Cause Lawyering and Social Movements: Can Solo and Small Firm Practitioners Anchor Social Movements?

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ABSTRACT

As the demand for affordable legal services grows, law schools and the legal profession struggle to respond. By examining lessons from successful social movements in the last century, *Cause Lawyering and Social Movements: Can Solo and Small Firm Practitioners anchor Social Movements* looks at the Law School Consortium Project and its potential to participate in and anchor the social movements of our time. The collaboration of the law schools, networks of solo and small firm attorneys and activists at the local, regional and national level provide key elements for powerful change given the technological developments of the 21st century.

The question of whether solo and small firm practitioners can be cause lawyers has been discussed by many interested in the topic of cause lawyering. In the first Cause Lawyering volume compiled and edited by Austin Sarat and Stuart Scheingold, several authors examine actual small and solo firms where the lawyers clearly meet the criteria articulated by Scheingold and Sarat in Something to Believe In: "At its core, cause lawyering is about using legal skills to pursue ends and ideals that transcend client service – be those ideals social, cultural, political, economic or indeed, legal." (Sarat et al 2004: 3) It appears that this question is settled. What is not settled is whether solo and small firm practitioners can anchor larger social movements in the United States. In an attempt to answer this question, this essay will first examine what differentiates social movements from causes, and what roles lawyers might play. Included in this discussion will be an analysis of the changes happening in social movements in the U.S., and the implications for lawyering. Second, there will be an examination of the last century's most successful social movement in which lawyers played an integral role, trying to extract the elements that seem essential, paying particular attention to the National Association for the Advancement of Colored People (NAACP) and the NAACP Legal Defense Fund (LDF). Finally, this work will examine a model in development, the Law School Consortium Project (LSCP), to see if the critical elements exist or can be developed for supporting current social movements. It will look at the LSCP as the mechanism by which law schools and practitioners make it possible to meet the challenge of access to justice and create a space in which "attorneys...unify profession and belief...and...maximize the consonance between moral values and professional practice." (*ibid.*, 73) It will also examine ways in which the LSCP might equip and support solo and small firm cause practitioners in social movements, and connect those practitioners to the movements themselves.

Social Movements and Lawyers

Michael McCann uses Tilly's 1984 definition of a social movement:

"...a sustained series of interactions between powerholders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise of power, and back those demands with public demonstrations of support." (McCann 2004: 508)

McCann clarifies by suggesting that "...social movements aim for a broader scope of social and political transformation than do more conventional political activities...they are animated by more radical inspirational visions of a different, better society." (*ibid.*, 509) McCann goes on to use a legal mobilization theory by which to analyze the role of attorneys in social movements. He asserts that there are three phases: the first phase, the "rights consciousness raising" phase that includes both agenda setting and defining the overall "opportunity structure;" the second phase of leveraging legal theories; and the final "legacy" phase during which there are attempts to institutionalize victories gained through leveraging. He asserts that lawyers are most helpful to social movements in the first and final phase, though most helpful in the first phase: "the first of these entails the process of 'agenda setting,' by which movement actors draw on legal discourses to 'name' and to challenge existing social wrongs or injustices....to make possible the previously unimaginable, by framing problems in such a way that their solution come to appear inevitable."(*ibid.*, 511)

A "cause," on the other hand is something a little more ephemeral.

"Our basic premise is that a 'cause' is not an objective fact 'out there.' A cause, rather, is a socially constructed concept that evolves, if at all, through a process in the course of which experiences, circumstances, memories, and aspirations are framed in a particular way....Yet, inasmuch as the reality of a cause is a constructed and negotiated experience, it is in the very act of legal representation that a cause...is asserted or defused, comprehended or dissolved, recognized or silenced. Cause lawyers, in short, are not simply carriers of a cause but are at the same time its producers: those who shape it, name it, and voice it." (Shamir and Chinski 1998: 231)

Shamir and Chinski suggest that a cause can be or is created in the interaction of a person or group of people and the lawyer with whom they interact. This process is, at its core, the

framing of the problem to be solved in the language of justice and fairness that the legal system of the appropriate society can address. This may well be phase one of the building of a social movement, and critical to those who have an issue or grievance within the system. But it implies something narrower than a movement. I adopt this general frame for the purposes of this discussion. Cause lawyers, therefore, become those who are willing to engage in framing issues and fighting for those who bring injustices to them. But a social movement implies a more transforming process of both the group who identify with a particular cause and the society in which the movement is happening. It implies a momentum into the basic cultural mores and structures of the society that cannot be addressed in one particular case, statute or regulation. Instead, it is about using cases, statutes, regulations and much more for a transformational assertion of a fundamental restructuring of beliefs and actions of a society.

While there are elements of McCann's analysis that are helpful in thinking about the role of solo and small firms in social movements, there are several assumptions that seem to be implicit in his structure of analysis: first, both the movement and the opposition/power base are centralized; second, legal responses are rational and consistent; and third, litigation theories and victories lead to a change in the policy and implementation of the institutions that represent the anti-cause of the movement. All of these assumptions, I would assert, emerge out of a 20th century and linear perspective of social engagement for change. Technology and globalization are changing our basic assumptions about organizing and what constitutes legal engagement with a social movement, therefore changing the role of lawyers and the clients.

Transformation of the rules of engagement

Technological advances allow lawyers to take a more active role as co-producers of social movements. The 2004 United States presidential elections saw a shift in organizing and

social activism that is still a little mind-boggling. It was the first time the power of technology was effectively used to create and respond to a need for organization and social dialogue. Millions of people relied on political and/or social commentary web logs or "blogs", websites and information not represented in the mainstream media, for their information and analysis. People met on the internet, worked together, voted for policies, chose media spots and set priorities on a daily (and sometimes hourly) basis. This organizing was highly decentralized in its character, took on some fundamental issues of democratic organization and interest, and, as the election unfolded, created localized communities of interest for engagement at the most local level, as well as creating a national voice for collective interests as defined through both structured and unstructured dialogue. This direct contact and coordinated dialogue by and among likeminded individuals was new, invigorating and fast paced. While some of it became linked to a political campaign, this technique was used by both left and right wing activists alike. This dialogue was akin to an open-ended forum for issue development and discussion.

Another interesting element of this new reality was the quick cycling of stages, if they are stages at all. The "conversation" was open to all who were interested, and lawyers who were paying attention began to mobilize and develop legal resources to support, respond to, and take part in the conversation as it unfolded. There was timely mobilization of attorneys to critical states where legal challenges to citizen's rights to vote were expected. Many of those lawyers who responded to the call practice in solo practice and small firm settings. These cause lawyers were able to structure their responses as the issues began to unfold, both in creating core groups who were researching and developing legal packets and strategies as well as those who were deployed and/or self-deployed to be available as necessary. They were also able to evaluate, shape and be part of the coordinated response, feeding new information back into the conversation. These quick evaluations and reevaluations were near

real-time, which changed not only the legal work but the ability to be part of a team that includes a vast array of voices in the analysis, and the ability to mobilize resources to a point.

This ability to have access to information, social dialogue, strategic discussions and model development allows for both a localized and efficient character to a social movement that is substantially different than what has been studied previously, and argues for new methods of analysis and models of response. While McCann's assessment that "legal mobilization politics typically involves reconstructing legal dimensions of inherited social relations, either by turning official but ignored legal norms against existing practices, by reimagining shared norms in new transformative ways or by importing legal norms from some other realm of social relations into the context of the dispute," (McCann 2004: 510) he overlooks the possibility that lawyers can be co-producers of both the process and the outcome of the social movement. While this was and is a method of work that is being implemented primarily in community change efforts at the local level, this model most effectively articulates the change in the process in which the social change efforts of the election worked. "Rather than an agent presenting a 'finished product' to the citizen, agent and citizen together produce the desired transformation." (Whitaker 1980: 240) In the context of social movements, technology allows us to implement a co-production strategy that from the beginning to the conclusion includes both attorneys and citizens in the conversation/dialogue about the social issue or cause, including long term strategy and short term tactics. Further, it allows linkages and deployment of resources for highest and best use of talent across a scope of issues.

This shift in process allowed by technology provides for a more rapid and cyclical response to problems that become causes (through definition and articulation of rights and remedies), but it also creates the mechanism to link the individual causes in near real-time to a significantly broader community of like-minded people who may then step up to the cause

plate and turn it into a social movement – the transformational engagement of fundamental structures- in a much more timely manner. The painstaking organizing needed for a social movement in the 1940s may well be replaced with the model where, within days or weeks, substantial numbers of people around the globe are mobilized to take to the streets to oppose an impending military action. In this model, the solo or small firm practitioner is not disadvantaged by her choice of practice venue if she is "linked" with like-minded attorneys working with those citizens bringing forth their problems. If those with grievances have access to lawyers who can articulate their grievance, then the possibility of a new cause, and a new (or revived) social movement arises.

The Role of Solo and Small Firm Practitioners in the Delivery of Legal Services in America

In the town where I grew up there were two lawyers serving all the interests of the community members. In cases brought to trial, one lawyer was appointed to prosecute while the other worked on behalf of the defense. They handled all of the criminal and civil matters in town, knew the basic outlines of the financial conditions of the families in the town, and provided a broad array of services, including pro bono services, to all who came in the door. As American communities become more economically isolated, the poor and working poor have an even more difficult time locating legal services. As Auerbach reminded us, "The country lawyer assured equal opportunity, social mobility, and professional respectability for the man of humblest origins, thereby preserving the democratic flank of the profession." (Sarat and Scheingold 2004: 30)

The only solo and small firm practitioners that appear to be locating in low income communities today are those with criminal practice areas. But the needs of low income people are particularly fierce in areas of consumer protection and benefits, both job related and government sponsored, housing, family law matters, and issues surrounding immigration

and residency. But establishing a solo or small firm practice in a low income community is difficult to do. Developing enough of a bread and butter practice to sustain the "low bono"¹ need is a challenge, in addition to understanding and responding to these matters as part of larger social movements that can nourish and link both the body and soul for the practitioner and the client.

In this country, a much higher percentage of minority and women law graduates begin their own practices right out of law school. The reasons for this phenomenon are multi layered, but include continued exclusion within the profession (Iwaton: B3), and perhaps continued challenges for the students who are non-white and non-male to compete in a curriculum crafted by a predominately white male faculty (AALS website). But these graduates, many of whom are more likely to have come from low income backgrounds, are also more likely to provide low bono and pro bono services to those who are in need. These are the cause lawyers examined by Aaron Porter in his article *Norris, Schmidt, Green, Harris, Higginbotham & Associates: The Sociological Import of Philadelphia Cause Lawyers*:

"Where the personal needs and the social needs of communities converge with the interests of the cause lawyers, the mutual needs of both can be addressed, as we see in the civil right movement's efforts against white domination of other racial groups." (Porter 1998: 158)

Porter's examination of the role of the African American firm of Norris, Schmidt, et al. in Philadelphia clearly shows the importance of the independent firm for African American lawyers. While this examination was centered in the years between 1950 and 1980, statistics show that these lessons continue to hold true.

"As a consequence of racial and social inequities in our social structure, the practices of black lawyers, including the creation of their professional institutions and bar associations and their involvement in larger social movements against an oppressive white social system fall within the category of fighting for equality under the law and share that ethos. Black lawyers were in effect always involved in cause lawyering." (*ibid.*, 157)

While many of those firms are solo and small firm practices, they struggle to find economic success while continuing to serve those in their communities with the greatest need. For cause lawyers in solo and small firms that are rooted in minority communities, the struggle to survive will continue to intensify with the economic times we experience now and in the future.

Even if they are not minority and women practitioners, cause lawyers in private practice have been an important part of the social movement for justice in our country. John Kilwein's examination of the role of twenty nine lawyers in private practice in Pittsburgh, Pennsylvania is an important work in understanding the lives and choices of these attorneys.

"For this project, a cause lawyer is defined as an attorney, in private practice, who focuses on the cause of improving the condition of some identifiable portion of the low income community and other disadvantaged citizens of Pittsburgh. Added to this definition is Menkel-Meadow's notion that by engaging in this kind of work, the cause lawyer incurs personal, physical, economic, or social status risks." (Kilwein 1998: 182)

Kilwein identifies several important elements of cause lawyers who choose private practice, one of which is the continuum of ways in which they practice. (*ibid.*, 183-186) From individual representation to some combination of individual representation and impact or mobilization lawyering, the spectrum of ways that they chose to deliver services was also linked to the way they understood the need. For those who provided primarily individual pro bono representation, they understood the primary issue to be lack of access to legal services, with the system of justice fundamentally sound. (*ibid.*, 187) "Through a steady supply of legal services, the poor would be able to take advantage of existing societal and governmental benefits that are more easily obtained by their financially secure neighbors." (*ibid.*, 187) Most of their probono referrals came from the Bar association, and they did not participate in impact litigation and other referral networks.

Others were more directly involved in specialized referral networks and were connected to a cause or political organization that they participated in as a citizen member. (ibid., 188) They were more likely to participate in impact litigation and mobilization efforts,

including

"litigation done in conjunction with the ACLU, Neighborhood Legal Services Corporation and other groups that forced state and federal penal institutions in western Pennsylvania to improve institutional conditions; a class action discrimination suit argued with many of the same organization that eventually forced several segregated suburban school district to merge into one more diverse district; and a suit undertaken with the Developmental Disabilities Law Project that resulted in changes in the way local schools dealt with students with various physical and mental challenges." (*ibid.*, 189)

Kilwein's findings show that these lawyers facilitated both increased direct service to

the poor and work with larger issue and cause organizations.² Using Carrie Menkel-

Meadow's definition, all certainly were engaged in cause lawyering:

"...cause lawyering is any activity that seeks to use law-related means or seeks to change laws or regulations to achieve greater social justice – both for particular individuals (drawing on individualistic 'helping' orientations) and for disadvantaged groups. Whether the means and strategies used are legally based 'rights' strategies or more broadly based 'needs' strategies, the goals and purposes of the legal actor are to 'do good' – to seek a more just world – to do 'lawyering for the good'". (Menkel-Meadow 1998: 37)

Some were also involved in lawyering for social movements. The key elements in this

differentiation appear to be 1) linkage to a larger network of people committed to a cause, 2)

consistency between personal morality and practice, and 3) ability to work with those who

worked deeply on specific issues in society.

"Cooperating" Solos and Small Firm Attorneys in Lawyering for Social Movements

Even for national litigation organizations, the importance of local counsel has been

acknowledged in many ways. The most powerful articulation of this was by Charles

Hamilton Houston as he envisioned the role of the local lawyer in the redesign of Howard

University Law School:

"Beginning in the early 1930s, Howard University Law School served as the West Point for a generation of Civil Rights lawyers...Houston's goal involved more than upgrading Howard's academic standing. He intended to train a generation of AfricanAmerican lawyers who would lead the fight against discrimination." (Ware 2001: 635-636)

Years later Judge Robert Carter explained:

"The overriding theory of legal education at Howard during those years was that the United States Constitution – in particular, the Civil War Amendments – was a powerful force heretofore virtually untapped, that should be used for social engineering in race relations.....A principal objective of the faculty at Howard was to produce lawyers capable of structuring and litigating test cases that would provide effective implementation of these guarantees on behalf of the black community." *(ibid.)*

These lawyers, highly skilled and trained in law that would assist with both the local work and the national challenges that would be needed, spread out across the south founding solo and small firm practices that would cooperate with the NAACP in its national, regional and local efforts to use litigation strategies as part of the larger set of movement tactics to deliver justice and freedom to blacks in America.

The reorganization of the NAACP in the 1930s to position it as a national litigation organization was led by Charles Hamilton Houston and held within it his wisdom on the relationships between the law school, the national organization and the locally based attorneys working across the south. He explained that his goals were: "1) to arouse and strengthen the will of the local communities to demand and fight for their rights; 2) to work out model procedures through actual tests in courts which can be used by local communities is similar cases brought by them on their own initiative and resources…" (*ibid.*, 642) He set about to do that by both strengthening the national office's capacity to structure and bring cases that reflected the litigation strategy as decided by the Litigation Committee of the NAACP, and to strengthen the relationship between the national and the local chapters, and the attorneys who led them.

Houston developed a four pronged agenda for the running the legal campaign: "Houston's first tenet...go nowhere without local support, but at the same time to assume the responsibility for cultivating that support....The social and public factors must be developed

at least along with and, if possible, before the actual litigation commences. Second, Houston emphasized loyalty to the cause of racial justice over loyalty to any particular organization or issue...The third salient feature of Houston's vision was his emphasis on using African-American attorneys....both in order to tap their creative energies and to build unity....Much of Houston's success can be traced to his extensive revision of Howard Law Schools' curriculum....Finally, Houston closely supervised the work of local attorneys...often solicited suggestions from the local attorneys and requested that they research specific aspects of the local situation." (Burch 1995: 135-138)

This agenda that blended the training received at the law school, the work of the national office and strategy with the work of the local, well-trained attorneys led to a winning strategy for the NAACP: "The Association needed the local leaders to build and maintain the grass-roots support essential to successful civil rights litigation....The local leaders also learned to defer to the NAACP attorneys on matters of legal strategy. The combined efforts protected the later success in the court room." (*ibid.*, 143) This model developed in the 1930s has remained the principal model for the NAACP though the significance of the litigation relationship began to change when the NAACP Legal Defense and Education Fund (LDF) was spun off in the 1950s. While operating as fundamentally integrated with the NAACP for a period of time, eventually (and pursuant to the appointment of Greenberg as the chief counsel of LDF) LDF became more independent and began to pursue its own litigation goals and organization building strategies.

Over and over again, the internship program has been referred to as the principal way in which the LDF won the hearts and minds of the attorneys who would become the cooperating attorneys for its work. This ability to acculturate and train the attorneys in the core values and principles of the organization serves the organization in much the way the 1930s training effort at Howard served the NAACP during the key litigation campaigns from

the 1930s through the 1950s. This has been and continues to be key to LDF's ability to coordinate planned litigation strategies: "LDF retains close ties with the special set of cooperating attorneys which it trained and who had spent a year at headquarters before starting a law practice in southern communities; for many of them, the organization is the 'single largest client.'" (Wasby 1984: 122) While LDF has a core of staff attorneys, they work one on one with the cooperating attorneys. "Staff attorneys prefer to work with cooperating attorneys who do much work, but 'need support and help': this may include inexperienced attorneys whom the staff attorneys can thus train 'in civil rights and skills'" (*ibid.*) Further, LDF supports these cooperating attorneys financially as well as through training once they are in the field. This financial support is key for developing the loyalty and one on one relationships that allows the LDF to rely on these attorneys for consistent performance with LDF acting as "a parent legal firm with law offices all over the country." (*ibid.*, 123) But LDF also understands the importance to its reach and connection beyond implementing its own legal agenda. "Cooperating attorneys... 'tend to know local people and problems better,' being local leaders with 'knowledge that is indispensable.'" (ibid.) As Robert L. Rabin sees it, "The LDF is a partnership – a mix of staff and cooperating attorneys managing a nationwide, heavy-volume caseload through a pooling of professional resources. It is the viability of the local cooperating attorneys that serves as a crucial link between the organization and its clientele." (Rabin 1975: 218)

Other models of coordination of resources were developed in the 1900s. They used the work of national and local legal services organizations that coordinated with local attorneys in different causes. These models tended to rely on the pro bono resources of large firms, leading to a very different outcome.³ While large firms have been and continue to be instrumental allies in social movements, they often find themselves at odds with transformational movements that challenge the core values and structures of society which

often benefit their larger clients. Further, they are not the focus of this piece, and therefore this model will not be explored further herein.

Whether for the NAACP, the LDF or for other organizations that worked with and coordinated with lawyers not inside their organizations to meet the needs of the cause and deepen the work to respond to the developing social movement, there were several challenges to be met: training, coordination (both between the coordinator and those being coordinated and also between the social organizations and clients and the legal team itself), referrals and issue identification, legal theory development, and support (both financial and technical) for the lawyers in the field who were involved. As our society becomes more complex these challenges are multiplied. As our communities of interest become more dispersed, the natural lines of communication are tested. Houston's model for the NAACP benefited from the segregation it contested. Almost all African American lawyers were going to attend Howard University School of Law. Developing a curriculum to train civil right lawyers meant training them in one location and in one curriculum. The network of African American lawyers was small and coherent, bound by social networks inside and by exclusion from those outside the network. Today's African American lawyers go to every law school in the country, live in almost every community and socialize in complex social circles. While there remains some cohesive networking, the complexity of coordination can no longer rely on the social bonds of alumnae or neighborhood connection.

The lessons of the LDF are similarly rich. The training model of the fellowship program shows the importance of being able to use deep research and training in a subject area "in house" to share and train in the field. The social relationships built while developing facts and theories that are implemented in the local areas by committed community based lawyers strengthen and give nuance to the legal theories applied in the real world by those who have been given the luxury of deep theoretical exploration.

For both models, the linkage with local leadership has been critical to success. To develop a movement, the grievance that the client brings through the door must be given the language and remedy of a cause. When that cause is connected through larger reflection to similar or identical causes across the county and the globe, and linked to activist organizations that can bridge legal strategies and theories to the social theories and structures that live in the "microsites" of power in each local community, social movements emerge. The linking up and down the chain of training, coordination, and vision with the local leadership and resources to move forward people in the most local of ways that they live their lives is key to the success of the past, and I would posit, key to the success of the future. Doing this in our ever more complex and atomized world is the challenge of today's cause lawyers.

Lessons of Community Based Cause Lawyers

Community based lawyers are integral to the life of the community in which they reside. They provide leadership in local organizations and a window into and a voice about the day to day struggles where our society is hammering out issues of justice:

"A poststructural rethinking of the democratic project does, however, afford some respite... Post-structural theories locate domination in cross-cutting social cleavages (race, gender, sexual orientation, age, etc.) and at microsites of power (the family, the workplace, schools, social service agencies, and the like). These microsites present less daunting targets for cause lawyers, who in effect turn away from high-impact, class action litigation and/or frontal assault on the institutions of the state. They focus instead on the empowerment of individual or perhaps small groups of clients. With less at stake politically and more at stake legally, legal institutions may well come closer to living up to their professed ideals." (Sarat and Scheingold 1998: 9)

Understanding this opportunity for change in the positioning of both local and cultural struggles for justice out of a centralized and planned litigation strategy into the hearts and minds of the "microsites of power" may well be the best option for cause lawyers linked to social movements and their causes in this early part of this century.

As the NAACP learned in the 1920s and early 1930s, without a centralized process for reflection about what is happening in a larger context and people who are thinking about local activity in the context of the national and international picture, you risk actions that are effective for one client but bring about results that will, in fact, hurt the movement in the long run. (Burch 1995: 195) While there are some organizations and issue groups that have some coordination, the possibilities for solo and small firm cause lawyers that are being provided by the advances in technology are breathtaking.

Technology and Cause Lawyering for the Solo and Small Firm Practitioner

The model that I would suggest is a powerful model and can be the basis of a cause lawyering network of solo and small firm practitioners. It begins with the same basic understanding of the central position of solo and small firm practitioners as has been said of all cause lawyers:

"Cause lawyering cuts against the grain of a widely accepted belief that law and lawyers are supposed to be apolitical agents for resolving society's conflicts while somehow remaining unsullied by them.....Cause lawyering is not about neutrality but about choosing sides. Put another way, cause lawyers are focused on the broader stakes of litigation rather than on the justiciable conflict as such or on the narrow interests of the parties to that conflict. Cases have significance to cause lawyers not as ends in themselves but as means to advance causes to which the lawyers are committed. Cause lawyers choose cases, clients and careers according to what they stand for. The essential question is whether there is something at stake in which the cause lawyer believes and is, thus worth fighting for." (Scheingold 1998: 118)

Because social movements are by their nature based in many actions and many locations, it is critical to provide a teeming array of entry points for the delivery of services. This plethora of entry points was provided during the civil rights movement by solo and small firm practitioners on the ground all over the south. The NAACP and the LDF recognized this phenomenon and utilized and supported these practitioners through strategic placement of staff and resources to these firms to support the actions bubbling up across the region and the country. The difficulty of working with solo and small firm practitioners in a decentralized manner raises many issues, not the least of which are training and coordination. Technology makes it much easier to accomplish each of these elements:

Training. One of the most difficult challenges for new solo and small firm lawyers is developing the practice and thinking skills to most effectively and efficiently represent their clients. If you begin their education by including opportunities for training while still in law school, you maximize the opportunity for success. First, if a curriculum includes law practice management courses, students begin to understand the business components necessary to support their cause-minded choice of clients. Further, by providing substantive courses in the areas that they are interested in pursuing, their legal education maximizes the possibilities that they will have the legal tools necessary to be creative co-producers of legal and social transformative work. Both of these components should be anchored in a deep and thorough appreciation of the technological uses that support practice and theoretical inquiry. This should include both the strengths and weaknesses of using technology.

Once practicing, linking with a local, regional and national network of likeminded attorneys provides the opportunity to participate in a "virtual" firm that can provide mentoring, referrals, products, and personal support. These elements are critical to the successful practice of law and were clearly part of the successful strategy provided by the LDF for its cooperating attorneys. It is also possible for law schools to offer continuing legal education to the network members so that they can learn how to take on new matters, and work with older attorneys to monitor the work that is accomplished.

Coordination. For all cause lawyers, there is the desire to have the work done on any individual matter add up to more, and to be part of something more. This desire manifested itself in the "public interest law practice" during the late 60s and 70s. (Becker 1981: 1436) "Public interest lawyers made important contributions to civil liberties, civil rights,

environmental and consumer protection law....however, the fragility of public interest practice became startlingly apparent." (*ibid.*, 1437) Public interest lawyers and organizations were criticized for provoking legal controversies when clients have not requested assistance, and "exploit[ing] the fact that their clients often lack the resources and skills needed to express their preference or to voice their complaints effectively," and "serve the financial supporters to the detriment of their client group." (*ibid.*, 1438-1439) Suffice it to say, this was not a co-productive mode of legal representation and had some negative consequences in both the media coverage and in the minds of some clients.

But having a group of lawyers focused on the often complex legal needs of a client group provided a service that is difficult for those who are oppressed to access:

"This is the kind of legal resources that corporations enjoy. ... 'the qualitative different type of assistance they receive gives them an advantage over people without ongoing assistance in the exploitation of all types of legal goods....they have a more accurate understanding of which actions will result in legal penalties...make more innovative demands on the legal system....alter their behavior to exploit particular legal benefits and protections...." (*ibid.*, 1446)

Lawyers within those organizations also develop deep relationships and norms that actually effect the expenditure of legal resources, the decisions about the basic structure of the use of the legal resources, and the strategies for accomplishing the clients' goals.

Centralized public interest firms most closely mirrored this model. "In order to represent their client groups effectively, public interest lawyers must try to provide the same type of continuous assistance that corporate counsel provide to their clients." (*ibid.*, 1449) But there were challenges for the public interest lawyers: solicitation, continuous contact, an instrumental attitude (how can legal assistance advance the interests of the clients), a critical perspective and client education. (*ibid.*, 1450-1452)

Creating a national network of solo and small firm attorneys that are committed to increasing access to justice solves some of the problems identified with the public interest lawyers of the 1960s and 1970s. The solo and small firm practitioner is anchored somewhere

in between. They serve the community in which they sit, or are networked with lawyers and groups who refer matters. Linking those practitioners with the resources of law schools that are actively engaged in developing effective and creative legal theories and strategies allows those practitioners access to both a community of like minded attorneys and a bank of knowledge. By further linking this work nationally, it is possible to see larger trends in the law and link attorneys with activists and thinkers to create and co-produce comprehensive strategies of response to what might have appeared to be individual problems.

The Law School Consortium Project – a Model of Organization for Solo and Small Firm Cause Lawyers in the 21st Century?

In 1996, the Open Society Institute (OSI) funded the Law School Consortium Project (LSCP) in response to an application from four law schools: the University of Maryland School of Law in Baltimore, Maryland, City University of New York in Flushing, New York, Northeastern University in Boston, Massachusetts and St. Mary's Law School in San Antonio, Texas. The Project was to address two identified needs: 1) Post graduate support for solo and small firm practitioners who included increasing access to justice as part of their core mission (the longitudinal law school model), and 2) creating recognition and support for the role of solo and small firm practitioners in the legal service delivery system within the academy. Each school was to develop an implementation model, and together the four schools would begin to engage other law schools on a national level about their findings and their work. The grant provided three years of core funding for the local projects, and some funding for the coordination of the four projects.

Within a year, St. Mary's experienced a thorough and deep leadership shift and withdrew from the project. The three remaining schools held to the task and have developed three distinct models. With additional funding from OSI, they developed a national office and national work. The LSCP now includes seventeen member law schools which have developed or are developing projects in their schools.

First, I will describe the models used by the founding schools and the national work, then I will look at why this project is an important addition to both the way we conceive of cause lawyering and to the capacity to deliver legal services to those who stand up for their rights, including those who coordinate their efforts in movements.

<u>The University of Maryland School of Law (UM)</u>: UM's initial idea was to create a model law office that would be the center of the work of what is now Civil Justice, Inc., the nonprofit organization created to house the work of the Maryland model. Initially, this office was located in the Baltimore Park Heights community, which was hard hit by disinvestment and drugs. Coordinating the work with more than one of the clinical opportunities at Maryland, the office opened with two staff people in 1999.

The Maryland model was to develop a network of solo and small firm practitioners who would be mentored by the Executive Director, an experienced general practitioner, who would also run this small firm and take cases from the community. Some of the matters would be co-counseled with network members, some of them would be handled by Civil Justice itself, and some would be referred to either network members or other legal services providers. This demonstration office would model best practices and be available as well for network practitioners should they need to use office space, the conference room or other facilities.

This office was open for about two years. At that point, the project summed up that the office needed to be closer to the school, to deepen the relationships and strengthen the second part of the mission of the project. The Executive Director began teaching a law practice management course at UM in 2001. In 2002, UM began exploring ways that the General Practice Clinic could coordinate more directly with the network members.

Currently, the Civil Justice Network consists of over 70 network members. Over 50% of these members represent women or minority owned businesses. There is an active list

serve where practitioners share their knowledge with each other, ranging from reasonable costs of copying machines to information about practicing in a particular court to sample pleadings in practice areas. The network meets quarterly to support each other and learn about new practice areas as well as practice management. The network is making about 15 referrals a week to practitioners who take many matters on a pro bono and "low bono" basis.

<u>City University of New York Law School (CUNY)</u>: Another of the founding members of the LSCP, CUNY has developed a model that sits inside the law school and is even more integrated into the core curriculum of the school. It is not separately incorporated , but now has several staff members supporting and working within the project. It is called Community Law Related Network (CLRN).

The CUNY network includes approximately 150 graduates. Members participate in one or more of five practice groups: Family Law, Immigration Law, General Practice, General Practice II, or Economic Development. Practice Groups meet every two to three weeks. They are initially part of a practice group that includes practitioners and students and receive intensive training and support. This training lasts up to a year and includes technical, moral and substantive support in opening and developing their law practices. The law school effectively acts as an incubator for solo and small firm practitioners. Upon "graduation," the attorneys become general members of the CUNY network, are on the listserve, and are invited to participate in trainings and other events. Clients are referred and opportunities for support and contracts with community organizations are developed and nurtured by the staff. (Law School Consortium Project 2004: website)

<u>Northeastern School of Law (NE)</u>: The last founding member that continues in the LSCP, NE has had the most difficulty with finding the model that works for them on a sustained basis. NE initially decided to focus on two practice areas that were very strong within their clinical program: Domestic Violence and Community Economic Development.

The Northeastern models were structured to examine how solo and small-firm lawyers can sustain economically viable practices which promote community economic development and prevent family violence by working with non-legal community organizations and other institutions. These models were interdisciplinary in their conception and specialized in their practice. (Law School Consortium Project 2004, website) In summing up their experience, they have moved back to a more legally centered model, replicating the CUNY model with in-house legal clinics that draw on the network members that are trained. Students and practicing attorneys together work through legal issues and strategies, and they work jointly on some representation, some of it inside the law school and some in network members' offices.

The National Consortium

In 2002 a Consortium Director was hired. The hiring of this key person has been critical to help give identity and form to the national effort, turning this into a national endeavor rather than a localized experiment for law schools to better reach their graduates. There is also a national support person for the network and, when finances allow, an administrative staff person. These staff people are building the national infrastructure, both through computer networks and direct relationships, and are helping the national board clarify the vision and strategy for the national office and network that is different from the work of the local network members. They have worked with members to begin to develop law practice management curricula, receive low cost services and training, and link members to each other to begin larger discussions. They are working to develop and share litigation modules, particularly in practice areas with federal jurisdiction like immigration, where the work of one member network group can be applied and used nationally. They are also working with law schools nationally to "open the conversation" about the role of the solo and small firm practitioners in the legal services delivery model. They are providing both a reality

check (only 10% of grads of law schools end up in a big firm practice), and a vision of how schools can inspire and work with their grads who are committed to public interest. As Sarat and Scheingold reveal "...it seems that is those with grand visions of what law and lawyers should and can do on behalf of social justice who are most likely to abandon cause lawyering..." (Sarat and Scheingold 2004: 69) Law schools now have an opportunity to provide space and support for students who reject the premise that "...thinking like a lawyer requires that students substitute an allegedly objective, precise and rational mode of thought for value-laden, emotional and politically driven habits of mind." (*ibid.*, 60)

The LSCP currently has a national advisory board with representation from member schools (including two deans), national legal service delivery organizations, successful and senior solo and small firm practitioners that have made key decisions about how to shape their practices to provide support for and participate in legal service delivery for justice initiatives and social movements, and key individuals who have worked in and around cause lawyering during their careers.

Conclusion

The most successful social movements of our time have been those for the protection of individual rights and for integration and the reduction of barriers to inclusion for African Americans in our country. While it is also obvious that there is much left to do in both of these areas, great strides have been made in the last 100 years in transforming our society and securing rights both through the implementation of laws and the transformation of our culture. Battles have been waged in the streets, in the courts, in the classrooms and journals, in the community and over the dinner tables of millions of Americans. These issues have been, and continue to be, central to our understanding of democracy. The organizations that have been at the center of these movements have been the NAACP, and the LDF. There are

several key elements to their success that can be summed up through an examination of their policies and practices: 1) they have a central staff that thinks about the issues in a thorough and broad way, 2) they have a network of attorneys that are based in communities all over the country, 3) the national offices, local and regional offices work co-productively with the network attorneys and citizens to strategize and implement those strategies in courts, legislatures and communities around the country, 4) there is attention paid to the economic viability of the network members through training and stipends to take and develop legal cases and strategies, and 5) there is an on-going and deep connection with the resources of law schools that help to think systematically about the training and legal theory development needed to support new lawyers, as well as provide mentoring and support for those lawyers in the field.

While the 1960s and 1970s saw the development of the public interest law firm that was centralized and supported by foundations, these organizations have more and more challenges in staying the course. They have been challenged as not representative of the clients nor client centered in their approach, driven by funders rather that movements, and working in the interests of the lawyers who dedicate their lives to the cause rather than the clients who are affected by the policies. Their agendas have become limited by the amount of funding that is available, and as foundations trim their giving, the ability of a centralized vehicle is challenged. We can learn great lessons about the power of having a think-tank of sorts, but we can also see the limitations of reach, as the work is almost exclusively legal, and removed from the movements vying for the hearts and minds of our citizens.

The limitation of solo and small firm practitioners who are cause lawyers are several. First, they are at the mercy of the market - they make a living by selling their services. Today, that generally means developing a specialization, but the general practitioner does still exist. The second limitation is driven by the isolation of a small or solo practice. There is no

backup, so the number of hours required to accomplish all the areas of a good practice are large. They must learn to be business people (not generally taught in law school), as well as learn the practice of law. They generally balance and juggle family, court schedules, administrative duties and other professional and personal commitments. As a result, the opportunities for higher level thinking and analysis are limited. The constraints of the day to day practice make theorizing difficult.

Technology, as we have seen, turns some of the challenges of small and solo firm practice into opportunities for entrepreneurial social movement organizations. Law schools and the LSCP have an opportunity to be leaders in this moment. By combining the resources of law schools, local networks of likeminded attorneys, goals for "doing good," and a national network of resources and inspiration, it is possible to create a virtual firm that both supports and inspires solo and small firms to take their activities to the next level.

"This case study suggests a number of reasons why cause lawyers are made and not born – that is, born with a specific role to play as they participate in movements against social injustices. Cause lawyering is something that you learn how to do: it works in unison with something that you experience, envision, and practice, acting through various strategies and with integrity. Cause lawyers develop and strengthen their skills and legal and political techniques over time, which enable them to engage in social causes, and in some cases, with specific objectives as a consequence of their indigenous experience, concerns, and being....Thus, although larger social and structural conditions may affect why and how lawyers become involved with social movements for change, their socialization process, experience, and vision play a vital role while specific reasons might influence their involvement in a social cause." (Porter 1998: 173)

I would assert that social movements emerge as the connective tissue as like-minded cause lawyers join with the clients in a co-productive process of giving voice and definition to the injustice, strategizing for the legal and non-legal responses to the injustice and implementing and evaluating that strategy. With law schools providing the space and support, solo and small firm lawyers supporting each other, and networks to support and train, it seems eminently possible for solo and small firm lawyers to be able to participate in social movements in a more efficient and helpful way. But can they anchor such movements? If technology can act as a vehicle by which lawyers and non-lawyers can become co-producers of strategy and tactics, then there is the potential for lawyers to become anchors. Their understanding of the systems of justice and the lack thereof can become critical and helpful in a fast-paced and non-linear conversation about the issues that are core to the movement at hand. Whether we can create and link solo and small firm lawyers to such microsites that create spaces for this dialogue is not yet known. Certainly, if the political activity of 2003 and 2004 is an indication, there will be plenty of "places" (virtual though they may be) where these conversations will take place. If there is access to the conversation and resources, support and training of a national network of like-minded solo and small firm practitioners, it may well be possible that they can assume a new significance in stabilizing and serving the emerging social movements of our new century. We must convince new public interest oriented law students that this is a viable form of cause-driven practice, and then we must train and support them.

Co-production and problem solving methods of work make lawyers part of the team to craft both the vision and the solution, participating in each as she might see fit. Coproducing and problem solving outlooks linked with the power of technology make it possible for solo and small firm practitioners to join forces with people everywhere to think about problems and solutions in a new way. Virtual law firms make designing legal strategies and implementation mechanisms more effective and efficient, and cause lawyers can feel part of something larger than themselves in a sustained and real way. This empowerment and linkage makes the practice of law on behalf of those who are "…reconstructing legal dimensions of inherited social relations, either by turning official but ignored legal norms against existing practices, by remaining shared norms in new transformative ways or by importing legal norms from some other realm of social relations into the context of the dispute" (McCann 2004: 510) into a natural, possible and accessible option for every law

student leaving law school. This network makes the potential pool of lawyers interested in lawyering for social movements much larger and more vital. It makes it possible for people striving for justice to access the skills and training of lawyers as an integral part of the movement more attainable. This linkage has the potential for powerful alliances that may, in fact, become critical anchors in turbulent legal times.

¹ The term "low bono" refers to the pricing structure whereby attorneys work out a payment schedule with clients taking into account both the costs of the services, the clients' ability to pay, and options that include installments, unbundling of services, and ability of the attorney to subsidize. I have even heard of some use of informal 'time dollars' and bartering for other goods and services.

² I use issue and cause as interchangeable here. Issue organizations and causes are both subsumed within the previous discussion of causes and social movements.

³ The ACLU also has developed an extensive network of cooperating attorneys that work to implement a legal strategy that is consistent with their focus on "battling restriction on the autonomy of the individual – threats to freedom of speech, religion and association, and governmental indifference to procedural due process." (*ibid.*, 220) Because the organization litigates through local and statewide chapters who choose which cases to accept, and the highly reactive nature of the work, the organization has not developed a planned litigation strategy. Much of the work of the organization is done by cooperating attorneys, and much of the success of the organization has rested on its ability to capture the pro bono hours of the large firms. It has not reached out to the many solo and small firm practitioners available, and does not provide financial support for the cooperating attorneys unless there are awards of attorney fees.

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