the impacts the facilities were having on residents who lived nearby and community members who used the public park directly across the street from the facilities. At every stage of this process, the coalition made sure that we were operating by consensus and that residents' voices and priorities were driving our activities.¹⁴¹ Our coalition held rallies, testified at city council,¹⁴² and spread neighborhood awareness about the public health and environmental issues associated with the waste-transfer stations.

Once we had a thorough understanding of the issues and our priorities, we partnered with Riverkeeper, Baykeeper, New York Lawyers for the Public Interest (NYLPI), and Superlaw Group attorney Edan Rotenberg to sue the waste-transfer stations. The lawsuit alleged multiple Clean

¹³⁷ *Id.*

¹³⁸ Jemez Principles for Democratic Organizing (Dec. 1996) (unpublished document), <https://www.ejnet.org/ej/jemez.pdf> [<https://perma.cc/G2GU-U9Z8>].

¹³⁹ Jill Sifah Sigman, Waste Equity and Law: An Analysis of the Legal Context Surrounding Two Permitted Waste Transfer Stations in Jamaica Queens (2020) (unpublished comment) (on file with author).

¹⁴⁰ N.Y. PUB. OFF. LAW §§ 84–90 (McKinney 2023).

¹⁴¹ For a more detailed description of our process, see Bratspies et al., *supra* note 135.

¹⁴² *A Local Law to Amend the Administrative Code of the City of New York, in Relation to Increasing Transfer Waste Station Permitted Capacity for Export by Rail: Hearing on Int. 2349-A Before the Comm. on Sanitation & Solid Waste Mgmt.*, 63 (testimony of CUNY Law Professor Rebecca Bratspies), <https://nyc.legistar.com/LegislationDetail.aspx?ID=4985169&GUID=2DA959ED-1EB6-440A-B695-9A7B192B0718&Options=ID%7cText%7c&Search=2349> [<https://perma.cc/S9E8-28RX>]; *id.* at 97 (testimony of Community Leader Barbara Brown on behalf of the Eastern Queens Alliance); *id.* at 140 (testimony of CUNY Law Student Natasha Bunam on behalf of NYLPI); *id.* at 144 (testimony of Community Leader Andrea Scarborough, coalition member); *id.* at 147 (testimony of community member Mary Arnold); *id.* at 151 (testimony of Community Leader Walter Dogan).

Water Act violations, as well as pendent state-law nuisance claims.¹⁴³ Brave residents were named plaintiffs alongside the environmental organizations.¹⁴⁴ Ours was a very different origin story from the kind of impact litigation in which lawyers identify a claim and then look for plaintiffs. For example, before the lawsuit was filed, we developed clear understandings about what outcomes would be acceptable to all the plaintiffs.¹⁴⁵ And, when strategic decisions about litigation had to be made, that was a task for the group, not solely for the lawyers.

As is typical, the litigation was a long, slow process, but the lawyers regularly updated the community on what was happening.¹⁴⁶ After filing unsuccessful motions to dismiss, the waste-transfer stations agreed to settle the lawsuit.¹⁴⁷ In that settlement, the waste-transfer stations committed to operational and facilities changes that will not only bring them into compliance with the Clean Water Act but should also drastically reduce their impact on the community.¹⁴⁸ Meanwhile, Luz Guel and Dr. Roberts-Semple spearheaded a grant-writing campaign that successfully obtained more than \$1 million in EPA funding to monitor conditions in the community around the waste-transfer stations.¹⁴⁹ Community leaders are co-Primary Investigators on this project.

With creativity, collaboration, and peer-to-peer relations, we have tried to cultivate a different vision of what science and law can look like

¹⁴³ Complaint at 44–57, *Raritan Baykeeper Inc. v. American Recycling Management LLC*, No. 21-5211 (E.D.N.Y. Sept. 20, 2021), <https://www.nylpi.org/wp-content/uploads/2021/09/001-Complaint.pdf> [<https://perma.cc/SN4Y-LBHW>].

¹⁴⁴ Residents expressed some concerns about retaliation. For that reason, Baykeeper was the lead plaintiff.

¹⁴⁵ The community members had concerns that the lawyers and organizational plaintiffs would abandon them if the waste transfer stations agreed to Clean Water Act claims but not the environmental justice claims. By airing these concerns and taking them seriously, we were able to agree on acceptable settlement parameters for all the plaintiffs.

¹⁴⁶ One caution, the transition from political advocacy to litigation can be tricky. We had many discussions about the scope of attorney-client privilege, and who could talk to whom about litigation, rather than public advocacy strategies.

¹⁴⁷ *Environmental Justice Advocates and Southeast Queens Waste Transfer Station Operators Reach Settlement in Clean Water Act and Nuisance Lawsuit*, NYPLI (Jan. 4, 2023), <https://www.nylpi.org/environmental-justice-advocates-and-southeast-queens-waste-transfer-station-operators-reach-settlement-in-clean-water-act-and-nuisance-lawsuit/> [<https://perma.cc/J776-AREP>].

¹⁴⁸ Stipulation of Settlement at 3–5, *Raritan Baykeeper Inc. v. American Recycling Management LLC*, No. 21-5211 (E.D.N.Y. Nov. 22, 2022), <https://www.nylpi.org/wp-content/uploads/2023/01/55-Regal-Settlement.pdf> [<https://perma.cc/VC4X-DL5A>].

¹⁴⁹ *EPA Funds Cmty.-Led Investigation of the Impact of Waste Transfer Stations on Air Quality & Odors in Jamaica, Queens*, ICAHN SCH. MED. MOUNT SINAI (Apr. 7, 2023), <https://mountsinaiexposomics.org/a-community-led-investigation-of-the-impact-of-waste-transfer-stations-on-air-quality-and-odors-in-jamaica-queens/> [<https://perma.cc/UP4P-SUSU>].

and what we can collectively accomplish when underserved communities set the priorities. At every step of this process, we were keenly aware of the wicked nature of structural racism and the need to continually adapt our response strategies.

IV. CONCLUSION: TRAINING A NEW GENERATION TO CONFRONT THE WICKED PROBLEM OF STRUCTURAL RACISM

There is a growing call for including community-focused training in a host of professions that were traditionally seen as elite and unconnected to overburdened communities. Writing about the need to confront the wicked problem of structural racism in medical training, Nicholas Kawa and his coauthors make a compelling case that “training researchers to work effectively in inclusive, transdisciplinary teams that consider both the complexities and politics of wicked problems, will lead to more sustainable and equitable outcomes, even if the problems are never permanently solved.”¹⁵⁰ Among the skills they identify as essential for this process is the ability to collaborate effectively with stakeholders and team members with diverse backgrounds, life experiences, and ways of knowing.¹⁵¹ This bold recognition of the importance of teaching these skills finds an echo in the interpretation to ABA Standard 302(d), which requires law school curricula to include “other professional skills needed for competent and ethical participation as a member of the legal profession.”¹⁵² Specifically, Interpretation 302-1 defines “other professional skills” to include collaboration and cultural competence.¹⁵³ In 2022, Standard 303(c) was revised to emphasize that law schools must “provide education to law students on bias, cross-cultural competency, and racism.”¹⁵⁴ Interpretation 303-6 emphasizes the centrality of these skills to professional legal identity and to lawyers’ obligation to promote a justice system that “eliminates bias, discrimination, and racism in the law.”¹⁵⁵ This ABA standard builds not only on developments in the medical field, but also on a long history

¹⁵⁰ Kawa et al., *supra* note 36, at 190.

¹⁵¹ *Id.*

¹⁵² AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, at 18 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch3.pdf [<https://perma.cc/R4LW-FBB4>].

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 19.

of legal scholars working in a wide array of fields whose writings have documented the impacts of structural racism on the legal profession.¹⁵⁶ To date, these new ABA standards have not been fully fleshed out. But taking a page from medical education, the standards might be a way to inculcate awareness of “the profoundly different epistemological and ontological assumptions that stakeholders have about the problems at hand, and learning how to work across such differences in practical and equitable ways.”¹⁵⁷ Specifically, this would involve a commitment to rethinking the role between lawyer and client, especially in impact litigation. Lawyers will have to be more open to collaborative processes when deciding (1) what questions get investigated, and what the research parameters will be; (2) whose voices matter in identifying possible solutions; and (3) once there is a project or a lawsuit, who has access to the data and who is an author in the resulting publications. These choices matter. The good news is that nonextractive practices actually lead to posing different questions, investigating different solutions, and sharing research through different channels.**

¹⁵⁶ Prof. Vernilla R. Randall has collected and curated much of this scholarship. See RACE, RACISM, AND THE LAW, <https://racism.org/articles> [<https://perma.cc/W5P9-LNS7>].

¹⁵⁷ Kawa, *supra* note 36, at 191.

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