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## **Cause Lawyers and Social Movements: Perspectives from Post-Katrina New Orleans**

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Cause Lawyers and Social Movements:  
Perspectives from Post-Katrina New Orleans

A Thesis

Submitted to the Graduate Faculty of the  
University of New Orleans  
in partial fulfillment of the  
requirements for the degree of

Master of Science  
in  
Urban Studies

by  
Peter O'Connell  
B.A. Columbia University, 1995

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## **Abstract**

Cause lawyers maintain primary commitments to causes and pursue political and moral objectives that go well beyond the traditional lawyering objective of client service, which is the goal of most conventional lawyers. In this research I conduct in-depth interviews with cause lawyers involved in efforts for social change in post-Katrina New Orleans to develop a richer understanding of their roles within social movements and how they conceive of and negotiate the core tensions in their work. I investigate the lawyers' roles within social movements situated in legal, political and social climates that are overwhelmingly inhospitable to their ultimate goals. Ultimately, this research presents a portrait of cause lawyers who develop alternative modes of practice that are more commonly associated with movement organizers and more closely aligned with movement goals of individual and community empowerment than are traditional models of lawyering.

**Key Words:** social movements; social change; cause lawyers; lawyers; New Orleans; Hurricane Katrina

## Chapter 1: Introduction to the Study

Lawyers and legal strategies have long been employed by social movements in their efforts to effect change. But there exist a number of interesting and unresolved tensions surrounding the notion of lawyering for social change. First and foremost, social movement scholars, legal scholars, movement activists and activist lawyers vary in their assessments of the efficacy of the law as a vehicle for meaningful change. And for those who accept lawyering as a valid device for social change there exist more subtle social, political and practical challenges regarding appropriate models, professional roles and specific tactics. This research will explore how cause lawyers conceive of and negotiate these tensions in their work.

This study seeks to add to the evolving dialogue within socio-legal scholarship regarding relationships between cause lawyers and social movements. As a point of departure, this research engages with an overarching framework of inquiry outlined in recent work by law and society scholars (see Sarat and Scheingold 2006). My study is motivated by a similar line of inquiry built around the following core questions. 1) What do cause lawyers do for, and to, social movements? 2) How, when, and why do social movements turn to and use lawyers and legal strategies? 3) In what ways do lawyers and legal strategies tend to advance or constrain movement goals? And, 4) How do lawyers shape movements and how do movements shape lawyers?

Broad areas of theory and research of relevance to this study include law and society scholarship on cause lawyering, social movement theory, critical theory, and the interdisciplinary socio-legal scholarship on lawyering for social change. I draw upon these scholarly traditions to better illuminate and sharpen the focus of the research. I turn to law and society scholarship for its important work that highlights the relationships between social movements and lawyers

working for social justice. It is within this field of research that scholars have developed the conceptual category of “cause lawyer” that is so central to this research. I look to social movement theory as a lens through which the work of cause lawyers and their associations with social movements might be approached. This research also draws generally upon the tradition of critical theory with a special focus on critical race theory, which has been the site of significant debate regarding the critique and defense of rights discourse that is especially relevant to this study. I also rely on socio-legal scholarship for key case studies examining the role of legalism in the trajectory of movements. I draw upon these areas of scholarship throughout this thesis, and apply specific attention to the most significant aspects of each in chapter three.

The principal technique of data collection for this research is in-depth, phenomenological interviews with cause lawyers involved in efforts for social change in New Orleans in the wake of Hurricane Katrina. I present and analyze the data provided by these informants, and then interpret these critical reflections through several appropriate theoretical lenses in order to develop a richer understanding of cause lawyers and their relationships to social movements.

This study contributes to theoretical and practical domains. It may prove useful to scholars as a depiction of how cause lawyers understand and negotiate key issues of concern to critical legal theorists. It may also prove valuable to lawyers who are interested in exploring and assessing alternative professional models. This research also contributes to the documentation of social movement activity and socio-legal activity in post-Katrina New Orleans.

Following this introduction, chapter two provides a more detailed discussion of the conceptual framework of this study. Elements of this framework include the background of this research, an exploration of the topic and research problem, the detailed purposes of the study, and its potential significance. In chapter three I present the scholarly theoretical background for

the study through a review of relevant literature that provides the theoretical foundation and relevant case studies against which the results of this research can be compared. In chapter four I delineate important elements of the research design and specific methods that I used, including the overall approach and rationale, population selection and sampling strategies, demographics of the respondents, data gathering procedures, and the procedures for analysis. This is followed by an analysis of the data in chapter five in which I present and interpret the findings. I present conclusions and offer recommendations for further research in the final chapter.



## **Chapter 2: Conceptual Framework**

Having briefly introduced the genre and structure of this research, it is my task in this chapter to lay out a conceptual framework within which I conducted this study. I begin with a statement of how I came to focus on this topic for my research. Then I delve further into the topic and the central problem of this research. This is followed by short discussions of the purpose and significance of this work. I conclude the chapter with a section designed to introduce the reader to the significance of the specific context in which this research was conducted.

### ***Background***

The curiosity that inspires this research developed from my personal involvement and scholarly interests in an emergent post-Katrina self-determination movement in New Orleans. I came to New Orleans shortly after Katrina as a volunteer activist interested in supporting people's efforts to ensure a just recovery and became involved in the emergent stages of a radical relief group. I began graduate studies about a year later and became interested in exploring the emergence of grassroots resistance in the recovery from a scholarly perspective. I began to view this social action that I was observing as an emergent self-determination movement and engaged in some preliminary research that probed a collection of stories and events for the meaning of these vital struggles (O'Connell 2006). Simultaneously, I began to consider the law as a possible career path on which I might integrate my scholarly interests with my interest in social justice activism. In this way, my personal, professional, and political interests have led me to this current stage of research that will shift focus from the nature of emergent grassroots organizing to the intersection of cause lawyering and social action.

I will begin to lay out the conceptual framework for this research by outlining the way in which I conceptualize the terms “cause lawyers” and “social movements” for the purposes of this project. These terms are used throughout this text and represent concepts at the core of the research problem, so in order to avoid confusion it is essential that I clarify at the outset how I understand and use these terms in the context of this research.

I have adopted the term “cause lawyer” for use in this study to refer to a broad category of lawyers working for social justice. “Cause lawyering” is a term that law and society scholars, Austin Sarat and Stuart Scheingold (2005), coined as an umbrella term to refer to certain types of lawyering that have variously been referred to as radical, activist, revolutionary, movement, empowerment, public interest, and community lawyering. Sarat and Scheingold explain,

What we call cause lawyering is often referred to as public interest lawyering within the profession and among academics. However, we prefer *cause lawyering* because it is an inclusive term. It conveys a determination to take sides in a political and moral struggle without making decisions between worthy and unworthy causes. Conversely, to talk about public interest lawyering is to take on irresolvable disputes about what is, or is not, in the public interest. Whether the pursuit of any particular cause advances the public interest is very much in the eye of the beholder (p. 5).

This scholarship conceives of cause lawyering as distinct from conventional lawyering in a variety of ways. At the core of the distinction is the notion that moral and political commitments are at the center of cause lawyers’ professional lives, whereas for most of their conventionally oriented peers these concerns are more marginal. “For cause lawyers, such objectives move from the margins to the center of their professional lives. Lawyering is for them attractive precisely because it is a deeply moral or political activity, a kind of work that encourages pursuit of their vision of the right, the good or the just” (Sarat and Scheingold 2005:5).

The work of these scholars and their colleagues has been key in the development of an understanding of the complex nature of the relationships between cause lawyers, social movements, and social change. Although cause lawyering projects are not restricted to any particular political orientation, I have chosen to limit my investigation to a subset of cause lawyers sometimes referred to as “left-activist lawyers” (Scheingold 1998) who work on various social justice causes in post-Katrina New Orleans. And, accordingly, when I refer to cause lawyers in this study this is the subset to which I refer.

The term *social movement* is also key to this research, and so I must offer some clarification about how I define and use the term. Zald and McCarthy (1980) make a distinction between the broadly defined term *social movement* and the more concise and bounded *social movement organizations*. They define a *social movement* as a “set of opinions and beliefs in a population, which represents preferences for changing some elements of the social structure and/or reward distribution of a society” (p.2). *Social movement organizations* are specific enterprises that arise within the context of a broader social movement. Zald and McCarthy (1980) define a *social movement organization* “as a complex or formal organization, which defines its goals with the preferences of a social movement and attempts to implement these goals” (p.2). Further, they conceive of a *social movement industry* that is made up of all the social movement organizations with relatively similar goals (p.2).

I use the term *social movement* in this thesis to refer to its broader use that covers all activities, and even beliefs and preferences, aimed at changing a particular element of society through collective action. This usage is aligned with Zald and McCarthy’s conceptualization of a general *social movement* and their idea of a broad *social movement industry*. I chose to adopt this perspective on cause lawyering for social change within a broadly defined movement rather than

just focusing on social movement organizations because of the particular setting in which I was conducting the research. As I describe later in this chapter, I came to recognize a broad, emergent, post-Katrina movement for self-determination and a just recovery for all. The dynamic context of the post-Katrina social movement environment gave rise to a broad and loosely-knit social movement coalition consisting of pre-existing and well-established social movement organizations, emergent groups focused on a variety of issues, neighborhood organizations that morphed into social justice advocacy groups, and many unaffiliated residents and allies motivated to find ways to take collective action to further their goals of a just recovery.

I made the decision to focus on a broader understanding of social movements early on in the research process and discovered later, during the data gathering process, that this view is aligned with how the cause lawyers themselves understand and relate to the big picture of post-Katrina social movements of which they are a part. Their work encompasses a variety of diverse causes, practice settings, and professional tactics. Cause lawyers in New Orleans work on behalf of post-Katrina civil rights and human rights movements, a movement focused on a right to return for all displaced residents, the environmental justice movement, the labor movement, and a movement to encourage government accountability and citizen engagement in the rebuilding process. Within these diverse yet interconnected movements, these cause lawyers help support social movement organizations, neighborhood groups, and individuals working on a number of specific social justice causes including access to healthcare, access to affordable and public housing, housing discrimination issues, access to and equity within public education, workers' rights, voting rights and criminal justice reform. Among the services that cause lawyers provide are litigation support, legal advice, organizational support, media outreach and awareness raising, educational programs and access to accurate and updated recovery information. Amidst

this diversity of causes and models of service provision there is a pervasive, common recognition among respondents and movement activists of a broadly defined and still developing movement for self-determination and a just recovery for all. This broad view is the one that I take in this exploration of cause lawyers and social movements.

### ***Topic and Statement of the Problem***

From Marc Galanter's (1974) classic article "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change" to more recent explorations, such as Derrick Bell's (2004) *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform*, law and society scholars have for decades explored questions of the capacity of the law to effect lasting social change. Despite landmark court cases and significant legislative victories, many of these scholars take a comprehensive view of generations of struggles in American courts and point out that legal change has produced little lasting improvement in the economic and social circumstances of historically oppressed communities. There are many different explanations offered for this. Some say that relying on rights discourse and remedy through the courts reinforces and legitimates a legal system that is established to protect special interests and to maintain a system of inequality. Others point out that resources must be mobilized by those who seek remedy in court and that these resources are difficult to access for those seeking remedy. Some say that isolated legal victories can easily be negated outside of court. Others say that the courts have limited institutional power and are not strong enough to operate on the level necessary to effect meaningful social change. Some recognize the symbolic value of rights claiming and how legal mobilization can be important for social movement organizing that can result in the employment of other tactics for change. But generally, after decades of scholarship

and debate there remains a scholarly skepticism of the utility of the law to effect substantial social change on its own (Galanter 1974; Rosenberg 1991; Albiston 1999; Bell 2004).

I want to learn about how cause lawyers experience and understand the apparent conflict between their commitments to seek social change through the practice of law and the deep ambivalence expressed by many scholars, activists, and even by cause lawyers themselves concerning the power of the law and the tactic of litigation to create enduring social change in the post-civil rights era. This is a core tension in this work at the root of the research problem. It is also just one of several other important tensions in the work of cause lawyering in the context of a social movement that have bearing on this study. This work seeks to draw out these other tensions from the literature and from the narratives of cause lawyers.

A defining characteristic of cause lawyers is that they clearly express certain political commitments and have chosen the law as a path for their social activism. These decidedly “anti-establishment” lawyers, who have devoted their professional lives to a fight against the status quo in their efforts for social change, maintain a level of belief in the liberating potential of the law. And yet an apparent paradox exists in their efforts to effect radical change within the context of a judicial system which can arguably be seen as one of the most entrenched institutions of the establishment.

The political and social tensions that must be negotiated in the profession of law in the interest of social change may prove to be particularly challenging for the committed cause lawyer. Much of what these lawyers are confronted with stems from their stated objectives to struggle for the empowerment of people, groups and movements for whom and with whom they work. This work is inherently political in nature and it occurs in a dynamic social context in which roles, relationships, meanings and choices about collective action are greatly contested.

This research identifies and further explores a number of these tensions that have been explored in the literature. It also explores the narratives of cause lawyers for expressions of these and other critical tensions in an effort to understand how cause lawyers negotiate these core issues in their work with social movements. This research seeks to illuminate these paradoxes and uncover the unique ways that cause lawyers, grappling with these tensions, understand these dynamics and how this shapes their practice.

### *Purpose*

The central purpose of this study is to harness the power of qualitative inquiry to uncover and explore how cause lawyers conceive of and deal with the multiple, often paradoxical, political, social and professional tensions in their work with social movements. Through the methodology of phenomenological design this research highlights themes and patterns that emerge from interviews with cause lawyers to reveal a portrait of the phenomenon of cause lawyering from the emic perspective of the lawyers interviewed. This portrait is compared and contrasted through a critical lens against the way that theorists, practitioners, and movement activists problematize the political, social and practical complexities of cause lawyering and its relationship to social movements.

This research adopts a general framework of inquiry borrowed from recent work in the field of law and society scholarship (see Sarat and Scheingold 2006). This framework serves the following broad purposes. It is designed to shed light on what lawyers do for, and to, social movements. It aims to uncover how, when, and why social movements turn to and use lawyers and legal strategies. It considers ways in which the use of lawyers and legal strategies tend to advance or constrain the achievement of movement goals. And it hopes to depict how movements shape the lawyers who serve them and how lawyers shape the movements. This

research will add to recent developments in the field of law and society through an exploration of these questions mainly from the perspective of cause lawyers in the particular context of post-Katrina New Orleans by fleshing out the deep meaning of these critical tensions and how they play out in practice.

### *Significance*

This research will contribute to the theoretical, scholarly literature by effectively providing a mini-case study in a real and dynamic context by which theories can be further tested. This research has potential to contribute to the realm of socio-legal theory, in so far as it might be used to apply and evaluate notions of the law and its relationship to social change as conceptualized by law and society scholars, social movement theorists, critical race theorists and critical legal studies scholars.

This research is also potentially significant to practitioners. The central themes and lessons that emerge from the analysis of this research might be used as tools by other cause lawyers seeking to understand similar tensions in their work. The successes and struggles expressed by the informants in this research may help inform the development of other cause lawyers. Movement activists seeking to better understand critical issues in their relationships with cause lawyers may also find this study useful.

And finally, the context of post-Katrina New Orleans as the particular site selection for this research suggests a certain level of significance. The horrors of the aftermath of Katrina exposed critical issues of social inequality that have only been exasperated by widespread failure of official recovery efforts. The struggle for a just recovery that has emerged out of post-Katrina New Orleans and the spotlight that this has placed on social inequity is becoming widely acknowledged as a crucial moment in a number of on-going struggles for social justice (Rathke



and Labostrie 2006; Arena 2007; Swan 2007). Enlisted in these struggles are community organizations with long histories in New Orleans, a community of cause lawyers with long term commitments to working for social justice in these communities, as well as emergent groups and an increasing number of national allies. This exploration of cause lawyering for social change in this critical time and place may be especially revealing.

### *Setting the Scene*

In chapter four I provide some description of the particular sample population of cause lawyers and their work to bring some context to their narratives. But before doing so, I will provide the reader with some broader context in which to place the subjects and their narratives. I draw upon selected examples of the growing body of literature on the post-Katrina context and the literature on social movement responses to Katrina in order to demonstrate the significance of the context in which this research is grounded. I mentioned briefly in the background section of this chapter that this thesis research emerged from some exploratory research that I conducted that focused on post-Katrina emergent social movement activity. I draw upon observations that I made in this initial stage of research to supplement the discussion of this literature in this section.

George Lipsitz (2006) locates and describes a “culture of hostile privatism” deeply rooted in contemporary American culture that has colored the official national response to Katrina. He writes that this culture has given rise to a “free market fundamentalism” that is evident in the official approach to the rebuilding of New Orleans. This market driven approach that Lipsitz identifies is evident in many of the policy decisions to which post-Katrina social movements are reacting. Among these are the dismantling of public housing and public healthcare facilities to make way for private development opportunities, the move toward privatization of public education, and the lack of viable large scale social programs to adequately support the recovery

needs of residents. Lipsitz also notes that the very same free market fundamentalism that is being promoted in the rebuilding of New Orleans “replicates the exact actions, values and practices that made the hurricane so disastrous in the first place” (p.452). He notes a history of valuing property and the interests of big business more than people that encouraged the development and destruction of the wetlands that historically protected New Orleans from storms. He points to the “faith- and finance-based approach to science and glorification of private gain” (p.452) that has led the U.S. government to deny claims of global warming, which has likely increased the frequency and intensity of storms. He notes that a systematic disinvestment in infrastructure, including levees and storm drains, put the city at greater risk. And he suggests that the privatization of public services, the failure to enforce fair housing laws and the “evisceration of the social wage promoted by union busting, capital flight, and tax breaks for business” (p.452-453) left the most vulnerable residents of New Orleans trapped in unsafe housing, unable to secure transportation for evacuation and exposed to deplorable conditions in the aftermath of the hurricane.

Similarly, Jamie Peck (2006) recognizes an historic process of evisceration of public services and disinvestment in the city that contributed to decades of social and economic decline that left a large segment of the New Orleans population highly vulnerable to the effects of the inevitable big storm. Peck notes that in the wake of Katrina there was an outpouring of conservative commentary, editorializing, and policy advocacy from conservative think tanks that “aggressively and effectively peddled... neoconservative/neoliberal ideas that dominated the post-Katrina policy debate” (p.705). Peck notes that the initial shock of the horrors of Katrina only briefly laid bare the inequities and limitations of the operating model of American neoliberalism and that “[w]ithin the space of a few months, if not weeks, it had become clear

that the longer-run outcomes of Katrina would not be a reversal of, or even a midcourse adjustment in, the process of neoliberalization but, in fact, an acceleration of its extant programs of social regression and market governance” (p.708).

Naomi Klein (2007) names and investigates on a global scale, with particular attention to post-Katrina New Orleans, a process of “disaster capitalism.” She uses the term to signify the “rapid-fire corporate reengineering of societies that are reeling from shock.” She investigates the aftermath of disasters around the world and recognizes patterns of state and corporate interests stepping in to intervene in the reconstruction process to benefit elite and corporate interests. Lipsitz (2006) writes that from the perspective of the elites controlling national policy, “New Orleans must be rebuilt for the convenience of investors, entrepreneurs, and owners. From this vantage point, the black residents of the city who suffered so terribly during and after the hurricane are not people who have problems, but instead they are the problems” (p. 451). This is the context in which post-Katrina social justice movements struggle.

Lipsitz, Peck and other scholars writing in their vein share the sentiment expressed by Doane (2007) that “[it] is essential to remind the nation that the scope of the disaster, the failed response and the racially disparate impact did not just ‘happen,’ but that they were the natural outcome of the social dynamics that create and reproduce racism and poverty in American society” (p. 117). Scholars writing about the context of Katrina in a variety of disciplines have chosen to describe the event as an “unnatural disaster” in order to point out that the effects of Katrina were caused by much more than an extreme weather event (Hartmann and Squires 2006; Horne 2006; Laska and Morrow 2006; Reed 2006; Steinberg 2006). Douglas Brinkley (2006) draws upon hundreds of oral histories interviews and arrives at the conclusion that Katrina was not a natural disaster at all but a failure of government, “one that, through breached levees and

massive government incompetence, the country brought upon itself” (Brinkley as cited in Stein and Preuss 2006). Bates and Swan (2007a) call the catastrophe following Hurricane Katrina a “social disaster: a disaster predicated upon and exacerbated by structural inequality and human decision-making,” and go on to write that “A social disaster can be triggered by a natural event such as a hurricane, but ultimately it is rooted in the choices a society makes and the prioritization of some lives over others” (p. 5).

This understanding of the social disaster at the root of Katrina is not one that is exclusively held by academics. In a preliminary interview for the stage of my research that preceded this thesis project, New Orleans resident and activist Malik Rahim stated, “Katrina is only the most recent disaster in a long line of social disasters” (Rahim 2006). He went on to illustrate how New Orleans society, in particular, and American society, in general, have been plagued by a long history of oppression based on race, class and gender. A theme that emerged clearly from this research is that there exists among the grassroots in New Orleans a collective understanding of how structural inequalities based largely on race and class issues compounded the problems of the disaster and informed the reactions of the grassroots response (O’Connell 2006). New Orleanian activist and writer Jordan Flaherty (2005) wrote of “the disaster before the disaster of racism, corruption, deindustrialization, and neglect” (p. 25). Similarly, on December 6, 2005, neighborhood activist and life-long New Orleanian, Dyan French, more commonly known as Mama D, testified at a congressional hearing in Washington D.C. that pre-Katrina racism created conditions that increased suffering and slowed an official response to the majority poor and black neighborhoods of New Orleans (CBS News 2005). The notion that the disaster is rooted in structural inequalities is important to this thesis research because the lawyers and the movement people with whom they are allied maintain similar notions and explain much of their

activities as being aimed towards a more just society that would not allow such humanitarian disasters to occur.

The continued failure of the official response of the various levels of government and major relief agencies to support the needs of those struggling most for their own survival and recovery greatly compounds the social effects of Katrina. In this context, people-powered, grassroots, progressive alliances have emerged to help fill the gaps left in the official response (Rodriguez, Trainor, and Quarantelli 2006; Bates and Swan 2007b). As bad as conditions were for many in New Orleans in the wake of Katrina, and as difficult as conditions remain for some, the catastrophe would have been much worse were it not for such efforts from the grassroots. Not only do these community responses proceed without the support of government aid, they are often obstructed by government agencies and development of policies that are often at odds with humanitarian goals of supporting the most vulnerable communities and individuals (Agid 2007; Bates and Swan 2007b). Scott Weinstein, a volunteer nurse who helped open a free community clinic immediately after the storm writes that “a pattern emerged immediately after the storm of thousands of competent people and groups only able to help others, receive help, or help themselves by sidestepping official agencies and rules that obstruct and frustrate rescue and relief efforts” (Weinstein 2005). This is a pattern of grassroots activity that persists at the time of this writing, nearly two and a half years later, well into the recovery phase. This is a phenomenon that Klein (2007) refers to as “the rise of the people’s reconstruction” that is the “antithesis of the disaster capitalist complex’s ethos” (p.466).

One of my interests in my earlier stage of research centered on the fact New Orleanians struggling for survival in the wake of Katrina were depicted as either helpless or criminal, a consequence of a tragically inadequate official response that is consistent with a long history of

city, state, and federal government abdicating responsibility for public welfare in crisis situations and (Bates and Ahmed 2007; Miller and Rivera 2007). Yet amidst this national image of failure there is a parallel story of self-determination, mutual aid, and people-powered direct action emerging from the grassroots. These post-Katrina stories of resistance, resilience and collective organizing are rooted in a unique culture of resistance developed over hundreds of years of community and individual struggles in the face of official neglect, oppression and white supremacy (Flaherty 2005). As one woman, a Creole elder, from the Seventh Ward of New Orleans flatly told me in a preliminary interview, “This ain’t nothin’ new, baby. We *know* how to struggle.”

This initial stage of my research clearly explodes the popular myth shaped by the media and widespread race and class prejudice that those struggling for survival in post-Katrina New Orleans were either helpless victims or immoral criminals. Instead, I found that the survivors of Katrina are, by and large, ordinary people doing extraordinary things in the context of horrible circumstances of abandonment and neglect. This early assessment has since been supported by a growing body of literature on the general post-Katrina social and political context and the research on social movement responses to Katrina. Rodriguez, Trainor, and Quarantelli (2006), in their research that relies primarily on fieldwork in the aftermath of Katrina supplemented with an extensive database of media reports and a series of government documents, conclude that despite media reports of widespread antisocial behavior, the primary response to the catastrophe was prosocial and that much of this was in the form of emergent collective organization. The collective efforts that I documented are examples of spontaneous direct action responses to critical survival needs. The emergence of grassroots leaders influenced the nature of the people-powered response to the struggle in New Orleans. These leaders and many of the other social

movement constituents have led lives steeped in a culture of resistance that shapes their worldview and influences how they organize. These organizing models are distinctly anti-authoritarian, people-powered, resistive, self-determinant, loosely structured and organically developing.

The primary purpose of my thesis research is not to thoroughly document these grassroots efforts or their historical roots, but it is important to provide a bit more context in order to at least partially understand the movement environment in which the cause lawyers at the heart of this research operate. So I will elaborate a bit more on the findings of my earlier research into the evolving post-Katrina social movement activity.

This initial stage of research demonstrated a popular recognition among movement leaders that the continued failure of government has spurred a mobilization of the grassroots to respond to critical needs. This understanding was also sometimes reflected in the mass media. On September 2, 2005, *The New York Times* published an editorial entitled, “The Man-Made Disaster” that pointed out the utter failure of government to respond to the situation in New Orleans. The editorial states that disaster planners were “well aware that New Orleans could be flooded by the combined effects of a hurricane and broken levees, yet somehow the government was unable to rise to the occasion.” This is just one example of the widely documented government failure that is often perceived by movement participants as willful neglect (see also Check 2007). Throughout the research process, I encountered examples of this collective belief in the willful neglect and abandonment of social responsibilities by government. The development of this popular notion and the role it has played is compatible with theories of collective behavior. “Present in all collective behavior is some kind of belief that prepares the participants for action” (Smelser 1962: 79). The notion of willful neglect by the government

prior to, during, and after Katrina is a theme that motivated an anti-authoritarian, do-it-yourself, direct action response to the needs of those left behind.

The phenomenon of cause lawyers working in support of social movements is seen in this research as one aspect of a locally-driven, post-Katrina, social movement that emerged from a rich tradition of social protest and self-determination. These efforts are decentralized and consist of a broad network of autonomous individuals and groups that support and communicate with one another but function separately. From an outsider's perspective this "movement" may appear disorganized and fractured and therefore less than optimally effective. But several informants in my early stage of research put forth the idea that this model has proved to be politically necessary because popular movements have a history of being undermined by the state and other opposing interests. This notion is supported by the literature on social movements (see Piven and Cloward 1978; Jones 1998). Despite the sometimes ephemeral nature of post-Katrina movements, some are beginning to recognize that a broadly defined movement for a just recovery of New Orleans may prove to be one of the longer sustained social movements in US history (Laska 2007).

So what has emerged in the wake of Katrina is a movement consisting of a loosely-knit coalition of local residents and dozens of groups with various organizational frameworks, political perspectives, and areas of focus, taking action on a number of levels to do the vital work necessary to heal communities and rebuild New Orleans. Cause lawyers rooted in these communities and networks of social action play an integral role in this process. This research seeks to discover how these lawyers situated in this context understand their roles, how they understand their relationships to post-Katrina self-determination movements and how they negotiate the challenges therein.



Those involved in post-Katrina social movement activity, including the participants in this study, generally have a deeper agenda than just returning to the status quo. The subjects of this research have participated in movement activity that aims to meet immediate survival needs and assist in the recovery and rebuilding efforts in a way that attempts to effect social change at the level that would attack the root causes of the social disaster in New Orleans. There is evidence in their speech and actions of a belief that Katrina has created an opportunity for significant change. In fact, the histories of disaster, inadequate government response, emergence of indigenous leadership and people led initiatives for change contain examples of disasters leading to significant political change. Flaherty (2005) points to the following historical examples. “The inadequate response of government to the 1985 Mexico City earthquake fueled a grassroots response that helped end decades of one party rule in Mexico. Corruption and stealing of post-earthquake material aid in 1972 helped end the Somoza dictatorship in Nicaragua. And the 1927 Great Flood of the Mississippi gave rise to a political movement that helped elect Huey P. Long governor of Louisiana” (p.28).

In the context of a social movement arising out of disaster response, it is a goal of this research to bring forth the role of the cause lawyer in the grassroots networks that develop when official state structures prove to be inadequate. The cause lawyers at the center of this research were thrust into the center of the disaster response effort by virtue of their established alliances with grassroots leaders, community groups, and unaffiliated ordinary citizens, as well as for the simple fact that they too were, for the most part, severely impacted by the disruptions of the aftermath of Katrina and became active in collective movements as part of their own recovery. In this thesis research I seek to learn about the relationships between cause lawyers and social movements as one aspect of the critical, yet under-recognized, emergent grassroots responses in

post-Katrina New Orleans. The contextual background of post-Katrina social movement activity presented here along with the narrative material, supporting data, and analysis of this research serve as resources for developing a richer understanding of how cause lawyers interact with these collective movements for social justice.

### **Chapter 3: Theoretical Context**

In this section I highlight and elaborate on the key theoretical and empirical developments from previous scholarship that provide the important foundations of this study and influence the framing of the research questions, the design of the research, and the interpretation of the findings. Three distinct but related areas of scholarship provide a solid ground from which this study can proceed. I have selected elements from law and society scholarship, social movement theory, and critical race theory based on what they can do to aid in the understanding of the key issues in this research. Each of these areas of scholarship contributes in its own way to this research and builds upon each of the others to provide a useful framework of background literature upon which to rely.

Initially, I look to a diverse collection of literature from law and society scholars that sharpens the focus of this research at the outset by outlining and developing the conceptual category of cause lawyer. This work also highlights some of the important learnings from previous work in the field on the relationships between cause lawyers and social movements. This rather legal-centric work is balanced by exploring ways in which key contributions from the tradition of social movement theory can bolster the understanding of cause lawyering vis-à-vis the social movement perspective. Critical legal theory, specifically critical race theory, adds to the picture a critical analysis of the uses of law and a theoretical discussion of rights discourse that is central to this study. And finally, I return to law and society scholarship for a comparison of intensive case studies of social movements and legal mobilization that provide historical contexts in which to explore some of the broad questions of this research.

A number of key themes emerge from a horizontal analysis across this literature that help focus this study of cause lawyers and social movements. One is that there exists contention about whether, to what degree, and under what conditions the law can be employed by movements to effect social change. The nature of this contention will be explored throughout the course of this study. A related theme is that the work of social justice movement lawyers is rife with contradictions based on negotiating these challenges and, as a result, they have developed sophisticated ways to understand and deal with these tensions in their work with social movements. Another theme that surfaces from the literature is that the law is employed by social movements and their lawyers in many subtle ways, such that it is experienced as neither just a resource nor just a constraint.

### ***Law and Society Scholarship***

The interdisciplinary work of law and society scholars has been key in the development of an understanding of the complex nature of the relationships among cause lawyers, social movements, and social change. Three important edited volumes containing the empirical and theoretical work of a broad spectrum of law and society scholars have been published in the last decade (Sarat and Scheingold 1998; 2004; 2006). These volumes provide a record of the development of scholarly thought related to cause lawyering. The first of these collections focuses on the question of how some lawyers challenge conventional ideas of the profession of law through their radical commitment to causes (Sarat and Scheingold 1998). The second anthology shifts focus to an investigation of how these lawyers construct cases and the ways in which causes offer lawyers “something to believe in” that provides meaning for their work (Sarat and Scheingold 2004). The most recent contribution shifts from an analysis of causes to a view of social movements in particular and from a look at the relationship between cause lawyering

and professionalism to the explicitly political work of cause lawyers (Sarat and Scheingold 2006). I seek to ground my research in this tradition that has greatly contributed to my understanding of cause lawyers and piqued my curiosity to learn more.

Sarat and Scheingold (2006) provide an historical context in which to view the challenges faced by movements and movements lawyers. They present the findings of an array of scholars who look at the life cycle of movements and movement lawyering. These scholars seek to understand how changes in society over time offer movements and their lawyers special opportunities and challenges that shape actions and inform how movement lawyers interact with the courts, society-at-large and the constituents of the movements for whom they work.

McCann and Dudas (2006) provide an analysis that shows “how the relatively favorable context for rights-based, legally oriented social movement activity in the United States in the middle part of the twentieth century gave way to an increasingly unsupportive, hostile context by the century’s end” (p.38). Even though the legalistic rights-based approach intended to spur increases in social movement activity through widespread public sympathy and eventually elite support has certainly not been abandoned and is still relied on as a strategic tool of social movements, the shift in responsiveness of American culture and in the realm of the courts against applying rights-based arguments for social change has created an atmosphere that has encouraged lawyers to examine other strategies and possible roles they might play within social movements. As the external political opportunity structure shifts, such that legal tactics become less effective, a possible role of the cause lawyer is to assess this shift and then to participate in alternative strategizing with other movement members.

### ***Social Movement Theory***

In the initial stages of this research it became apparent that much of the cause lawyering

literature is quite legal-centric, such that important perspectives seem to be missing from much of the cause lawyering literature. Jones (2008) recently noted, “In fact, existing theories and empirical work on social movements often are ignored, even when these theories clearly provide relevant support for the vast empirical work on cause lawyers” (p.i). Because the researchers in this field are just beginning to explore ways to bring social movement theory into the study of cause lawyering there are few published examples of this to which my research can turn. So one of the projects of this research is to begin to explore ways that the study of cause lawyers can draw on social movement theories and concepts to explain phenomena.

Social movement theory has evolved to focus on three related factors that researchers use to systematically analyze the complex, interrelated features of social movements. These are the “political opportunities” that encourage the emergence and growth of social movements, the “mobilization of resources” that is at the core of social movement organizing, and the “framing process” by which movements define their identities and goals (McAdam 1982; McCann 1994; McAdam, McCarthy and Zald 1996). None of these theoretical approaches is comprehensive enough to take into account all of the complexities of social movement dynamics. But despite the limits of each perspective, when taken together, each in turn builds on the other and adds to our ability to understand the complex dynamics of social movements. In the following pages I identify key features of these three perspectives on social movement dynamics that I find useful for this study.

“Political opportunity structure,” applied to the world outside a social protest movement, has been the focus of much research and theory development related to political protest. This approach to understanding social movements emphasizes the connection between activist efforts and more mainstream institutional politics. The basic premise is that factors originating outside

of the movement “enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy” (Meyer and Minkhoff 2004:1457-58). In other words, various aspects of social movement activity often correlate with the relative openness of the political environment external to the movement. The challenge facing researchers concerned with political opportunity and social protest is trying to understand which aspects of the external world affect the development of social movements and how this development is affected. Tarrow (1994) offers a succinct and helpful definition of political opportunity structure: “consistent — but not necessarily formal or permanent — dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure” (p. 95).

There are a number of ways that the political opportunity concept is useful in an examination of the relationships between lawyers and social movements. There is some evidence that cause lawyers do participate in the assessment of political opportunity and consult with movement leaders about when best to employ certain strategies (Jones 2006). And in the event that the political opportunity structure is unfavorable to movement action, the cause lawyer may become active in trying to push for changes that may open up opportunities in the external political opportunity structure. It is possible but uncommon that certain legal tactics may open an opportunity for social action that did not previously exist.

The political opportunity structure perspective on social movement development is an interesting way to look at post-Katrina social movement activity. As catastrophic as the aftermath of Katrina proved to be, it can also be seen as a moment of opening opportunities. In fact, the framing of Katrina as an opportunity for change is a particularly noticeable element of

post-Katrina popular discourse in New Orleans. In fact, when I first came to New Orleans as a volunteer shortly after Katrina, many formal institutions of society were either severely debilitated or altogether non-functional, and there was a clear sense among the local and out-of-town activists whom I met that, despite all of the tragedy around us, the circumstances presented an opportunity for change because “business-as-usual” had come to a screeching halt.

Whether or not the disruptions of Katrina actually did usher in any real formal structural shifts in the political landscape that provided openings for historically marginalized groups to gain traction is a subject for a different research project. But it appears that, the top to bottom societal “shake-up” of Katrina was perceived by some as representing a *possible* shift in political opportunity, such that social movement participants were energized to organize and raise their expectations for success. It is possible that Katrina actually resulted in a more restrictive political opportunity structure for New Orleans social justice movements, one that is even less hospitable to claimants fighting for change. But the *perception* that there was a shift in the political opportunity structure was sufficient to positively affect the mobilization of social justice movements. This view is in line with a strain of social movement literature that suggests perceptions of political opportunity are far more important to collective action than the actual strength of institutional or opposing political forces (Kurzman 1996).

The political opportunity approach to analyzing social movement activity may be somewhat useful to the particular discussion of the roles that lawyers play within movements as collaborators on movement strategy when they assess and report back to grassroots organizers their perceptions of change or lack of change to the structures of political opportunity. But certainly the political opportunity structure approach is not sufficient to explain all aspects of social movement activity. For instance, it does little to explain the clearly defiant, resistive



strains of movement activity that rise up in the face of obviously restrictive and inhospitable political opportunity structures. And in fact, one might argue that historically and in the contemporary context, this is the type of environment in which social movements operate in New Orleans.

The political opportunity approach to understanding aspects of the cause lawyer/social movement relationship is most beneficial to this study if used in conjunction with other theoretical approaches, each in turn adding to our understanding of the various aspects of social movement activity. Some scholars have sought to understand the ways in which lawyers and legal strategies are employed by social movements within the context of resource mobilization theory. This branch of theoretical work emphasizes the importance of resources to social movements. Mobilization is "the process of forming crowds, groups, associations, and organizations for the pursuit of collective goals" (Oberschall 1973:159). The idea is that organizations do not "spontaneously emerge" but require the mobilization of resources. Also found within resource mobilization theory is the notion that discontent is not sufficient to give rise to social movements. The relative power of the aggrieved is in large part measured by their ability to mobilize resources (Oberschall 1973). Resource mobilization theory views resources as more than just financial. In fact, the most important resource to social movements may be their people. Money, hours of labor, and specific skill sets are obvious important resources that enable movements to build organizations and launch effective struggles to attain their objectives. Social movement scholars also extend the resource mobilization approach to view less tangible but equally critical elements such as knowledge, solidarity and legitimacy, as important resources to movements (Kitschelt 1991:326-330).

In this light, cause lawyers can be seen as participants in the resource mobilization process for social movements in two ways, as a particular type of resource to be mobilized and as movement participants engaged in garnering of other resources. On a basic level, cause lawyers themselves can be resources for a movement. The cause lawyers in this study, as I will provide evidence for later, see themselves as being in support roles within the larger movement, as a resource ready to be mobilized. Legal mobilization, the work that cause lawyers do, can be seen as a special case of resource mobilization. Another way in which the work of cause lawyers for social movements can be seen through the resource mobilization approach is that they are a limited resource. There is a relative scarcity of lawyers who are qualified, willing and able to do the support work needed by movements. Lawyers are constrained by commitments to other causes and by a need to earn money that is most always in short supply in social movements.

Cause lawyers bring with them professional skills and connections to other assets (relationships with national advocacy organizations, law student volunteers, etc.) that can be mobilized to build movements and exploit opportunities for change. But a key insight of resource mobilization theory is that resources often come with strings attached; that is, they not only support collective movements, but they often steer movements into channels favored by the resource suppliers (Edwards and McCarthy 2004 cited in Cummings 2006:311). The process by which lawyers are mobilized as a resource, precisely what they bring to social movements and the effects that legal mobilization has on social movements will be analyzed in the course of this research.

The third approach used by social movement scholars to better understand how movements operate is the process of framing. I employ key aspects of this perspective in my analysis of the work that cause lawyers do for social movements. Framing refers to the process

of assigning meaning to or interpreting relevant events and conditions in ways that tend to mobilize core constituencies and garner popular support (Snow and Bedford 1992). The framing perspective has become integral to the study of social movements because of the idea that before collective action is likely to occur, a critical mass of people must engage in a process of social construction of a sense of injustice (Piven and Cloward 1977; McAdam 1982). This is the process of collective framing that focuses the energy of a social movement.

In this study, I will use the framing perspective to seek to understand how cause lawyers contribute to the dynamic, collective process of social construction and negotiation of meaning that is framing. The framing perspective is a relatively promising way to access some of the intricacies of the cause lawyer-social movement relationship. It is a process in which cause lawyers play an integral role. It is a large part of what they do in the courts, just as it is a large part of what they do outside of court. Cause lawyers often have relatively easy access to the mass media and as a result are in a position to help frame the goals of the movement to the rest of the community. They participate in the creation of frames of collective meaning within social movements and independently express personal frames of understanding that unite them with other constituents of the movement (Jones 2003 and 2006).

In an early attempt to employ social movement theory in the study of cause lawyers, Lynn Jones (2006) introduces the phenomenon of lawyers “framing” a cause within the context of social movements. She summarizes what is known about this process from the perspective of social movements and adds to this by inserting the question of what cause lawyers contribute to the framing processes of social movements. She suggests that movement lawyers do not invariably undermine movement goals through a sole focus on litigation strategies and a one-sided biased view of movement issues as seen through an elite profession lens. The lawyers in

her study play an important cooperative, internal role in the movement framing process. Through the movement framing lens, Jones views movement lawyers, not as outside elites, but as one type of movement activist.

Jones suggests that cause lawyers can be viewed as a category distinct from lawyers as a whole because of their often-divergent analysis of the legal system. The way they frame the system is different than the conventional lawyer. These lawyers often adopt a “haves come out ahead” frame that is in alignment with most movement activists’ views. This view informs the work that lawyers do in regard to framing the legal system for movement actors. She says that movement lawyers often contribute to the collective action framing process by helping frame the courts as benefiting the powerful, as potentially dangerous because of the potential for bad precedent setting, and as restricting rather than protecting rights. We will see in the data analysis section of this thesis that several of the respondents’ quotes suggest this type of re-framing function of the cause lawyer.

I use these three core components of social movement theory, (political opportunity, resource mobilization, and framing), in places throughout my analysis of the data in order to better understand the phenomenon of cause lawyering for social movements. Although these components of social movement theory offer some help in understanding how lawyers fit into the dynamics of social movements, they do not do much to help explain political challenges and the effects on social movements of choices that lawyers make regarding litigation and other elements of their professional practice. For insight into this aspect of the social movement cause lawyering phenomenon I turn to key aspects of critical race theory and an analysis of a critical debate concerning rights discourse.

## *Critical Race Theory*

In conjunction with law and society scholarship and social movement theory, this research looks to some of the key arguments of critical race theory (CRT) as a way to understand issues underlying cause lawyering for social movements. CRT is a critical theory project that in recent decades has influenced the development of socio-legal scholarship by stirring a debate concerning the critique and defense of the viability of rights discourse for those seeking social change. In this section, I highlight the historical origins of CRT and examine some of its key tenets in order to demonstrate its usefulness to the study of cause lawyering.

In a break with traditional liberalism, the critical legal studies (CLS) movement, a precursor to CRT, developed as an oppositional scholarly movement in the post-civil rights era years in a critical response to the persistent societal hierarchies that the promise of the civil rights movement failed to alleviate (Crenshaw, et al. 1995). In Hutchinson and Monahan's (1984) classic piece on the rise of the CLS movement, the authors show that the "CLSers" contended that American society in general, and specifically legal activists and social movement activists, maintain an unjustified faith in civil rights legislation. They argued that this blind faith effectively allows the hierarchies and contradictions in liberal democratic society to persist. CLS writers contended that these hierarchies are masked by the ideal of the "rule of law" that, instead of serving as a tool for liberation by correcting social imbalances, actually hides and reinforces these inequities. CLS scholars used this analysis to deconstruct and decidedly reject the possibility that law can be employed as a force of liberation.

The early CRT movement grew out of the critical legal studies movement, in part, as a reaction to the CLS rejection of rights discourse (Crenshaw, et al. 1995). CRT scholarship, as a

whole, does not simply reject the use of the law based on the criticisms it shares with the CLS movement. CRT scholars maintain, instead, that rights claiming and redress through the courts, in conjunction with other social movement tactics, remains one of the only viable tools available to historically marginalized people in their efforts towards social and economic equity (Valdes, Culp and Harris 2002). CRT scholars recognize the persistent inequities of the post-civil rights era and the shortcomings of previous attempts to achieve social equity through the courts, and they use this analysis to call for change in strategy, rather than a flat rejection of the utility of rights discourse altogether. CRT goes beyond the scope of most traditional academic scholarship and other critical projects in its activist dimension that seeks, not only to critically examine, deconstruct and understand the reality of our social condition, but also to intervene and change it (Crenshaw, et al. 1995).

CRT proposes routes by which rights discourse might be most effectively employed and routes by which the law might most effectively be transformed and redeemed as a tool for social change in conjunction with other tools of resistance. Bernie Jones (2001) summarizes the objectives of CRT, “The critical race theorists had as their objective ending exclusive reliance upon civil rights legislation, [the advancement of] storytelling to broaden public consciousness of racism and discrimination under the law, and protest reminiscent of the 1950s and 1960s” (p.1). My research seeks to examine how cause lawyers engage with social movements to support these types of objectives in the current political and social climate of post-Katrina New Orleans. Specifically, I employ this understanding of the objectives of critical race theory to examine whether cause lawyers adopt an unjustified blind faith in the rule of law, or whether cause lawyers promote the objectives that Jones identifies by strategically using but not solely relying upon liberal civil rights discourse, by supporting the transmission of narratives to

broaden public consciousness, and by encouraging more radical direct action tactics on the part of social movement actors.

After a comprehensive review of CRT literature, my assessment is that the field is still evolving, extending to other disciplines, and absorbing internal disputes, such that it is a complex task to fully lay out a concise and complete picture of critical race theory. Instead, in the following pages, I draw upon four main tenets that underpin the objectives of critical race theory outlined above, which are especially useful to this study of cause lawyers and social movements. The first is that CRT is essentially a scholarly resistance movement, one that is dually critical of reformist civil rights scholarship as placing too much confidence in the rule of law, on one hand, and of left legal scholarship as unduly rejecting the value of rights discourse and redress through the courts on the other. The second aspect of CRT that is key to this research is its tendency to revisit and critically reinterpret historical and contemporary struggles from the perspective of the historically marginalized, instead of from the commonly accepted perspective of the dominant social group. A third aspect of CRT directly related to the second is CRT's reliance on narrative and storytelling devices to bring forth the voices of the oppressed in an effort to communicate their experiences and activities in a way that might broaden public consciousness. And last is a critique of popular notions of the colorblindness and neutrality of the law. In the following pages I outline each of these four components of critical race theory and suggest how each contributes to understanding the work of left activist cause lawyers and social movements.

First and foremost, one of the most salient qualities of the work of the critical race theorists is that it is a resistance movement. CRT scholars, when reflecting on the genesis of the movement, cite the fact that they began organizing themselves in response to the realization that the significant progress of the civil rights era had stalled or was even being rolled back (Delgado

and Stefancic 1995). According to Delgado and Stefancic (2001), critical legal scholars, Derrick Bell and Alan Freeman, produced the earliest examples of the brand critical scholarship that became known as CRT. They became deeply concerned with the “snail pace” at which racial reform was proceeding in the early post-civil rights years. They and others began to recognize in the 1970s that many of the early victories of the civil rights movement were already being eroded and that a conservative backlash against civil rights gains was mounting. This period of retrenchment continued throughout the 1970s and 1980s and served as a catalyst for critical legal scholars and others interested in similar social dynamics to develop an analysis of the entrenched racism, racial hierarchies and other power relationships that persist in our institutions and social relationships. CRT began to develop traction as a scholarly movement in these years and stirred controversy as these scholars worked to shed light on and challenge the practices of subordination performed and allowed by legal discourse and legal institutions.

Critical race scholars created a scholarly resistance movement simultaneously engaged in critiques of reformist civil rights scholarship and left legal scholarship (Delgado and Stefancic 1995). Early CRT scholars investigated whether civil rights strategies of the past could effectively be put to use in the post-civil rights era political climate. They contended that legal activism and liberal efforts for social change that focused primarily on legal remedies for formal equality addressed only the most overt types of racial discrimination and not the pervasive structures of white supremacy that are at the core of how our society is organized (Delgado and Stefancic 1995). In fact, these scholars argued and continue to argue that the Constitutional and legislative responses to overt discrimination gave rise to a popular but false belief in a “color blind” justice. They argue that this tendency of the courts and the general population to view the work of the civil rights era as “complete” makes it even more difficult to challenge the



underlying racial power structures that prevented significant improvement in the day to day lives of people of color. At the same time, they are critical of the CLS rejection of rights, because they recognize the power that rights discourse can offer historically marginalized people.

One of the ways that CRT scholars engage in their resistive brand of scholarship is through the second element of CRT that I have identified as important to this research. CRT scholars present fresh views of history by reviewing and reinterpreting history through the framework of critical race theory rather than through the lens of the dominant social group, and by introducing additional historical evidence and minority perspectives that are all too often absent from the historical record. One famous example of this is Derrick Bell's (2004) assertion that *Brown v. Board of Education* was actually decided in the way it was primarily because of international and domestic economic and political pressure, and that the real motivation behind the *Brown* decision was not some sudden shift in society toward racial justice but actually a move to preserve the interests of the dominant group of elite whites. This analysis highlights an essential problem that critical race theorists identify in the legal system that is controlled almost exclusively by elite whites. The problem is that changes in relationships among races, including the significant changes in the progressive and civil rights eras, tend to reflect the interests of the dominant group rather than evolving out of some idealistic or progressive sentiment (Bell 2004).

Much of the work of CRT is in the vein of Bell's reinterpretation in the previous passage. Scholars use CRT to interpret events and historical trends so that it can be shown that the dream of the civil rights movement has not yet been realized, that there still is work to do. In this way, CRT scholars situate themselves as critical interpreters and use a process of critical analysis to reinterpret and "shake-up" common understandings. I will show later in this thesis, in the analysis of respondent narratives, that interpreting is also a role of the cause lawyer who works

with social movement activists to critically analyze social and political contexts and broadcast reinterpretations that support movement objectives.

The third element of CRT that I employ in this research is its focus on the importance of voice. CRT rejects the contemporary liberal tendency to assume that there is, for instance, one unified “Black” experience and asserts the importance of recognizing individuality and diversity of experience and identity in order to oppose the essentialist tendencies of our society that serve that conflate and marginalize voices of historical oppressed people (Valdes, Culp and Harris 2002). But there also exists within critical race theory a simultaneously held belief that there is a unique voice of color that exists in “somewhat uneasy tension with anti-essentialism” (Delgado and Stefancic 2001). This belief in a unique voice of color is based on the notion that historically oppressed people of color are the only ones capable of communicating the subtleties and qualities of their respective histories and experiences in a way that white liberals or even the most sensitive, leftist, white ally could not possibly know.

The recognition of the power of voice is one of the motivations behind the often used strategy within this genre of employing narrative devices and legal storytelling that highlights the experience of oppression. Ladson-Billings (1998) writes, “The voice component of CRT provides a way to communicate the experience and activities of the oppressed, a first step in understanding the complexities of racism and beginning a process of judicial redress” (p.56). Later in this thesis I will explore this notion of the importance of voice in social movements when I examine whether cause lawyers see part of their responsibility to the people and movements with which they are allied as providing a space in which their clients can formally voice their unique experiences.

In their overview of critical race theory as it had developed in the last couple of decades prior to their writing, Delgado and Stefancic (1995) observe that a fundamental message of the CRT movement is that racism is not extraordinary. It is, rather, “business as usual” in our society and is part of the daily struggle of people of color in this country. The fact that racism is so thoroughly embedded in our society makes it that much more difficult to address. Often times, because the racial power differential called white supremacy is the default social arrangement or “normal” state of affairs, that day-to-day problems associated with racial hierarchy go unseen especially from the perspective of the dominant group.

Within CRT thinking is the notion that race is a social construction that has no biologically scientific reality. This does not mean, however, that race is not important to social reality. CRT claims that clearly race is crucial, because of how racialization is experienced by members of society (Valdes, Culp and Harris 2002). The notion of race as a social construction is becoming more and more accepted across society, but this notion is also being abused by dominant groups to maintain the hierarchical status quo. The argument is repeated at all levels of society that if race is a social construction and fundamentally unreal, then we should not consider it in our institutions or social relations. But, as CRT theorists would argue, this argument ignores the contextual reality of how race is experienced socially. CRT theorists recognize race as a social construction but advocate for a “race conscious” view of social relations and institutions.

These arguments concerning entrenched every-day racism and calls for race-consciousness in social relations and institutions culminate in a fourth major theme flowing throughout the CRT literature. I identify this fourth component as a critique of the brand of liberalism that believes in colorblindness and the neutrality of law. In the view of many CRT

scholars, these liberal political views have allowed for interventions in only the most overt types of formal racist discrimination and tied the hands of those who would do more to substantially address racial inequality in America (Crenshaw et al. 1995; Delgado and Stefancic 1995; Delgado and Stefancic 2001; Valdes, Culp and Harris 2002; Bell 2004). CRT scholars put forward that only aggressive color-conscious action can effect change in racial hierarchy. CRT scholars suggest that this action should be rooted in and balanced between aggressive rights-based litigation and forms of social protest that allow the voices of those struggling for justice to be heard.

The CRT approach to the role of the law and the value of rights claiming is likely more in line with the beliefs, values, and struggles of cause lawyers and social movements than is the liberal view of rights claiming as the key to liberation or the CLS view of the impotence of rights. These lawyers and movement leaders generally appear to maintain a degree of critical skepticism regarding rights and the promise of rights discourse to directly effect substantive social change, but they do advocate for strategically using rights discourse to formally address the persistent inequities in the American social structure. The four elements of critical race theory highlighted in this section help to specifically focus this research on similar issues that arise in the study of cause lawyers and social movements.

### ***The Utility of the Law for Social Change***

A crucial debate joining together the fields of social movement scholarship and legal scholarship revolves around the question of whether the law can be mobilized to bring about social change. Two contrasting books published in the 1990s typify this debate and employ case study methodology and historical analysis in an effort to address this basic question. Viewed alongside each other, an analysis of their competing claims will help situate this research relative

to this important question. In the following pages, I review these works in some depth to offer some historical context in which to situate a central question of this research. A close look at this debate bolsters this research by more fully laying out what the real challenge is to litigation from the social movement perspective.

Both Gerald Rosenberg's *The Hollow Hope: Can Courts Bring about Social Change?* (1991) and Michael McCann's *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (1994) employ case study methodology to deeply investigate the question at hand, but interestingly, the two arrive at starkly different conclusions about the role of the law and, specifically, rights discourse and its effect on efforts for social change. Rosenberg's ultimate assessment is that the courts are not equipped or inclined to be the harbingers of meaningful social change. McCann, on the other hand, argues that legal tactics, as one facet of a robust social movement, can be an effective tool. He makes a vital contribution by identifying more subtle, but no less important, ways in which legal action and discourse are important to movements.

Rosenberg examines the United States Supreme Court's efficacy in the production of social change by exploring case studies of the civil rights movement through the lens of *Brown v. Board of Education* and the women's rights movement with a focus on *Roe v. Wade*. His analysis paints a picture of courts that ultimately lack the capacity to create meaningful change, except on the rare occasion when a number of essential conditions coincide to allow significant constraining factors to be overcome. He claims that judicially upheld rights of claimants do very little to create sweeping social change for subordinated groups. In fact, Rosenberg views litigation primarily as a liability to social movements as it diverts resources and movement attention away from more potentially fertile paths aimed at social reform.

Rosenberg sees the important successes of these movements as being produced primarily by the non-legal political action of the movements with which the courts then had to catch up. He concludes that, instead of being the harbingers of change, the court cases of *Brown* and *Roe* fell into line with the political, economic, and social changes that were already occurring in society. Although Rosenberg's investigation of the direct results of court rulings is appealing because of its straightforward empirical nature, it seems to fall short of considering the social complexities of how legal forms are employed in the work of social movements (i.e. the power that rights claiming provides by energizing and mobilizing a movement.) This is where Michael McCann's work adds to the discussion and encourages those concerned with the question of the impact of the law on social movements to dig a bit deeper and to not write-off legal mobilization so quickly as a misguided approach to effecting social change.

McCann focuses on a systematic analysis of the gender-based pay equity reform movement to arrive at very different conclusion than does Rosenberg. One of the reasons that his conclusion is different is that he conceptualizes the question differently. McCann broadens his view of the impact of the law on social movements beyond a top-down investigation of the direct effects of court decisions to a bottom-up view of how legal forms, including rights claiming, operate in the social world to benefit movement goals. He develops a legal mobilization framework through which he examines the role of the law in four stages of social movement trajectory: movement building, the struggle to compel formal policy change, the struggle to control the process of policy reform, and the transformative legacy of legal action. He claims that the evidence shows that at these various stages legal mobilization can be both a restricting factor and a resource for achieving goals. His analysis includes an investigation of the contextual

factors of when, where, and to what degree legal mobilization is more or less effective as a tool for social change.

McCann concludes that legal mobilization is not, in and of itself, sufficient to effect massive social change. Rather, McCann realizes that the law can be more or less effectively mobilized in the interest of movement goals based upon the relative robustness of other movement resources. McCann argues that legal forms are important to social movements in ways that are more subtle, but no less important, than a straightforward consideration of success in the courtroom and direct effects of judicial rulings can reveal.

A problematic aspect of Rosenberg's analysis is his primary focus on direct judicial effects of legal mobilization at the expense of seriously considering the deep importance that extra-legal effects may provide to causes. Extra-legal effects of legal mobilization might include other goals of organizing, consciousness raising and community building. His methods are designed to find causal relationships between court action and numerous possible extra-legal effects. Given the complexity of social reality, such causal relationships are nearly impossible to draw. Rosenberg concedes this when he writes "social scientists do not understand fully the myriad of factors that are involved in an individual's reaching a political decision...[so] it is simply impossible to state with certainty that the Court did or did not produce significant social reform in civil rights" (p. 108).

Because of the nature of these extra-legal effects, they are often difficult to measure, so claims of causal relationships between legal action and social change become even more difficult to assert. Rosenberg briefly acknowledges this and warns that, ultimately, his finding of little to no evidence suggesting extra-judicial influence requires that his assessment remain uncertain. But this is problematic because much of his conclusion is based on the assertion that not only

were direct social effects of court action limited but that the extra-judicial effects were also negligible. Rosenberg looked for these extra-judicial effects in news media reports, public opinion polls, and the action of elites. He did not look for evidence where it would most likely have been found, in the words and actions of movement activists, which would have been a better measure of the real but subtle effects in the everyday lives of those struggling for change. McCann fills this gap with a bottom-up analysis that takes more seriously the possible advantages that legal mobilization has for individuals, movement momentum, and the ultimate progress toward movement goals.

McCann's systematic analysis of the role of law in the gender-based pay equity reform movement provides particularly useful insight into the question of the utility of the law as a tool for social movements. McCann writes that he began his study of the movement convinced of the plausibility of the prevalent scholarly interpretation of the limited and limiting role of legal mobilization in social movements (p.3). This view, voiced by many critical legal scholars, contends that litigation and legal tactics are at best severely limited in their ability to effect meaningful social change for marginalized groups; and even worse, legal tactics may be a waste of valuable movement resources towards an end that may prove to be at odds with ultimate movement goals. Generally stated, this is also the view that Rosenberg advocates and the view that McCann started with. But the evidence that McCann uncovered in his research on the pay equity reform movement forced him to rethink his intellectual stance on the role of the law in social movements.

The perspective advanced by McCann "affirms a critical commitment to documenting the important ways in which legal mobilization plays a limited and limiting role in social movement politics" (p.12). But at the same time it also questions the prime focus that much of the critical



legal scholarship places on the law as a purely hegemonic, co-opting force. McCann contends that each of these views are valid at different times, in different contexts, to different degrees. The framework that he presents is based on a vision of the law that is not really an exclusive force in and of itself, but is rather one dimension of social practice that is as indeterminate, complex, multidimensional, and as dependent on context as is the rest of our social world. The legal mobilization framework developed here conceives of law as neither just a resource nor just a constraint for those who wish to take action for social change. Instead, it turns attention to understanding how, when, and to what degree law tends to be both at once.

McCann identifies and investigates four stages of movement activity in search of the different ways in which legal forms are mobilized and their varying impacts in the life cycle of a social movement. After investigating the initial movement building stage of the pay equity struggle, McCann's assessment is that legal advocacy has been more of a positive force than a detrimental one. He attends to the effective uses of litigation and other legal strategy to raise consciousness of the issue in a way that brought pay equity discourse into the public sphere and provided a catalyst for growth of the movement. He describes "court decisions and legal forms [as] not self-generating forces of defiant action. Rather, they constitute only political resources that may or may not be mobilized in practical action" (p.91). He concludes that lawyers, litigation, and legal discourse, while not the primary force of early stage movement development, did nevertheless serve as an important resource in the building of the movement.

The study shows how the initial although modest court victories in the early stages of the movement provided a "jump-start" to a movement that had for some time been struggling for legitimacy outside of the spotlight. The result of these initial court victories should not be interpreted as evidence for litigation being the "cause" of an emergent social movement. Rather,

it provided hope and inspiration to movement activists who had long been struggling and it raised awareness of the issues and affirmed the validity of rights consciousness so that others were drawn to participate in movement activities.

Critical legal scholars often claim that legal action disempowers movement activists and decreases democratic participation in movement politics. McCann's study suggests the opposite. In fact, his research provides evidence that top-down, elite-dominated, local movement actions typically involved little or no legal action, whereas the most bottom-up examples of grassroots participatory action were accompanied in their early stages by lawsuits at the local level. Winning in court often became a way to build movement membership to engage in other forms of political action rather than an alternative to grassroots political action. Although he concludes that legal mobilization had a general positive effect on early movement development, it is important to emphasize that McCann noted a wide-ranging degree of variability between settings, and that where this did work, it only worked for a limited time.

Just as legal tactics can contribute to building early-stage movement participation and momentum, so too can it be used as a tool in what McCann conceives as the second and third stages of movement activity, the struggle to compel concessions from the dominant groups (managers, unsupportive politicians, private employers, etc.) and the struggle to gain control of the policy-use of the law as a leverage tool so as to not necessarily require victory in court or even going to court at all. The pay equity movement shows that the mere potential for judicial intervention and the power of rights discourse among movement activists and other players in the struggle can provide potent resources for social movements. Actual or potential litigation can subtly shift power relationships to allow for "bargaining in the shadow of the law" (p.140).

In this way, McCann's analysis suggests the importance of broadening the focus of the effects of legal mobilization from merely an analysis of formal legal processes to understanding how legal discourse as a social phenomenon is informally employed behind-the-scenes as a resource in the development of a movement and in the resolution of social conflicts. This broadened view is especially important given the compelling evidence that movement activists commonly understand litigation as a potentially powerful tool of last resort. McCann says that tactical use of legal leveraging in concert with other negotiation strategies has been a prevalent strategy in the pay equity reform movement. Early court victories empowered movement activists to be able to force negotiations with the threat of further legal action. Through a systematic examination of the collective bargaining process McCann presents a view of "the law as a club" by which concessions by employers can sometimes be compelled.

This general positive view is qualified by evidence that the tactic of trying to force concessions by elites through threat of litigation can be uncertain and risky. There exist clear limitations and costs. McCann's examination of numerous local cases reveals that the positive impact varied. In some cases, legal action was clearly the most important factor throughout the struggle to compel concessions. In other cases, legal action was important only for a limited time. In still other cases, legal tactics were crucial but only in indirect ways. And even more significant, but less common than the previous scenarios, is the one in which legal action produced only very minimal concessions (i.e. unsubstantial wage improvements for some workers and a commitment from employers to "study" the problem.) The reasons for these variations are complex, but this particular study identifies the following three key factors.

One important factor is the shift in the courts in the mid to late 1980s at the height of the movement towards being less receptive to the idea of comparable worth and wage discrimination

claims. A second factor of variability involves the resolve and capacity of opponents. Private institutions were much more likely to go to great lengths to oppose wage reform efforts than were public sector employers. The final factor identified by McCann that affects the tendency for legal mobilization to be able to effect concessions is the overall strategic strength of the larger movement. None of the local struggles studied by McCann used legal tactics, or any other tactic for that matter, exclusively. Legal tactics are most successful when employed at the right time, in the right context, in concert with a host of other strategies (bargaining, legislative lobbying, media tactics, striking, mass demonstration, etc.) None of these tactics is sufficient on its own. Thus legal tactics have proved less successful in localized struggles in which these other tactics are ineffectively employed.

McCann's prime contribution is his identification of a gap in the scholarship regarding serious inquiry into the many indirect effects of reform litigation and devotes much of his analysis towards illuminating the importance to social movements of legal discourse outside of courtrooms. Much of the scholarship on the effectiveness of the law as a tool for social change has involved skepticism about the value of the courts as a resource for social movements based on the two related but distinct critical claims that courts are poorly organized to develop and administer social policy and that courts lack the coercive resources necessary to impose changes in social relations and practices (p.177). McCann believes that these low estimates of the influence of legal mechanisms, although based on empirical evidence, are faulty because they are too narrowly conceived and do not consider the broader social contexts in which legal norms, rights discourse and judicial signals produce "radiating effects" from which social movements can gain considerable political capital.

In the debate over the utility of the law for social change that is typified by the McCann-Rosenberg debate we can locate a key issue at the core of this thesis research. My assessment of this debate is similar to my assessment of the CLS/CRT debate about rights discourse. I find the ultimate rejection of legal mechanisms and rights discourse by critics such as Rosenberg and CLS scholars to be faulty and short-sighted. They develop an appropriately critical framework of analysis but stop short of the more nuanced perspectives of McCann and CRT that appear more closely attuned to the real experiences of people involved in real struggles who experience legal mechanisms and rights discourse as both constraining and empowering.

## Chapter 4: Design and Methods

### *Overall Approach and Rationale*

The intricacy of the social world under consideration in this research suggests numerous compelling perspectives from which it would be possible to uncover layers of complexity in this study. But in order to have a meaningful, manageable, focused study, it is necessary to settle on a locus of interest or unit of analysis through which the study can be conducted. Although it will be important throughout this study to view the social phenomenon of interest from a variety of angles (micro, macro, organizational, individual), this study will take as the primary unit of analysis individuals and their lived experiences and perceptions.

Because my research interests are focused on the complexity of social interaction expressed in daily life and on the meanings that the participants attach to these interactions I made an initial determination that a qualitative approach to this research would be most fruitful. Rossman and Rallis (2003) offer five characteristics of qualitative research that are well suited to approach the questions posed in this research. They say that qualitative research (a) takes place in the natural world, (b) uses multiple interactive and humanistic methods, (c) focuses on context, (d) is emergent and evolving, and (e) is fundamentally interpretive. A range of qualitative research methodologies were then explored to discover which might be best suited to capture the specific type of information sought by this study. I decided to base this research primarily in the genre of phenomenological studies through which the lived experience of a small number of people is investigated to understand the deep meaning of a person's experience and how individuals articulate this experience and integrate the meaning into their lives (Rossman and Rallis 2003). The process of in-depth phenomenological interviewing to be used in this study

will closely follow the methodology developed by Seidman (1998). A description of this process and how it will be applied in this research is provided in the *Data Gathering Procedures* section.

### ***Population Selection and Sampling Strategies***

This research is designed to be a study of a particular kind of population and a particular phenomenon. The population of interest consists of cause lawyers working in conjunction with social justice movements. The phenomenon of interest is the way in which cause lawyers conceive of and negotiate the challenges unique to lawyering for social justice movements. This research focuses on the cause lawyer as the primary unit of analysis in order to gain access to the deep meaning of their work and how they experience their side of the relationship between lawyers and social movements.

Particularly, this research focuses on cause lawyers in post-Katrina New Orleans working for a variety of social justice causes. Broadly conceived, these issues include environmental justice concerns, public and affordable housing, the right to return of displaced people, workers' rights, and other issues critical to a just recovery. Instead of focusing on one lawyer or a group of lawyers working on a single issue I determined that a richer understanding would be achieved by taking a broader view of lawyers working in support of social justice movements. This allows a broader range of experience and perspective from a larger field of potential informants than might be available with a more narrow focus. This benefit of a broadly focused view of multiple causes had to be balanced with the risk that it might prove too broad and imprecisely focused. The soundness of the choice was affirmed time after time during the interview process, during which the respondents self-identified as a bounded group. The respondents revealed that they conceive of themselves and their work as being intertwined in a network of others as part of a broadly defined "movement" for social justice in post-Katrina New Orleans.

I selected potential informants on the basis of several criteria for inclusion and exclusion. The potential respondent pool was initially developed by searching for lawyers who live and work in New Orleans who clearly fit into the category of cause lawyer as conceived by law and society scholars. These lawyers are distinct from conventional lawyers in a number of ways. They choose to devote themselves to the interest of specific causes, often at personal, political, and financial expense. They are primarily motivated to engage in work that will advance their vision of a more just society. The cause lawyers in this study assist people and groups that traditionally have difficulty in finding lawyers for political and financial reasons. They challenge the prevailing conceptions of professionalism that stress neutrality and distance. Cause lawyers as a conceptual category devote themselves to serving causes across the political spectrum. This study was delimited by focusing on left-activist lawyers working in the context of a post-Katrina self-determination movement for a just recovery.

I originally gained entrée to this population of cause lawyers through my volunteer work in support of the grassroots relief effort to promote a more just recovery from the effects of Hurricane Katrina. In this work I developed a relationship with a social justice lawyer engaged in support of the grassroots organization for which I was working. This lawyer in many ways exemplifies the cause lawyer model and became a significant informant in the initial stage of this research. This initial contact provided a bridge to other potential respondents by recommending and facilitating contact with others involved in similar work. These other lawyers were also asked to recommend other potential contacts based on my description of the population I wanted to access. In this way, a pool of potential participants grew through a “snowball sampling” method in which study participants recommended other potential information rich cases of interest (Marshall and Rossman 2006).



This method of snowball sampling proved to be very reliable way to build a pool from which study participants could be selected. There was a lot of commonality in the recommendations. In fact, it became apparent through this initial referral process, and even more so in the in-depth interviews, that there exists in New Orleans a small community of cause lawyers who all know each other in one way or another and frequently work together on various causes. This provided further evidence that I had tapped into what could be seen as a bounded group of cause lawyers working in support of social justice issues in New Orleans.

This initial survey of the population yielded fifteen lawyers who could possibly qualify for this study. In my initial phone and email correspondence with these potential respondents I described my research interests and gathered some basic information about work history, what type of lawyering they do, how they conceive their roles and how connected they were to social movement dynamics in post-Katrina New Orleans. Of these fifteen, I eliminated two who, although supportive of several of the causes that to which other respondents are committed, maintain much more conventional practices and perform a bit of social justice support work on the side. These did not seem to represent the population of committed cause lawyers that I sought and so I eliminated them as potential subjects. I identified and invited thirteen potential respondents to participate in the interview process. Scheduling of the interviews with the remaining thirteen potential respondents proved to be especially challenging with this group of exceptionally busy lawyers committed to causes around which there was often an element of impending crisis to which they had to attend. Of this of pool thirteen, I was eventually able to complete interviews with ten respondents who exemplify the category of cause lawyer and are meaningfully involved in social movement processes. These ten became the subjects for this study.

### *Demographic Background Summary of the Respondents*

Although each of these lawyers fits within the conceptual category of cause lawyer, and although the analysis of their discourse will reveal that they share many interests and values, the respondents are actually quite a diverse group with varying backgrounds, identities, specialties, and levels of experience. I will present some demographic description here in order to provide the reader with some understanding of the ten respondents whose narratives form the core of this research.

As a group, the respondents are very well rooted in the New Orleans community. Eight of the ten were residents of New Orleans pre-Katrina. Of these, half were born and raised in New Orleans. The four non-native, pre-Katrina residents have lived in New Orleans for ten to twenty-nine years. One of the two who were not living in New Orleans at the time of Katrina was born and raised in New Orleans and decided to return to her hometown to support the relief efforts immediately after the storm. The other came to New Orleans for the first time immediately after Katrina as a law student to offer legal support and decided to make a permanent move and start her legal career in the city after graduation from law school.

The group consists of two black females in their late thirties and early forties; four white females, with ages fairly evenly distributed from early twenties to early fifties; one black male in his early thirties; and three white males, one in his mid-forties, one in his late fifties, and one in his late sixties. These age ranges came fairly close to spanning the length of a typical career with the majority of the respondents falling into the mid-career range.

Characterizing the respondents by the type of law that they do is slightly more challenging than is the case for these other demographic categories. This is because several are involved in a number of overlapping areas of the law. And, in fact, most self-identify more

readily with descriptors such as *community lawyer, social justice lawyer, civil rights lawyer, or human rights lawyer* than with strict areas of the law or single causes. Most indicated that more important than their specialty is their orientation toward being a social justice cause lawyer. Nonetheless, some do focus more on a certain type of law than others. Two are environmental justice lawyers. Four are most commonly known as civil rights lawyers. They deal with such issues as access to healthcare, affordable and public housing, access to public education, workers' rights, voting rights and criminal justice defense. Two deal rather exclusively with affordable housing and housing discrimination issues. One works mostly on juvenile justice reform and one advocates primarily for adults faced with the possibility of, or already sentenced to, death by execution. This provides the reader with some background as to what type of law the respondents are involved in, but it is important to note that they more closely identify with advocating for social justice than they do with any particular specialty area of the law. Three were involved in grassroots movements as social justice activists prior to going to law school. The other seven say that they were motivated to find a career in which they could be active forces in social change and chose the law for that reason and entered into the world of social movement through the role of lawyer.

### ***Data Gathering Procedures***

This research relies on semi-structured, in-depth interviews with cause lawyers as the key informants. These interviews are designed to explore personal life histories relative to the topic, specific details of the participants' experiences, and participants' reflections on the meaning of their experiences.

A pool of potential informants was established through a "snowball sampling" method in which potential informants identified other potential information rich cases of interest (Marshall

and Rossman 2006). Individuals in this pool were screened to establish whether or not they could appropriately be included in the sample group. Thirteen potential respondents were identified and invited to participate. I successfully completed interviews with ten.

I adopted a modified version of the phenomenological interview format advocated by Seidman (1998). Seidman recommends a series of three in-depth, iterative interviews, each with a specific purpose. It became apparent early in the interview scheduling process that my informants were not able to make themselves available for three separate interviews on three different occasions, so I chose to modify and collapse the preferred model into one longer interview while maintaining the essential structure of three segments, each with a specific focus. The first part of the interview inquired into the interviewee's history and life story relative to the research topic. The second part of the interview oriented the researcher and the interviewee to the specific details of phenomenon of interest. The third part of the interview is designed to create a reflexive dialogue about the meaning of the interviewee's experience. These interviews were open-ended, semi-structured, conversational interviews designed to elicit rich descriptions, deep interpretations, and critical self-reflections. This raw narrative data was then transcribed, aggregated and coded and then analyzed through appropriate theoretical frameworks and related to what was already known in order to determine its particular correlation to the scholarship on lawyering for social change.

### ***Procedures for Analysis***

I began the formal process of data analysis by meticulously transcribing the full audio recording of each interview. This resulted in 104 pages of text and proved to be more than just a tedious process; it was fruitful in that the transcribing process allowed for an initial review of each interview during which I invariably noticed bits of significant information that I had missed

in the actual interview. As I got deeper into the transcribing process patterns began to suggest themselves, but I was conscious not to jump to conclusions and prematurely form rigid notions about the emerging themes of the lawyers' discourse.

I then made an initial reading of each completed transcript to identify, mark and label significant passages. Some of these labels related directly to the major threads of the conceptual framework of this research or concepts that were brought forward in my review of the literature. But I was also conscious of allowing new observations and insights to emerge from the text that could suggest new labels. I reread and refined these emergent categories. This coding process enabled a formal representation of a number of categories. Several interesting and unexpected categories presented themselves in this process, some of which were relevant to this research and reported on in the findings section of this thesis. Other categories emerged that were deemed less directly relevant and were set aside and not included in this report. I then collected the passages that constituted the most relevant categories for a further level of analysis in which I looked for themes within and between categories. I then experimented with various ways of organizing these themes into a conceptual scheme and eventually selected one that offers a way of filtering and interpreting the copious amounts of data that the respondents provided in a way that can shed some light on the research question. These themes and conceptual schemes are presented along with my interpretations in chapter five.

## Chapter 5: Findings and Interpretation

### *Introduction*

The interviews with cause lawyers that serve as the basis of this study contain stories of lawyering for social movements. These stories provide the perspectives of cause lawyers in the process of reflecting and thinking critically about their work in the interest of social justice movements. In these interviews it was clear that the respondents wanted to dispel myths and shed light on the reality of what it is to work in their capacity to support social justice causes. Clearly, the project of illuminating the complexities of their work has a certain salience for them. When asked to talk about their work, respondents were eager to discuss the complexities, challenges, successes and rewards of working on social justice campaigns.

Respondents communicated their particular understandings of their roles within the broadly defined social movements in which they work by what they said and how they said it. In the first level of analysis, I identified conceptual categories contained in the narratives of the respondents such as the following:

- Early experiences with activism
- Significant role models
- Problems with law school pedagogy

Some common themes arose from an analysis of well more than a dozen categories of data of which the above three are merely examples. The resultant themes form substantive units to which I have ascribed names based on how respondents define these dimensions of cause lawyering. The six substantive themes that emerge most clearly from this analysis are:

- 1) Expressions of the limitations of legal advocacy
- 2) The work of relationships
- 3) Feeling situated within a movement
- 4) Alternative measures of success
- 5) Ameliorating symptoms versus addressing root causes
- 6) Expanding notions of professional and political responsibilities.

I describe each substantive theme below and provide a fuller examination and interpretation of each theme in the section that follows this initial introduction.

### ***Developing the Substantive Themes***

An important aspect of the narratives of the cause lawyers comes in the form of the lawyers' perceptions of the limitations, negative side effects and contested notions of the promise that legal mechanisms might offer to those seeking social justice. These accounts of measured skepticism coalesce to form a theme that I simply named *expressions of the limitations of legal advocacy*. These lawyers' reflections of the limitations of legal advocacy begin to explain some of the other categories of meaning explored in this analysis. For instance, the limitations of legal advocacy theme clearly helps explain why cause lawyers seek a more expansive professional role than that of a traditional lawyer. This, in turn, allows for broader means by which they can claim success in their work. The limitations of traditional lawyering models also suggest one reason that cause lawyers seek out relationships in many facets of their work. These relationships help situate their work within a larger movement. And this adds a dimension of meaning to their work that would be absent without this felt embeddedness. This expressed feeling of being connected to movement actors and embedded within a movement leads to the next thematic

category of this analysis that discusses the importance of relationships in the lives of cause lawyers.

The *work of relationships* category presents a prominent theme in the discourse of the respondents. This particular category emerged early on in the coding process as I observed a strikingly high frequency of statements concerning collaboration, descriptions of coalition building processes, feelings of solidarity with clients and other movement participants, the negotiation of power dynamics in these relationships and the overall primary role that relationships play in the lives of cause lawyers. This theme is represented by a higher number of passages within respondent narratives than any of the other themes and is named *the “work” of relationships* to point out the active role that relationships play in the work of the cause lawyer. This thematic category contains a wealth of data concerning issues such as what motivates cause lawyers and the qualitative aspects of how they engage in their work with social justice movements.

This focus on relationships allows a glimpse into the process of how lawyers become socially situated in a larger movement. This perspective leads fluidly to a discussion of the discrete but related theme of *feeling situated within a movement*. Within this thematic category, I assemble passages from respondents that relay their understandings of their role within a larger movement. This theme offers examples of how this “situatedness” benefits the cause lawyer and the movement as a whole. The respondents offer various descriptions of how they experience themselves and their legal work as just one piece, and not necessarily the most important piece, of a robust social movement.

The category of *alternative measures of success* contains expressions of the relatively sophisticated, alternative means of measuring the success of their work and the success of the



movement as a whole. Into this category, I placed statements concerning the inadequacy of defining success by the standards of traditional lawyering and statements containing descriptions of why and how these lawyers find alternative ways to measure success. When viewed in the aggregate, these lawyers are clearly focused on objectives such as community empowerment and other broad goals of social justice. And since empowerment and justice-seeking are inherently political activities this category sheds light on the inherently political nature of deciding what counts as “success.”

There are many tensions and complexities that reveal themselves as sub-themes of the previous and following thematic categories. These are appropriately discussed within the context of the other themes in this analysis. But my analysis of the data also revealed one tension that was a pronounced enough aspect of the discourse to warrant a category unto itself. Featuring prominently in the interviews is a fundamental tension between problem solving for individuals and the sometimes competing dual focus of pursuing broader movement goals of widespread institutional or societal change through policy reform. The respondents described various ways of understanding and dealing with this issue, but nearly all contribute in some form to the development of the collective category that I named *ameliorating symptoms versus addressing root causes*.

Ultimately, despite their measured skepticism in the ultimate promise of legal mechanisms, these lawyers cautiously accept legal advocacy as a valid part of a broad struggle for social change. At the same time, they adapt their practices to reflect their beliefs about the political implications of the various challenges of cause lawyering for social justice movements. They share ways in which their efforts to negotiate these challenges have led them to develop their practices around the major themes that serve as the focus of this analysis. This leads them to

expand their notions of what lawyering means in the context in which they do it. They have developed models for lawyering and engaging with social movements that extend beyond traditional lawyering roles. Some even describe a professional role that they have adopted that, at times, more closely resembles the role of community organizer than the traditional lawyer. These ideas are presented and explored as a category that I name *expanding notions of professional and political responsibilities*.

These substantive themes prove to be a useful way to categorize what respondents are generally saying about the meaning that they attach to their work. Presenting respondents' discussions of the thematic issues only gives an overview of the respondents' understanding of the phenomena. In the following pages of this chapter, I present each theme and respondents' expressions of them in order to access another level of analysis in which I search for the deeper meanings in the negotiation of the tensions within the work of the cause lawyer.

### ***Expressions of the limitations of legal advocacy***

One of the questions that motivates this research is whether or not cause lawyers approach their chosen profession with an unreasonable degree of faith in the tendency of the court system to be a harbinger or even a major player in efforts for substantive social change. Analysis of the respondents' discourse on this issue supports the claim they actually have developed through experience, measured, qualified degrees of faith in the role of the courts in issuing changes on the issues on which they work. In this section, I present an overview and discussion of what cause lawyers identify as limiting factors that make the courts less than optimally effective vehicles of change. In addition to these, the lawyers offer a few examples of what they see as serious negative impacts on social movements that certain legal action on their

behalf can sometimes produce. I also examine what the informants say about how they deal with this reality in their work with social movements.

Within this theme of how cause lawyers understand the relative limitations of legal advocacy for social movements there exist minor sub-themes that I highlight in this section to give an overview of the broad theme. One is that cause lawyers recognize a widespread belief in a “myth of rights” that encourages people to rely too much upon the utility of the courts to effect change. Out of this I draw forth another sub-theme of the role of cause lawyers as framers within a collective action framing perspective. Cause lawyers sometimes participate in the framing process by helping movement actors manage expectations for success in court by framing the courts as being less than optimally effective. There is also a sub-theme evident here of cause lawyers as assessors of political opportunity who help movement activists recognize when the political opportunity structure is likely to be inhospitable to their legal claims. In this scenario, the cause lawyer often becomes active in searching out alternative forms of professional practice that allow the cause lawyer to support political action designed to enable other elements of the social movement better situated to take better advantage of the current structure of political opportunity.

A couple of the respondents spoke directly about the “myth” that entices people, especially non-lawyers, to place an undue amount of confidence in the legal system to right social wrongs. Respondent E says that he is frequently approached by people from the community or local or national advocates for social justice causes who want his help to file some sort of formal legal action to seek redress for some social problem that they recognize. He says,

Most of the time I tell them it is a myth that the courts are the place that you go to get justice. People who are not lawyers, even though they haven’t necessarily gotten any justice for themselves in this way think, “Gee, if we could file suit, that would do it.” ...and the reality is that it’s not like that at all.

He goes on to say that often his role as attorney is not to aggressively file and pursue lawsuits but to help people adjust their expectations, or even to convince them that a lawsuit would be bad because it diverts attention from other avenues through which grievances might be more efficiently redressed. He says that often a court case can “give the City Council or...all these other people a way just to say, ‘Hey it’s in the courts now, we’ll just have to wait and see what happens.’” And when a court case is being pursued he says that part of his job is to make sure that other people involved in the movement continue to push for change at other levels and that they don’t rely too heavily on narrow prospects for change coming out of the courts. Respondent E says, “part of the problem of the lawyer is to constantly help people adjust their expectations. You know, this judge didn’t become a judge by being a spokesperson for social justice or by sticking his neck out all the time.” Respondent F talks about his belief that advocacy consists of much more than just litigation:

I mean, I’m a lawyer and I know how to litigate and do that stuff, but as an advocate I realize that litigation has some serious limits and takes a lot of time and a lot of energy and usually a lot of money.... And so that’s why I try not to do it so much myself if I can avoid it, because I think that advocacy is a much larger thing than just litigation. It is also about brainstorming with people about what their options are.

In these examples we see the possibility that these cause lawyers, rather than prescribing legal solutions to all problems, are often critical of prospects in the court and recommend or help search out alternative or broader, concurrent strategies for action around the causes they support.

Related to Respondent E’s warning to movement activists about the conservative nature of the courts are a number of other cautionary statements from cause lawyers that indicate a pattern of measured skepticism concerning the use of the courts by those seeking social change. One is that the courts are political in nature and in recent years have become more conservative in some ways that certainly affect how the courts might best be strategically engaged with by

social movement lawyers. This observation mirrors scholarly observations of shifts in recent decades in the American popular consciousness, and reflected in the courts, of an increasingly unsupportive context for rights-based legally oriented social movement activity (Rosenberg 1990; McCann and Dudas 2006). Respondent D says that,

...there has been a withering away of people's abilities to have private rights of action to sue in federal court on broad basis or sometimes even on an individual basis. And you know, that has happened over the last ten years or so. So that that right of action has been gradually chipped, chipped, chipped away. And it's been kind of quietly done and most folks...[when] you get to the point that you think, "Hey, I really need to sue about this issue," You may find yourself kind of wiped out of the system now because of some of these court decisions that have come down over these past few years.

She follows this statement with an explanation that, without this right to sue, individuals and grassroots groups often must rely on the Housing Authority or the School Board or some other agency to rectify the situation for which a remedy is sought. This lawyer feels that this is the level on which social movement pressure is in the current political context most effectively applied. In her work she actually tries to focus on building non-adversarial relationships with individuals who work at the local administrative agency level in an effort to try to effect change without having to go to court.

Respondent D also points out that her way of working more closely with the institutions of "the establishment" doesn't mean that she is less committed to working towards meaningful change in lives of those for whom she works. In fact, she believes that on average she finds more success in her mode of engaging in the struggle than those who take a more adversarial approach. She says, "...the courts are not necessarily the best way to go in the environment that we live in now. You know the old saying 'Justice delayed is justice denied.'" Respondent D goes on to explain that often a lawsuit results in entrenchment and refusal to negotiate from the other side. And the judicial process is so slow that she often she finds it hard to explain to her

individual clients or the grassroots groups with whom she works that, even if they win, they may not receive the relief they seek because of the slow process of trials and appeals that sometimes takes years to move through, not to mention the drain of resources that sometimes precludes this possibility altogether. Respondent D says that for these reasons, “most of the time I would prefer to negotiate stuff by advocacy-type work. It’s just more effective. It’s faster. It impacts more people.”

Another way in which social movements might be limited by an over-reliance on lawyers and court action is that lawyers who are willing and able to do this work are in short supply and already overworked. Respondent D speaks of her post-Katrina experience of having to deal with so many emergency situations that her clients and community groups were faced with that it became very difficult to work on the bigger picture structural change work that keeps her feeling connected to a larger social movement.

A lot of what we do is by its nature an emergency, and that makes it even harder to kind of juggle your workload, because you really have no control over that part of the job. Sometimes what you have to do, which is a really hard thing for me to do, is telling people, “No, I can’t help you.” Because you sometimes get to the point where you’ll be totally ineffective if you keep taking more on. Then you can’t focus on the individual clients that you currently have or the bigger picture things that you want to do.

Despite claims presented by the lawyers in a later section of this chapter that individual support and broader social change work are not mutually exclusive, we see in this example a clear limitation of legal advocacy that is based on the reality of limited resources, a reality that places lawyers in a position of having to make choices about how to focus their efforts.

In addition to expressing limitations of legal tactics, the lawyers in this study identify two main types of negative impacts on social movements that can result from litigation. One is the potential that a negative ruling will create “bad law” that will negatively affect other people. And the other is the possibility that legal action will slow or stop movement momentum.

Respondent B provides an example of “these big impact litigation suits that, if you get a bad ruling on, if they are poorly drafted lawsuits or you have people who didn’t know what they were doing, then you have a lawsuit that has negative effects forever pretty much.” She recognizes this as especially worrisome in post-Katrina New Orleans where a lot of lawyers have been “coming in from out of town to do this big impact work and they don’t have good local council or sort know the ins and outs of things.”

Respondent G offers the individual client litigation scenario counterpart to the big impact case that makes bad law. He recognizes the problem of making bad case law as a perennial dilemma for cause lawyers who represent individual clients, because ethically a lawyer is supposed to do what is best for the particular client without consideration for the broader consequences. Because of this he says, “We may push the envelope a little with one of them and get a bad ruling that may affect other people. That’s always a risk.”

Respondents also indicate concern about the possible negative effect of litigation slowing movement momentum. Respondent E repeats a story told to him by a colleague of a neighborhood group that formed for the simple goal of having a stop sign installed at a particularly dangerous intersection. Neighborhood residents had repeatedly made requests through official channels to no avail. Frustrated with the lack of response, forty people convened a neighborhood meeting and hired a lawyer to be their advocate. The lawyer filed a lawsuit, had a big press conference and pursued the case for two years. After two years of legal wrangling the suit was successful and the stop sign was installed. The neighborhood group that had originally galvanized around the stop sign issue upon formation was initially energized by the lawsuit in a way that made them recognize the possibility that collectively they might be able to work towards other common neighborhood goals. But because of the long delay in reaching resolution

through the justice system, by the time it was settled and the group leaders invited the lawyer to a meeting to give her a plaque of recognition for her work, there were only seven people in attendance at what turned out to be their last group meeting. Respondent E concluded this story by saying that reliance on legal strategies can be disempowering if it is protracted and does not encourage the participation of citizens. He remarked that this is so even in successful cases, like in the example, and it is even more deflating in an unsuccessful case. “If you get to the end and you’ve lost, you would be lucky to have seven people there.” He summarizes this cautionary stance on legal mobilization and movement momentum by saying, “Used in the wrong way it can kill a movement. I mean if you take the excitement and enthusiasm of people and channel it all into a case, that’s a killer.”

The expressions of respondents of the limitations of legal advocacy contained in this section can be examined in relation to the contested place of rights discourse that is at the heart of critical race theory and the questions raised by the utility of the law case studies examined earlier in this thesis. As established in an earlier section of this thesis, the critical argument against rights discourse was introduced by critical legal studies (CLS) scholars who criticized rights discourse as indeterminate. They argued that the legal definition of a right was indeterminate because it depended largely on social context and judicially interpreted meaning. In response, critical race theory (CRT) scholars agreed with much of the indeterminacy critique but argued that CLS scholars had ignored the transformative power of rights for a group of disempowered outsiders (Crenshaw, et al. 1995). The lack of complete faith in the legal system to effectively serve the cause for which these lawyers work is based on many of the same realizations that gave rise to the CLS movement. Nonetheless, considering their chosen profession, these lawyers have obviously not rejected traditional rights discourse and legal



mechanisms altogether. In concordance with the CRT scholars, a few of the respondents indicate that, despite its clear limitations, they see potential for redress through the law. And, also in the tradition of CRT, many of the respondents indicate a belief in the transformative value of the law and of rights claiming for marginalized people.

The informants in this study present a gradient of skepticism concerning the promise of the law as a liberatory force. This range of opinion extends across a spectrum that can be generalized into three types of views. One of these views is displayed by two respondents who are most accepting of the promise of legal mechanisms to bring about social change and only qualify their acceptance by acknowledging that strong social movements are usually necessary to bolster legal tactics. A majority of respondents adhere to a view that is more skeptical about the promise of legal mechanisms. They are largely focused on doing legal support work for groups and organizations but represent individuals when they understand this work to support broader movement goals. These respondents consult with movement leaders to determine when and what legal tactics might be most effective. They see their work as just one aspect of a vibrant social movement, and they spend a portion of their time doing non-legal support work. A third type of view is exhibited by two respondents who are most highly skeptical of the promise of the legal mechanisms of traditional lawyering. They are highly integrated into community groups, have close relationships with movement leaders, and often do support work for the movement that extends beyond the traditional role of lawyer. They use legal forms in a way that, at times, borders on cynical as a way to forward movement goals by framing issues for the movement and the public, by creating a space for voices to be formally heard, and by using legal discourse to energize the movement.

### *The work of relationships*

Respondents in this study talk on the subject of the significance of relationships in the work that they do at a higher frequency than any other topic or theme. Often in the course of our discussions we would be focused on a discrete aspect of their work and, as a way to help me understand how things work or how decisions are made, the lawyers would steer the discussion back to focus on relationships. In this way, the quality and challenges of various relationships internal and external to the collective movement organizations with which they work became central to many of the interviews.

The respondents talk of collaborating with grassroots leaders and other lawyers. They speak of how relationships between cause lawyers and community groups build over time. They speak of relationships that are reaffirming and supportive, and they speak of relationships that tend to be restricting or disempowering. They talk about how they deal with conflict with their allies, and they talk about how they build relationships with power brokers. And more than anything they repeatedly refer back to the value that they place on human relationships.

The respondents want to be meaningfully connected to others struggling for similar causes. They find numerous ways during the interviews to express the intention that their professional relationships should reflect their political beliefs. At the same time, the focus on relationships seems to also have more utilitarian, tactical purposes. These relationships enable outcomes of individual and community empowerment by facilitating transfers of knowledge from lawyers to community members. And, similarly, the lawyers tell of how their work is empowered through these relationships because of a transfer of knowledge of the reality of the conditions experienced by the people at the center of the social justice struggle that can serve as a foundation upon which the lawyer's work can be built. And perhaps of most significance to

this research is the underlying theme of accountability implied by the lawyers' focus on relationships. Trust that develops from strong, lasting relationships provides an atmosphere of internal accountability that increases the likelihood that the work of the lawyers remains congruent with the collective values.

A prominent theme in the collective discourse of the cause lawyers interviewed in this research is that claiming membership in the activist community and feeling a sense of belonging to a larger movement provides a certain type of sustenance that motivates these lawyers to continue to struggle and work towards often evasive long term goals. As Respondent E puts it, "...if you are pushing the edge all the time and you continue doing that over time, there's plenty of times you are going to lose. And the only way, I think, to continually do that is to be in relationships with people. And this is where it gets back to working with organizations." The lawyers interviewed in this study repeatedly refer to the power of relationships in their work. Two respondents specify points of time at which it became necessary for them to assess the quality of their connection to community groups, connectedness to relationships that represent meaningful association with a larger movement, and the benefit that reconnection to the grassroots plays in their personal and professional lives. Respondent A says,

I started out very connected to [the grassroots] and was very connected for a number of years. In the last couple of years, I felt like we had become disconnected in the office. There was a philosophical difference and I felt very disconnected from that and so I was compensating in my downtime by doing other things in the community and so I wanted to bridge that again, and so in the office I'm in now...we do a lot more community organizing, a lot of outreach, a lot of partnership with people in the community doing similar work....

Respondent H, who worked for some time outside of New Orleans, came back to the area after Hurricane Katrina to support local efforts for a just recovery. She speaks of her earlier

professional experiences outside of New Orleans and her reconnection to the activist community upon her return to New Orleans.

When I first started...I worked directly with community groups. But actually, because my role was strictly as a litigator, even though I was working very directly with community groups all the time, I felt like I was more locked into playing the role of a traditional lawyer, you know, going to court, helping them. I mean, there was definitely advocacy strategy going on, but I don't think I felt as connected [in my previous job] to a movement as I have since moving back here. I'm from here...and now I am really able to see how my skills as a lawyer can fit into broader social change ideas.

Respondent H makes an important distinction between the connection she feels through her multi-faceted support work with the activist community in New Orleans and her relative lack of connection in her previous "strictly as a litigator" way of lawyering for community groups. This sentiment is expressed in the narratives of others as well. Respondent F identifies a feeling of "hope" that motivates people to enter this realm of lawyering and to continue doing this type of work and points to the role of relationships within the community of movement participants. "I think people come [to this work] with this hope and then it fades. You don't need it every day. You don't need it even every week, but you have to be around other people that are trying to do it.... It's not like anybody else is going to feed us. That's why the little communities we belong to are so important." This statement provides further evidence of the motivating and sustenance providing functions of social movement communities that likely also extend to types of social movement participants other than cause lawyers.

Some of the literature on cause lawyering suggests that there is a real potential for lawyers to disempower or otherwise derail people's movements because of inherent power differentials in the relationships between the elite professional lawyers and the rest of the movement actors. This theme is elaborated on in a branch of law and society discourse that deals explicitly with the roles of lawyers and activists and lawyers as activists with special attention to

how activists who are not lawyers view what lawyers do to and for movements. A cursory look at some examples from these secondary sources begins to draw out some of the complexities of the relationship negotiations between activists and lawyers that can help illuminate similar complexities in the discourse of the respondents in this research.

Sandra Levitsky (2006) contributes to this examination with her inter-organizational analysis of the gay, lesbian, bisexual and transgender (GLBT) movement in Chicago. She found that even when legal work by GLBT legal advocacy organizations had been successful in producing positive results in line with the goals of the broader movement, non-lawyers within the movement felt like the lawyers had their own agenda, were exclusionary of the rest of the community, and forced their particular issues to the forefront of movement at the expense of issues promoted by other groups within the movement. She found that one of the main mechanisms that allowed the legal organizations to do this was their relatively much larger budgets and fulltime professional staff. Essentially, she argues that the elite status of lawyers situates them much differently than other movement actors and sets up a dynamic in which non-lawyer activists are at risk of being disempowered and less visible.

This problem of “lawyer dominance” is critical to the discussion of the relationships between cause lawyers and social movements in this thesis. But it should be noted that many scholars, such as Silverstein (1996), present more nuanced and multi-dimensional accounts of negotiations between lawyers and other activists, in which lawyer dominance is certainly an issue to be negotiated but the problems are not as stark as in Levitsky’s study. These more nuanced ideas of how power dynamics play out appear to be more in line with the experience of the lawyers in this study.

I found among this particular group of lawyers a noticeable hyper-sensitivity to lawyer dominance issues. Perhaps this is a defining quality of a cause lawyer. They express certain overriding political commitments to what can be generally described as empowering the individuals and groups for whom they work, and they seem to use these political beliefs as a guide to how they want to conduct themselves in their working relationships. Most express a significant awareness of potential and actual power differentials and how they might harm a collective movement. Several talk extensively about what they try to do to maintain a healthy balance. Respondent B says, “[Maintaining this balance] requires listening to others very carefully. And I think [law partner’s name] does that really well, you know, by pulling out the legal issues but trying to let them lead in terms of where they go and let them decide what kind of advocacy, whether it be litigation or media or whatever.”

Respondent E echoes the importance of listening carefully to the people with whom one collaborates, and he adds to the discussion the importance of humility.

Part of maintaining successful and balanced relationships with the people you are working with comes from experience and good listening, because a lot of lawyers don’t have experience with folks... Part of that is humility, understanding your limitations, and that even if you are the best lawyer in the world...that this grandmother who didn’t get anything more than a high school education may be a better advocate than you are.

This respondent also reports that through time he has developed a strength of relationship with the organizers and community members with whom he frequently works. The trust that he has developed allows these power relationships to be regularly checked and the balance maintained.

He says,

I’m at a point now with most of the folks that I work with where *they* will check *me*. They will say, “This is not a part we need you for.” I think a lot of it is just having enough experience to realize that you are just one part. You know, there’s plenty of things that I can’t do, and there’s plenty of things that I shouldn’t do.

In this statement we can see how internal accountability is developed through relationships over time.

A number of the informants provide accounts of the collaborative process between cause lawyers and organizers working within social movements. This process of collaboration is the arena in which these relationships grow and are tested. Respondent E regularly attends strategy meetings with community organizers. He talks about the fact that he is often welcomed to the table as more than just a consultant on legal matters related to movement activities. He is accepted as another type of organizer who is able to collaborate with other organizers on issues of broader campaign strategy, whether or not it relates directly to his skills as a specialist in the law. When asked why he thinks he has been able to step into this more expansive role, he says that it has to do with long-lasting relationships with a number of the organizers; relationships that he characterizes as mutually beneficial learning experiences.

I think organizers are so important and I always try to learn from them.... I go to these meetings and there's rarely a lot of lawyers in them. And so you get to put these skills to work. And the great thing is that you have some skills, some links, some resources that other people don't have. The people in the meeting often have skills and resources that you don't have and so again it's the idea of a relationship, that I learn, and they learn, and that we pool and do what we can do.

Respondent B talks about how the cause lawyer working with a movement may have unique perspectives to offer the movement in the strategizing processes that stem from their specific training and experience. She suggests that this perspective can provide important insight on issues that extend beyond discrete legal matters that can prove valuable to the group decision-making process. Respondent B also indicates in the following passage that the lawyer is just one of many types of specialists that contribute to well-rounded social movements.

I think that working hand-in-hand with organizers is key. In working hand-in-hand with community members you need someone there thinking about how to make structural change and systemic change...changing systems, changing laws, changing policies

...people who understand that sort of over-arching structure. And maybe we don't understand it as well as we should or know how to change it exactly for the best but...that's why I wanted to go to law school. And also the way that lawyers are trained to think is slightly different than other people. I think it is actually really valuable to have somebody on a team that thinks very logically, not necessarily linearly, but analytically. I think that it is really a good idea to have somebody like that when you are doing any major organizing or social movement. You also need the economist, and the artist, and the mechanic, and those folks, so it's a major asset to have a couple of people who think like that.

Respondent B suggests, in the passage above, a particular value that lawyers bring to these relationships. Respondent E makes a point of saying that lawyers also benefit from these relationships. He says that he really started to be able to function as an integral part of grassroots movements when he became conscious of "how much *they* were teaching *me*."

In 1971 Jonathon Black published *Radical Lawyers: Their Role in the Movement and in the Courts*. It concludes with a number of selections that suggest the importance of a particular direction in which some radical lawyers of the time were looking. Interestingly, the direction is inwards. Commenting on the significance of introspection to the work of the movement lawyer Black, in the introduction to his book, says, "The more willing they are to shed their cloak of special knowledge and status, the more invaluable they will become to the forces of change....But the radical lawyer who balks at such an exploration of self can never be a true radical....If he is eager to participate in the quest for liberation, then he must himself be open to liberation." Of greatest interest to my research is the notion presented by Black that the efforts of radical lawyers to engage in a critical introspection might produce new models of lawyering that transform traditional relationships between lawyers and the state and lawyers and their clients, models that endeavor to empower those for whom they work and interrupt the traditional systemic power differentials that American legalism reinforces.



When the cause lawyers talk about how and with whom they collaborate it is apparent that virtually all of these lawyers see relationships as critical to the work that they do. But there is also some real variation from one to another of the way they do their work and with whom they collaborate. Some work almost exclusively at the grassroots level. Some do work that is more rooted in the mainstream establishment. Others do some of both. Without further investigation of these relationships from the perspective of those with whom the lawyers work, it is difficult to objectively assess the degree to which the lawyers are truly successful in their efforts to avoid lawyer dominance and develop mutually empowering relationships. What I can report is that I observe a clear recognition on the part of nearly all the respondents of the potential for power imbalances in their working relationships. They are able to freely talk about these dynamics and what they do to mitigate against doing harm in their working relationships.

### *Feeling situated in a movement*

Law and society scholar Thomas Hilbink (2006) documents a shift in cause lawyering during the civil rights movement from an “elite/vanguard” model toward “grassroots” cause lawyering in which lawyers sought to situate themselves much more within movements, and integrate their legal support work as just one of many pieces of a functional movement. Hilbink states that in the initial stages of the movement the most prominent approach of movement lawyers was dominated by “a belief that society’s ills can be cured through legal action” (p. 64). He argues that these lawyers adopted an “elite/vanguard” method of lawyering in their approach to working with social movements as expert specialists with a “focus on law as the primary means for bringing about change” (p. 64). The emergence of grassroots social movement lawyering in the late 1960s and 1970s displaced the elite/vanguard model and was characterized by movement lawyers who worked as collaborators with movement activists rather than

removed, expert directors of strategy. These lawyers saw the movement struggles in much the same way that movement activists saw them. They were not leaders of the movement or even always at the core of the movement, necessarily, but they were certainly part of the movement. This emergent wave of grassroots lawyers worked within social movements and challenged the prevailing professional standard that lawyers must remain disinterested and neutral. This shift paved the way for cause lawyers committed to social justice to participate in integral ways in aspects of social movements that include but extend beyond litigation.

Social movements involve coalitions of people using their particular skills in collaboration with others on a common cause. A tension that exists in the relationships between cause lawyers and social movements is the possibility that the elite professional status of the lawyer may create imbalances in the movement that may tend to place more importance on the legal aspects than on the many other levels on which a social movement functions. This tension is discussed in the literature on cause lawyers and social movements, and an awareness of this abounds in the narratives of the informants in this study, as was brought forth in the preceding section on cause lawyers' perception of relationships importance.

A factor that may reduce the potential for lawyer dominance is the notable fact that nearly all of the respondents conceive of themselves and their work as being just one piece of the larger social justice movements in which they work. This deeply held understanding of their relative role within a larger movement may help counteract some of the tendencies for lawyers and legal mechanisms to dominate the movements of which they are a part. The recognition that their work is only one part of a larger movement is a defining characteristic of what it means to be a cause lawyer.

Respondents in this study tell of the diversity of ways that they are involved in the support of causes that extend beyond litigation. There is a wealth of data on this topic that comes through in the interviews. This will be explored in greater detail in the later section entitled *expanding notions of professional and political responsibilities*. But first, in this section, I will look at the degree to which these lawyers see themselves as situated within a movement, and what they understand as the relative role that legal tactics play in relationship to other movement tactics. In this section, I share examples of how cause lawyers consciously frame their work as being situated within a movement. Following these examples, I present three interrelated sub-themes that arise from a comprehensive look at what the respondents say about the importance of being situated in a movement. First is the sub-theme of reservations regarding the ability of legal mechanisms, in and of themselves, to effect change on the scale that social movements seek. This leads to a second sub-theme expressed by most respondents that it is the duty of the lawyer to insure that legal components do not become central to the movement. The third sub-theme that arises from these narratives is that, as part of a well-rounded movement consisting of a variety of tactical approaches, legal tactics can be most helpful to movement goals in a support role, as one tool in the push for change.

As is shown in the previous section that looks into the negative impacts and limitations of legal mechanisms as expressed by the respondents in this study, these lawyers express reservations about the ability of legal mechanisms to effect change in and of themselves without a broader movement designed to push for change on other levels. But the data I looked at relative to this theme shows that these lawyers understand the legal tactics at their disposal as being “one simple tool in an arsenal of weapons that people have to bring about change, or to stall, or to at least bring about opportunities for people” (Respondent E). This same lawyer goes on to say that,

“If it is all in court, I think that there is no chance.... [Litigation] is just one tool, like anything else, that can be used for good or bad.... It needs to be used along with other tools though.” This is another indication that legal pressure in isolation, even if it results in a victory in court, does not necessarily equate to meaningful social change of the sort being advocated for by movement actors.

In spite of the respondents’ expressed desires to work in solidarity with social movements, there are of course challenges to cause lawyers who try to integrate themselves into movements in the mode of grassroots lawyer. Respondent B directly discusses the problem that lawyers and their movement allies have regarding their mutual desire to ensure that a coalition is really a coalition and that the lawyer is not driving it all and making all the decisions. She says of this potential problem,

I think that is a question that we always have to keep in mind, because we have these ideas in mind of the legal paths that other people don’t have in mind. I think it is important to not make the legal action be the center of the movement. Your goal is not to change the law. Your goal is, let’s say, to create equity in schools, and changing the law is part of that. You also need to get parents involved. You also need to get funding. You also need to have support of the City Council. These things that the lawyer doesn’t necessarily need to have anything to do with. So it’s like the legal pieces are just that. They are pieces. They are fringe pieces....What happens in court is a really small thing compared to the bigger movement.

In the passage above the lawyer talks about how it is important for her to maintain an expansive view of the ultimate movement goals and to make sure that the legal component of the struggle does not take center stage in the movement at the expense of its other components. Respondent I supports this understanding of the challenge of recognizing the legal component as merely one aspect of a movement by saying, “The lawsuit isn’t the only thing. And it’s hard not to fixate on that, especially when there is a big loss, or maybe even if there is a big win, but things fit together as pieces of a broader strategy and a broader movement.”

The lawyers make comments such as, "...the case is only one half of one percent of what is going on..." and, "...typically, the lawsuit is just one small piece and part of the problem of the lawyer is to constantly help people adjust their expectations." This suggests that these lawyers see it as part of their role to make sure that their work does not become central to the movement and that they make sure to constantly stress to others in the movement that they should not put all their eggs in the same legal basket.

The following passage from an interview with Respondent B clearly communicates some of the ideas at the root of why it is important to these lawyers that they see themselves as integrated into a robust movement active on many levels.

...if it is part of a movement, you don't want your lawsuit to be the only thing, and you want widespread support of your lawsuit. You want everyone you ever talk to [in the movement] to be like, "Oh, wow. I'm so glad you sued." Because that is a kind of pressure that will help it be more successful. If you have the support of the community, you will have great plaintiffs to choose from. Whether or not the judge would ever admit it, the judge would be affected by all the media attention. And also if you have attention on it, you will have attorneys coming to work with you on it who will be brilliant and have access to all sorts of resources. So to me that is a major condition for a lawsuit...if you are talking about litigation in social justice movements...in order to be part of a movement you need to have the rest of the movement happening and the lawsuit part is just one piece of that.

Other respondents indicate that they understand the importance of having a robust social movement of which legal tactics are just one way to take action. Respondent J, for example, says,

...but we are only a stick, because we never would have been able to close that landfill had it not been for the political pressure from the community.... Rarely, and I mean rarely, do you have a legal victory that by itself results in serious social change. I mean you can see a *Brown v. Board of Ed.* coming around once every hundred years. And in the environmental movement it's really the same thing. Typically a lawsuit is just one part of a piece.

Others confirm this understanding of the importance of integrating legal tactics into a well-rounded movement instead of taking legal action in isolation with hopes to effect change.

Respondent B does so with the statement, “I don’t think it is ever a good solution by itself to just go to the court for real social change.” Respondent F says,

So if you are going to court to look for justice, you are going to be disappointed most of the time. Now, however, if you are with a group of people who are challenging the City Council, the State Legislature, the Congress, and developers, and stuff like that, then litigation can be one simple tool in the arsenal of weapons that people have to bring about change or stall, or to bring about opportunities for people. If it is all in court, I think that there is no chance, I think that the courts follow and don’t lead.

Marshall (2006) maintains that lawyers and movement activists can cooperate to employ a variety of legal and direct action strategies that can frame the issue in ways that can gain popular support for the cause. She provides examples of strategies developed cooperatively between movement leaders and lawyers that involve a combination of legal strategies and direct action strategies more familiar to the activists. This resembles the ideal version of collaboration that several lawyers describe. She posits that this interaction may be, in the end, favorable to the movement, as it’s members “through this interaction with the legal system...learn how to gain control over the political processes that govern their lives” (Marshall 2006:178).

The informants clearly express a common understanding that their roles as cause lawyers are essentially support roles. They have special skills to offer in a specific arena of action, but at the same time, they try to remain cognizant of the broader agenda of the group. Consider the following statement by Respondent H. “I see lawyers as being kind of in the back of the pack providing support that the movement needs, so that’s how I see it in an *ideal* sense. That the work I do is *ideally* connected to community groups and advocates for a larger agenda for social change.” Respondent B says, “The *idea* is that we are supporting social justice movements that originate and are driven by the community.” When speaking about the balance of this relationship these lawyers place emphasis on the words *in an ideal sense* and *ideally*, and *the idea is* when describing the optimal relationship between the cause lawyer in a support role and

the rest of the movement. This suggests the existence of real challenges to maintaining this balance. The other themes in this chapter help us understand what these challenges are and how cause lawyers respond to these challenges. But, at this point in the analysis it is clear that, on the whole, these lawyers strive to be integrated into and supportive of the broad movement.

### *Alternative measures of success*

A current that runs throughout the themes of this analysis is that the work of the cause lawyer often involves activity that extends beyond simple litigation, and since the political climate in which they are operating often does not lend itself to clear and immediate success in or out of court, these lawyers are challenged by the need to measure their success and that of the larger movement beyond simply whether or not they win in court. In this section, I look at how cause lawyers define success in this context. I turn to the cause lawyers themselves to define lawyering success and what they understand to be movement success. This approach reveals that cause lawyers find various and sometimes surprising ways to measure the success of their work.

Almost unanimously, the respondents indicate that, in their worlds, success is not measured in the traditional terms of wins and losses. Respondent I says, “Success is not like getting a shiny star at the end of they day. And it’s not just about getting a win. It’s really about feeling good enough about it to keep going.” Respondent H reinforces the claim that for this class of lawyers, success is not simply about winning cases. He says, “It’s definitely not about winning cases. And it’s not even about the number of individual situations that get resolved. I don’t think about it like that. I guess it’s more how I feel about it. Like, do I feel good about the work...feeling like I’m not working in a bubble.” Respondents agree that for them success is not just about litigation success, but they describe a variety of alternative ways of measuring success in their work.

Only one respondent offers quantitative ways of measuring success. Respondent G, who works in a non-profit organization that provides legal representation to poor people, says,

We count the number of people our work is benefiting both through individual cases and we try to estimate how many have benefited from the cases that we believe had systemic effect. We figure a rough dollar value of our advocacy and direct service, and we collect information about how we have influenced policy and practice changes.

He describes this as a typical model used to measure outcomes in the non-profit world. The rest of the respondents offer less quantitative, but highly descriptive, explanations of how they define success.

It is clear from what the respondents share that they do not measure success in traditional ways. We can look at the variety of ways of defining and measuring the success of their work to try to understand some general patterns of response. Because they do not expect to win frequently in or out of court, the respondents tend to take a long view of the potential for broad social change, and they look for small successes to mark progress along this path. Interestingly, and in concordance with the earlier finding of the high significance accorded personal relationships, many measure success by the quality of their relationships with the people with whom and for whom they work. Respondents also indicate that simply being a part of a collective struggle and supporting a continued resistance helps cause lawyers feel successful in their work. A final, significant sub-theme repeated by a number of respondents is that they find success when they feel that their work is providing a vehicle for the previously unheard to have their voices heard.

Respondent F begins to offer an articulation of why the nature of cause lawyering requires a different standard by which to measure success.

Justice work and working with community groups is very messy, very unpredictable, very unsystematic. You can have a sense that you are trying to do the right thing, are on the right side, but it is not clear if, first of all, there will ever be a victory, and second of



all, where it's going to come from . . . Hopefully, something will change in a way that you will be able to see . . . but that's part of your limitations.

These lawyers are keenly aware of the need that they feel to work out the meaning of success for themselves. Respondent A says, "You have to define your own victories, you know?" This notion is affirmed by Respondent E when he says, "I think you have to search that out and help to create that narrative for yourself and for the group, because if you don't have some success, you'll quit." Cause lawyers must find ways to discern small, intermittent successes from the uncertain climate of the protracted social justice campaigns of which they are a part. They are motivated to keep working toward broad and often evasive goals by finding success in "the little things" that can be framed as small steps toward a broader goal.

You've got to look for small, individual successes. For this person, on this day, it mattered that I went to court with them. For this family, on this day, it mattered that they were treated with dignity in the system. And I can find success in that, even though my ultimate goals may be as big as transforming the juvenile justice system or abolishing the death penalty or bringing every survivor back home who was living in the 9<sup>th</sup> Ward before the storm hit. . . It's almost like that [small success] has to be enough or you will never survive in this. (Respondent A)

Respondent B makes a statement that, for her also, "some of the biggest successes are the little things." She shares a story of what she identifies as a recent success. She had been working for a number of months helping some neighborhood-level grassroots activists establish their post-Katrina dream of building a community center in their flood devastated neighborhood. She assisted this group with the legal aspects of their project such as navigating the zoning ordinances and incorporating as a non-profit. She proudly shared with me a newspaper clipping featuring the opening of the community center. She concludes her story of working on this project by saying, "It's the little things. And hopefully it all builds into a bigger picture. . . little successes that hopefully support a broader agenda of social justice."

We see in the previous passage an example of a lawyer taking a broad view of long-term movement success and measuring small, incremental steps down that path. Related to this view is a sub-theme expressed by several lawyers of measuring success in terms of proper process versus ultimate outcome. As informant E states, “Success is much more about being involved and participating in the struggle for justice than it is in achieving any clear and final successes. At some point in your life, it becomes that you are doing the right thing with the right people and, you know, maybe you’ll win, and maybe you won’t win.” For many of these lawyers it appears that proper process involves forming collaborative relationships and engaging in mutual, principled struggle. Respondent F says, “...and so success is, I think, in relationships...getting to know people and just fighting the good fight.” Similarly, Respondent A speaks about finding success or satisfaction through collective acts of resistance. “We can feel successful when we put up a fight . . . when we don’t let things just happen to people without a struggle. And, you know, sometimes I guess all you can do is bear witness and stand to fight another [day]. But at least it didn’t happen quietly.”

Interestingly, when speaking of their ability to find success in simply being part of struggle, two respondents offer strikingly similar metaphors. Respondent F says, “You are part of a river, a movement, of people who have been trying a long time before you were around...and occasionally, as a lawyer, you are able to get somebody out of jail or help stop them from being evicted or very small concrete things and you say, ‘You know, I don’t know where the rest of this is going, but I think we are able to do *this*.’ ” This river analogy is complemented by Respondent E’s metaphor of the “great flow” of a movement over time. “A real understanding of justice...makes you humble about what you as a person can accomplish...you realize you are in

this great flow and history of people doing what they can to try to do something about justice and you've got a little role to play and sometimes it works and sometimes it doesn't."

One lawyer shared with me a story about a time in which he was asked to explain how movement participants, including the lawyers, find reason to celebrate successes when they are seemingly losing time and time again. In this story, the respondent was defending a large group of activists who had been arrested for an act of civil disobedience. He was in the courtroom for several days in a row and one of the law enforcement personnel who had been witnessing the proceedings, while escorting the respondent out of the courthouse, began to ask some questions to try to understand this dynamic. This is the account that exchange:

I'm walking out of the courtroom one day and this big power-lifting cop was with me and he says, "[first name of respondent], this is the thing I don't understand." He said, "You're in court with all these people. You put on all these papers and arguments about international law and justice and all that other stuff. You lose every damn argument you make. All of your clients are found guilty and sent to jail. But when you walk out of the courthouse everybody cheers. What's up with that?" And that's when I said, "It's just a different environment. People recognize they are not going to win right now, but they are going to try to do the right thing anyway and feel like they are just trying to move the ball forward a little bit. And that hopefully, at one point, they will be found to have been on the right side and they participated in moving this thing forward and they are living out their convictions and that stuff. And so all I am doing is making a little space for them in the courtroom and for their family so that they can tell some of their story and they can have their day or their half hour or whatever it is to be able to do this stuff and then to help them explain to their family and friends what they are doing." And so it is clearly not about the traditional criteria of success (Respondent F).

Within the respondent's account we find evidence of movement participants and their lawyer framing their efforts as just one part of a broader struggle. He clearly states that they do not look toward a "traditional criteria of success." And he introduces an important activity through which cause lawyers often are able to claim success. He talks about "making a little space for them [the movement activists]...so that they can tell some of their story." In these interviews several lawyers talk about finding satisfaction and measures of success through their role of facilitating

the expression of the voice(s) of the too often unheard. Respondent A says, "...sometimes, I guess, all you can do is bear witness...so that [the injustice] doesn't happen without anyone noticing, so that people know there are faces that go with this struggle...stories that go with it." This sentiment is in line with the CRT assertion of the importance of voice and the suggestion that legal rights claiming provides a venue in which voices can be expressed.

Another respondent offers an example of how other lawyers often struggle with the notion of prioritizing the facilitation of expression of these voices over doing whatever it takes to get a "win." Respondent E has collaborated with other lawyers who are less experienced working with social movement activists who sometimes tell him regarding their frustrations in working with defiant, non-compliant movement activists, "You gotta tell them to shut up. They are going to fuck up the case." To which he responds, "Look, it's not about the case. It's not the win and the loss of the case for them. They have something they need to say and we are here to give them the space to say it." The same attorney provides another example of this in the following passage.

We had an experience since Katrina where we had some migrant workers who were doing some stuff in the hotels and stuff like that and were able to get a big national civil rights group to take on the case and then they wanted to start telling the workers that they couldn't talk to the owner without the lawyers being there because it violated attorney-client privilege and set up problems for the deposition and stuff like this, but the point is to empower the workers to be able to make more decisions for themselves and give them the voice to speak out. And even if it caused problems for the case or caused problems for the lawyers, the point is that the lawsuit might help protect people and they would rather be able to talk in an organized way with the owners than to win the lawsuit. So you have these contradictory things there.

These are representative examples of the variety of reasons that cause lawyers tend to look beyond whether or not they are winning cases to find alternative measures of how they and the larger movement are being successful in their work. These lawyers see their efforts as being situated in the contemporary social justice movements that they support as well as being

connected to historical global and local struggles for justice. This perspective allows them to take a long view of the potential effects of their work. And understanding themselves as being situated within this context helps them to continue, often without the benefit of immediate, tangible and widespread results, to work toward their ultimate goals because they are able to see small successes and seemingly minor contributions as contributing to the larger effort of working for social justice.

In summation, one broad way that cause lawyers measure their relative success is by asking to what degree they have been able to empower people or “make space” for voices to be heard. There was another commonality in responses that indicates that lawyers measure success according to whether or not they are able to maintain a principled focus in their work. As Respondent A asks, “Is [my practice] consistent with the principles that I say guide my life? Is it important? And this sounds kind of trite, but at the end of the day, is it making the world a better place than I found it?” In the end the lawyers indicate that what really matters most to them are the components of their work that assist community building, empowerment, and accessing and facilitating the expression of social movement constituents’ grievances.

#### *Ameliorating symptoms versus addressing root causes*

In “Revolutionary Lawyering” Bill Quigley (2006) states that people in general, and lawyers in particular, have been taught that radical change is not possible, and that from this thought it follows that the best a social justice minded lawyer can do is to forget about working for more substantial goals of systemic social change and just do things to help individuals in their struggles. According to Quigley, these beliefs contribute to the development of a class of progressive lawyers who work to help individuals deal with some of the symptoms of their larger

struggles, but who are not oriented to attack the larger issues from which these symptomatic problems arise.

Respondent C recognizes that many of her colleagues practice this mode of lawyering. She says that there are actually quite a few private attorneys, including ones from big firms, who do pro bono public interest work. But her assessment is that, although most of this work is certainly helpful to individuals, it is so limited in its scope that there is not any real hope that it can effect substantive change for society as a whole. Earlier in her career, Respondent C worked for an organization that offered legal support to the homeless population. Most of the other lawyers doing that work, she says, were private lawyers from big firms who wanted to come out into the streets and shelters once a week to do charity style service work that addresses symptoms but not causes of social inequities. She comments, "...they did not necessarily want social change coming from there. They really were a 'help-the-person-with-the-individual-case' kind of group and that's pretty much it. They didn't want to do anything a little bit controversial." This was not enough for Respondent C who wanted to do more. She felt resistance from her colleagues to her desire to do things that "...they thought were politically not a good idea, like voting rights type of stuff for homeless people...," and she decided to leave this project to look for work in which she might hope to have a broader impact by addressing the causes of societal inequalities that are at the root of people's struggles.

In *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, Lopez (1992) describes and names a tradition of "regnant" progressive lawyering for subordinated people that results from the mindset described in the previous paragraph. (He uses the term "subordinated" to describe individuals who inhabit the bottom of the political, social, and economic hierarchies for reasons of age, class, disability, ethnicity, gender, race, or sexual

orientation.) Lopez challenges the prevalent “regnant” tradition of progressive lawyering by claiming that no matter how well intentioned the progressive lawyer fighting “the good fight” might be, unless he can break free of these ideas of practice and professionalism, he will merely reproduce the subordinating assumptions of “traditional legal and popular cultures.” These assumptions are often deeply engrained and difficult to break free of. Lopez writes about how this idea both “surrounds” and “dwells within” progressive lawyers. The regnant idea, “defines a lawyer’s connection to her job, to what she knows, to those who work with and around her, to the institutions in which she functions, and to the society she desires to change” (p.23). Lopez claims that many progressive lawyers who do not step out of the traditional framework of “regnant” lawyering end up stripping clients of agency and relegating them to roles of passivity and obedience.

Bill Quigley (1994) says that Stephen Wexler’s *Practicing Law for Poor People* (1970) is considered an “autocite” for writers about advocacy for poor and powerless people because, at the time Quigley was writing, there were so few examples of good quotable writing on the topic of the relationships between lawyers, poor people and organizing. And although a number of good examples have been produced in the intervening years, Wexler’s points still are significant to this exploration of models for public interest law work. Wexler states that, despite a growing interest in poverty law at the time he was writing, most poverty lawyers adopt a conventional model of lawyering; one that is similar to the model that Gerald Lopez refers to as “regnant” lawyering. But as Wexler points out “the traditional model of legal practice for private clients is not what poor people need; in many ways it is exactly what they do not need” (p.1049). Wexler advocates for putting the lawyer’s skills to use in poor people’s movements in a more effective, albeit nontraditional, way with a focus on community organizing versus solving individual legal

problems. Wexler writes, “The two major touchstones of traditional legal practice—the solving of legal problems and the one-to-one relationship between attorney and client—are either irrelevant to poor people or harmful to them” (p.1053). This model isolates poor people from one another and fails to empower clients, provide them with new skills, or meaningfully address any of the fundamental issues that motivate them to seek legal help. Any legal remedy that a lawyer might provide via this traditional framework often leaves the client “precisely where he found them, except that they will have developed a dependency on his skills to smooth out the roughest spots in their lives” (p.1053).

It can be deduced from the narratives of respondents that they entertain complex, varied and sometimes conflicting views of the two types of models of lawyering presented and respectively criticized and advocated for by Lopez and Wexler. Respondents in this study express a common impulse to do work to improve the circumstances of people’s lives. Individually, they rely on direct legal problem-solving for individuals to varying degrees. Some do quite a lot of individual representation and see this work as meeting some immediate needs and being supportive of larger efforts on a slow march towards greater justice and eventual social change. Others do very little individual representation and choose to focus more on organizational support and broader impact work, such as legislation, class-action suits, and other tactics that respondents refer to as “impact work.” But despite the differences in their chosen modes of practice, they all indicate that, in and of itself, direct legal representation is an insufficient means of producing major change. They strive to effect more systemic change, and they have varied ideas about the best way to do this. Most of the respondents conceive of themselves as being more committed to objectives of social change than their mainstream counterparts. It is possible to bring forth from this analysis a distinction between the more



common charity-style service work of many liberal, public-interest lawyers that is focused on ameliorating symptoms of social conditions and the work of cause lawyers that is more focused on attacking root causes of social inequities in a way that is aimed at lasting social change and is more rooted in social movement communities. A number of respondent statements imply an understanding of this distinction.

This discussion highlights a relevant tension in the work of the cause lawyer between the motivation to do more broadly focused social change work and the underlying motivation to help people in an environment in which there is such enormous, immediate, and unmet need for individual representation. Interestingly though, most respondents in this study indicate that they either don't recognize this as a tension in their professional lives or have developed ways in which they feel they are able to maintain a balance between serving the needs of individuals and doing more broadly focused impact work.

Respondent I responds to probes related to this tension by saying, "I've got to say that it is not really a tension for me. It takes a lot of time to do individual work, but I really believe in it." She believes that the impact work must be rooted in the lives and individual stories of individuals. "There's just no way to do that [impact work] unless you are walking around talking to people and know what's going on." She contrasts this to the post-Katrina phenomenon of the arrival of many well-meaning, but less than optimally effective, out-of-town lawyers wanting to do "big impact litigation" but who are unable to ground their efforts in the lives of real people because they haven't done the individual representation and legal counsel. She sums up her feelings about this balance by saying, "There would be no way to do public interest law without being connected to the community you serve." For her, individual representation is a way to stay connected to the community in a way that can strengthen any attempts to do the broader impact

work. She says that the way that she and other lawyers do this is by helping people solve their individual problems and by “talking to people, collecting their stories, and being able understand the laws well enough so that we can translate their stories into lawsuits if necessary.”

Respondent B also says that, despite some tension in maintaining a balance, the individual representation that focuses on addressing individual symptoms and broad impact work that focuses on root causes are actually complementary endeavors. She says, “I see them as the same thing,” and talks about the importance of being selective about the cases that one chooses. She recognizes that since it is impossible to meet everyone’s individual needs for representation, it is best to chose to work on the individual cases that are likely to be able to support opportunities for broadly focused impact litigation. She also talks about how representing organizations or groups of people can more effectively meet the needs of a greater number of individuals. She also feels that her organizational support work has a greater potential of eventually influencing social policy than is the case with straight individual representation.

Respondent E also expresses a preference for working with community groups as a way to impact more individuals. He says, “... a lawyer with an organization can have far more impact than a lawyer with individual clients or stuff like that.” He says that he doesn’t neglect the work of individual representation completely. Instead, he says that he will represent individual clients as long as they are “...part of a movement...and ‘movement’ very broadly defined...you know, everything from a neighborhood and that sort of thing.” He provides an example of how his focus on organizational support does not mean that he doesn’t ever represent individuals. He talks about how individual representation, within the context of an organization or broadly defined movement, can help the activists he works with stay focused on their efforts. He gave examples of how he feels like it is an important role of the movement lawyer to “get folks back

out on the street” who have been arrested for civil disobedience. He also describes doing other more common, although perhaps less sensational, individual support work. “...a lot of the [movement] people who I deal with are in crisis personally. So you might help them keep their electricity on, or get their house back, or something like that, just so that they can stay active in the social justice campaign, because they are all volunteers.”

When the lawyers discuss their motivations to pursue a career in the law, each of them says something about feeling a calling to help make people’s lives better in some way. One way in which a lawyer might do this is by representing individuals and helping people find solutions to their problems one person and one problem at a time. This type of work has the advantage for the lawyers of providing personal interaction with the people they are serving in a way that allows them to see tangible results of their work. But most of the cause lawyers interviewed for this study indicate that this mode of helping individuals work through their problems, addressing the symptoms of their conditions, is not enough for them in and of itself. They seek modes of practice that they understand to be more directed at causes of the problems that people face. The lawyers differ some in the professional decisions they make in response to this fact. Some choose to only work with individuals through their work with organizations explicitly focused on social change. Some choose individual clients based on whether they can conceptualize the case as being embedded within a larger movement. Some choose to work on impact litigation that is rooted in the stories of real people. They make these different professional choices based on a common desire to work towards broader, more expansive remedies that will have a greater impact on a greater number of people. They see their work as hopefully alleviating some of the individually felt symptoms of systemic injustices along a path that is ultimately guided by a desire to root out and attack the root causes of these struggles.

### *Expanding notions of professional and political responsibilities*

When discussing the nature of his daily work Respondent G suggests that most people have an inaccurate understanding of what lawyers actually do in their day-to-day work. He thinks that this is particularly so in the case of social justice lawyers working in public interest roles. Respondent G suggests that the courtroom dramas of television and cinema create a prevalent, but largely inaccurate, understanding that lawyers spend most of their time on litigation, either preparing cases or arguing them in court. He thinks that this might be the case for some corporate lawyers in big firms, but the reality of the day-to-day work of the cause lawyer is quite different and more varied than these media portrayals suggest.

In an effort to gain a better understanding of the type of work that cause lawyers do, I asked each interviewee to talk about the percentage breakdown of their time spent on litigation versus their other responsibilities as cause lawyers. In this section of the analysis, I will first look into what the interviewees have to say about this percentage breakdown of their work activities. This will open into a discussion of the types of non-litigation work with which they are involved and a look at what they identify as the positive, indirect effects of their litigation work.

All respondents, with the exception of one, indicate that they spend a minority of their work hours focused on the traditional lawyering work of litigation. Respondents qualified this in similar ways such as, “very little time,” “a very small amount,” and “less than you would think.” In addition, nearly all were able to give fairly precise numerical percentages because of time management records that they choose to or are required to maintain. These ranged from a low of 10% to a high of 30% of their total work time spent preparing for or engaging in courtroom litigation. On the high end of percent-litigation responses, Respondent G indicated that the 30% figure is “a little higher...actually quite a bit higher than other organizations doing the same type

of work. We are really a litigation organization.” It is telling to learn that even a lawyer working for what he characterizes as a “litigation organization” spends only less than a third of his time working on litigious matters. This particular lawyer works for an organization that does individual and impact work for low-income residents who cannot afford legal counsel, and although he characterizes his organization as a litigation organization, he says, “But we do believe in other forms of advocacy too. And obviously, a lot can be done through informal advocacy or relationships with other people in the community including legislators, social service agencies and government agencies.”

Respondent I indicated that a greater percentage of her work used to be focused on litigation before Hurricane Katrina. But since the storm she has found it necessary to do more varied types of community and organizational support work as part of the recovery. She sees an important post-Katrina, partial shift in emphasis regarding the roles of lawyers connected to popular movements and community organizations. She explains that because “...everything is up in the air about what our world is going to end up looking like...[and because] we have all these new programs that are getting rolled out,” that these lawyers have professional and political opportunities and responsibilities to participate in the post-Katrina policy setting processes and to advocate for a just recovery in the interest of the grassroots groups and the people with whom they are allied. For this reason, she and others spend an even greater percentage of their time post-Katrina doing impact work or policy advocacy than they did prior to the storm. There is an apparent heightened tension in post-Katrina New Orleans between this need to do more broadly focused impact work and the drastic increase in need for direct representation and legal counsel that individuals experience. The ways in which the respondents understand this tension is

explored in greater detail in the previous section of this chapter entitled *Ameliorating symptoms versus addressing root causes*.

The one exception to the pattern of less emphasis on litigation was Respondent J who was an outlier in this and several other categories of response. Although he was not able to offer a precise numerical percentage, he indicated that he spent a majority of his time preparing for litigation and simply said, “As a lawyer, that’s what you do.” It is interesting, but not surprising, to note that this particular respondent also indicated a much more unquestioned faith in the promise of litigation by itself to open up opportunities for social change. He also maintains a more traditional lawyer-client relationship to the community with which he works, and he has been involved in supporting social justice work for fewer years than most other respondents.

The average percentage of time devoted to litigation reported for all of the lawyers who indicate that they spend much less time litigating than doing other types of lawyering is approximately 25%. Respondents report spending the majority of their time, about 75% on average, engaged in other activities not directly related to litigation that are designed to support the social justice interests of community groups, individuals, and the interests of broadly defined social justice movements of one kind or another. This set of interviews contains a wealth of information about cause lawyers taking action in non-litigious ways that are still within the bounds of the traditional responsibilities of the lawyer. These narratives also offer a number of examples of ways in which most of these lawyers typically take action that are fairly removed from traditional lawyering roles. In the next few pages, I examine the variety of ways that these lawyers report supporting social justice initiatives in their work beyond the mode of litigation. Because it is perhaps most revealing to consider the exceptions to traditional modes of lawyering, I focus greater attention on these.

Respondent B shares a number of activities that she focuses on in her work that are both not related to litigation and outside of the realm of what lawyers traditionally do. She says,

To be completely honest the amount of time that we actually spend on litigation is like 15 to 20 percent, smaller than you would think, I mean in terms of actually drafting pleadings or going to court or strategizing around that. The rest of it is all writing things, talking, going to meetings, figuring out how to bring in media, whether it's like news or folks from universities, or otherwise you can bring attention to things, also, like organizing, holding meetings, trainings, we give a lot of trainings. Right now [my partner] and I have a lot of administrative work that we are doing to keep the organization going...fundraising and stuff. We do a bunch of general 'know your rights' trainings. We are reporting on things that the city is doing unlawfully [in the disaster recovery process]...We have done a lot of work to discover public information that is actually hard to get a hold of and we are posting it on our website so that people can have access to it in a way that people can easily digest. Not just education, but housing and workers' rights, know your rights trainings, but web-based.

This passage contains at least ten different examples of traditional and non-traditional types of support work that these lawyers do. Of particular interest is the activity of collecting and disseminating information to the public. This was an activity that was described by a majority of the lawyers interviewed. Most framed this as a particular need in the post-Katrina environment in New Orleans and see this as a major contribution that they, as lawyers, can make to the popular movement for a just recovery for all segments of society. Respondent B notes,

...litigation is some small percentage of my time and the rest of it is either working with community groups to give them the information they need for their communities about housing or FEMA. It's mostly hurricane related stuff, but now everything is so hurricane related that it could be anything, basically. We have some how-to packets. *How to do a FEMA Appeal, How to Deal with Contractor Fraud*, etc. I think that the role that lawyers can play is by providing reliable information that community groups can use. That's how this clinic started. It was like an informational clinic. There is so much going on out there. So how do you make sense and make sure that people have accurate and up-to-date information? So that's one part of it. And the other huge part of it is...helping them connect with resources in the community.

Contained in this passage is the idea that, especially given the reality of what it is to try to navigate the complexities of post-Katrina recovery, cause lawyers can use their research skills,

relative ease of access to resources, and established connections to community leaders and grassroots groups to support efforts towards a just recovery. Two respondents specifically indicated that they have developed their websites to facilitate the distribution of information to individual citizens and community advocacy organizations. These lawyers recognize an overwhelming need for this type of support coming from the communities in which they work. A number of informants indicate that this level of community support was necessary pre-Katrina, but that, in post-Katrina New Orleans, such needs have multiplied and compounded in a way that allows these lawyers to see a clear connection between doing this technical support work and supporting a larger movement towards a just recovery for all. From a resource mobilization perspective, we can see that an increase in post-Katrina social movement activity is correlated with an increase in cause lawyer participation in the resource mobilization process of social movement development. These cause lawyers interviewed here suggest that there are certain types of resources that they as a group are particularly adept at mobilizing in the interest of social movements.

Most respondents indicate that they prefer providing informal advocacy and distributing information to the public by way of their connections to community groups. They told me that they are inclined to do this because they feel like it is an efficient use of their limited time and, perhaps more importantly, because it is more likely to empower a greater number of people in the long run to get this information out to and through grassroots groups and community organizations. Respondent G says, “We do a lot of community organizing...we do a lot of outreach...and we get a lot of invitations to come talk to community groups.” Respondent I says, “...the community group piece is definitely a chunk of the advocacy work.” There is an interesting tension here between this preferred method of working with groups and the need that



these lawyers express to make personal connections with individuals. This idea was explored in some more detail in the section on how these lawyers negotiate a balance between working for systemic change and connecting to the individuals in the communities they are motivated to support.

Throughout these interviews, as was highlighted in the first theme of this chapter, most of the cause lawyer respondents express a measured skepticism about the use of litigation by itself to directly effect substantive change on the issues on which they work. This does not mean, of course, that they don't engage in litigation as part of a broader strategy. In fact, they do. And despite their general skepticism, they recognize a number of important indirect effects of litigation. They emphasize certain positive outcomes of litigation that can support the goals of a social movement regardless of whether or not a case is ultimately successful in court.

Respondent F expresses skepticism about the court's tendency to deliver true justice and offers some examples of peripheral benefits of court action to the movement. Specifically, he points to information discovery and temporary stoppage of an impending negative action to allow the broader movement to focus its energy on other tactics.

People can hope for things to get done in the court, but usually the things you get out of court are not, in the end result, ultimate justice... Maybe you hold some people accountable. Maybe you get some information. Lawsuits can be a way to discover information that can be useful to the larger movement. Or maybe you are able to prolong it so that other things can happen either in Congress, or City Council or State or something. And so there's little things and they are not the end, but it is an opportunity for some change.

Another lawyer, Respondent E, confirms and elaborates on the peripheral benefit of information discovery that Respondent F mentions in the passage above.

The litigation process can discover information that would be helpful for people to lobby, or to raise hell, or to write articles, or to give people some support, or at least to allow folks tell their whole story to people, so at least they understand how they are getting

screwed, as opposed to taking the standard story that we are doing it for your own good, or you are not good enough for this or for this, etc.

This last passage also suggests the specific importance of the litigation process to the movement of allowing people a venue in which they can formally address their grievances to the power structure that so critically impacts their lives. In the section of this chapter that focuses on how cause lawyers measure success, I proposed that this is one of the most important roles of the cause lawyer engaged in litigation, to provide the space for people's voices to be heard. A prime example of this occurred in the movement to defend New Orleans public housing developments from proposed demolition. In November of 2006, after months of the Housing Authority moving forward with its plans for demolition without any meaningful consideration of the needs and voices of the residents, court action initiated by cause lawyers working in the interest of the movement forced a public meeting at which dozens of residents were able to, for the first time, speak out in an official forum and to make their voices heard by those making these critical policy decisions. This turned out to be a liberating experience for individuals and an invigorating moment in the trajectory of the movement. Respondent F talks about the power of such events and the difficulty in precisely assessing the personal and community psychic benefits and what empowerment this might lead to. "You don't know if some kid got to see his mom stand up and point her finger at somebody and really tell the truth, and that might inspire him in ways that we just can't know."

The data that relate to this theme of *expanding notions of professional and political responsibilities* indicate that lawyers have developed alternative ways in which they can participate in movement efforts, in part, due to a climate that has been increasingly inhospitable to the legal claims of grassroots social justice organizations and their lawyers. In this section and throughout the chapter, the lawyers offer a number of examples of how they avoid or move away

from the traditional lawyer role of disputer to participate in collaborative ways in many aspects of the social movement, from organizing meetings, to offering education opportunities, to framing the struggles and goals through media, to strategizing actions, and numerous other supportive activities.

## Chapter 6: Conclusion

This thesis research originated with an inquiry into how cause lawyers conceive of and negotiate the various social, political and practical challenges that arise in their work with social movements. I conducted this inquiry to help answer the following questions central to the study of cause lawyers and social movements. What do lawyers do for, and to, social movements? How, when, and why do social movements turn to and use lawyers and legal strategies? In what ways do lawyers and legal strategies tend to advance or constrain movement goals? And, how do lawyers shape movements and how do movements shape lawyers? The research process yielded a wealth of information that contributes to answering these questions. In the following pages I begin with a summary of the key findings of this research. Then I return to the original research questions to assess what these findings offer in terms of answers to these core questions and what larger lessons can be drawn from this research.

A primary finding of this research is that cause lawyers present a measured skepticism concerning the utility of legal mechanisms to effect enduring social change. They understand that legal pressure in isolation, even if it results in a victory in court, does not necessarily equate to meaningful social change. Despite their beliefs in its limitations, these lawyers do not reject rights discourse or traditional legal mechanisms altogether. They recognize the transformative value of the law and rights claiming for marginalized people and the value that it can offer to movement building. They see some potential for redress through the law, but recognize that this is only likely to occur in the context of a vibrant social movement. Because of this they often collaborate with movement activists to help search out alternative strategies for action around the causes they support, strategies that complement or replace litigation. The limitations of legal

tactics encourage cause lawyers to explore broader ways that they can be active in efforts to support the causes to which they are committed.

Claiming membership in the activist community, expressing solidarity with a cause, and feeling a sense of belonging to a larger movement provide a certain type of sustenance to cause lawyers that motivates them to continue to struggle to work towards often evasive movement goals. These lawyers see their efforts as being situated in the contemporary social justice movements that they support as well as being connected to historical global and local struggles for justice. This perspective allows them to take a long view of the potential effects of their work. Understanding themselves as being situated within this context helps them to continue, often without the benefit of immediate, tangible and widespread results, to work toward their ultimate goals because they are able to see small successes as contributing to the larger effort of working for social justice.

The informants clearly express a common understanding that their roles as cause lawyers are essentially support roles. Cause lawyers committed to social justice participate in integral ways in social movement activity that include but extend beyond litigation. They have special skills to offer in a specific arena of action, but at the same time, they try to remain cognizant of the broader agenda of the group. This motivates them to develop their range of skills beyond litigation to most effectively support their causes.

Almost unanimously, the respondents indicate that, in their worlds, success is not measured in the traditional terms of wins and losses. They look beyond whether or not they are winning cases to find alternative measures of how they and the larger movement are being successful in their work. They emphasize certain positive outcomes of litigation and the other support work that they do that buoy the goals of their causes regardless of whether or not a case

is ultimately successful in court. In concordance with the very high importance they place on relationships with clients and social movement activists, many measure success by the quality of their relationships with the people with whom and for whom they work. Cause lawyers report that simply being a part of a collective struggle and supporting a continued resistance helps them feel successful in their work, and they find success when they feel that their work provides a vehicle for the previously unheard to have their voices heard.

There is a tension in the work of cause lawyers between the motivation to participate in more broadly focused social change work and the underlying motivation to help people in an environment in which there is such enormous, immediate, and unmet need for individual representation. Cause lawyers develop ways of practicing in which they feel they are able to maintain a balance between serving the needs of individuals and doing more broadly focused social impact work. They have varied ideas about the best way to do this, but despite the differences in their chosen modes of practice, they base these choices on a common desire to work towards broader, more expansive remedies that will have a greater impact on a greater number of people.

A fundamental contribution of this research is its recognition that cause lawyers develop models of professional practice that extend well beyond the standards of traditional lawyering to include some of the key components of community organizing. Cause lawyers as a group focus less on the traditional lawyering work of litigation than they do on other activities not directly related to litigation that are designed to support the social justice interests of community groups, individuals, and the interests of broadly defined social justice movements of one kind or another. In part due to a climate that has been increasingly inhospitable to the legal claims of grassroots social justice movements and their lawyers, cause lawyers have developed alternative ways in

which they can participate in movement efforts. They tend to avoid or move away from the traditional lawyer role of disputer to participate in collaborative ways in many aspects of the social movement including organizing meetings, offering education opportunities, framing the struggles and goals through media, strategizing actions, and numerous other supportive activities.

Although most cause lawyers do not come to the profession through previous experience as community organizers, their experience working with social movements encourages them to expand their professional roles in that direction. A view of the dimensions of cause lawyering through the lens of social movement theory suggests a blending of lawyering and community organizing in their professional lives. Although they participate in these activities to varying degrees and with varying success, on a basic level, the work of cause lawyers centers on the key social movement activities of assessing political opportunities, mobilizing resources and contributing to the collective framing process. In this way, the notion of “lawyer as organizer” comes into focus through an examination of cause lawyering from the social movement perspective.

Having summarized the key findings I will now return to the core research questions identified at the outset of this project to determine what answers these findings offer. This research began with the following four interrelated questions concerning cause lawyering and social movements. What do lawyers do for, and to, social movements? How, when, and why do social movements turn to and use lawyers and legal strategies? In what ways do lawyers and legal strategies tend to advance or constrain movement goals? And, how do lawyers shape movements and how do movements shape lawyers? I will reflect on each of these in turn and then take a holistic look at the findings and conclusions in relation to the set of research questions to draw out the larger lessons that emerge from this research.

*What do lawyers do for, and to, social movements? In what ways do lawyers and legal strategies tend to advance or constrain movement goals?*

I will consider the two questions above concurrently because of their similar and overlapping focus. Among the things that lawyers do for social movements is of course the traditional work of lawyering. This work includes preparing and litigating cases in the interests of social movement causes. It also includes empowering movements by representing their interests in disputes with opposing interests of the state and elite players outside of the courtroom through informal negotiation and the use of tactics such as letter writing and phone calling that may encourage concessions through the threat of legal action. Lawyers also support social movements by way of non-adversarial support work such as offering legal advice concerning possible consequences of planned movement strategy and through the more mundane legal work of helping movement organizations negotiate processes such as establishing non-profit status and by assisting activists with their legal problems so that they can continue to participate in activities of the movement. This type of assistance ranges from working to get activists who have been arrested for civil disobedience quickly back “on the street” to assisting activists with other legal problems unrelated to movement activities so that they can focus more fully on social movement organizing.

A key finding of this research is that the traditional legal work described above represents only a minority of the work that cause lawyers do for social movements. They spend the largest portion of their time on work that is less commonly associated with the work of conventional lawyers. They use their research skills and relative ease of access to resources to collect and distribute essential information to individual citizens and community groups. They are heavily involved in the framing of key issues to the general public in ways that are aimed at increasing



popular support for movement goals. They also use their professional connections with people such as other lawyers and law students, legislators, and employees of social service and government agencies to mobilize support and garner resources for their causes.

Just as important as what cause lawyers do *for* social movements is the question of what they do *to* social movements. Specifically, I was interested in the course of this research to learn some about whether or not lawyers and the tactics that they use influence movements to follow a trajectory that possibly conflicts with movement goals. My assessment at the end of this study is that cause lawyers, as a special category of lawyers, are especially attuned and committed to movement goals such that they are hyper-conscious of such issues and strive to maintain primary allegiance to the goals of the larger movement. Cause lawyers develop close relationships with other movement participants and strive to work in solidarity with social movements such that accountability develops in these relationships that prevents or corrects tendencies for lawyers to do things *to* social movements that would take them off course.

Since specific information regarding what cause lawyers do *to* social movements was somewhat more difficult to distill from the respondent narratives than information concerning what they do *for* social movements, the assessment I offer above could possibly be better confirmed or refuted with an analysis of these relationships from the perspective of other movement activists, a point that I will address later in this section in my suggestions for further research.

*How, when, and why do social movements turn to and use lawyers and legal strategies?*

This research shows that rather than “outsourcing” the legal support needs of social movements by merely enlisting the technical support of lawyers for specific tasks for a limited period of time, social movements more commonly develop ongoing relationships with cause

lawyers such that these lawyers become integrated into social movement networks and are available as resources to movements when needs arise. As is indicated throughout the findings of this research, social movements do turn to lawyers when they decide to litigate, but they also involve cause lawyers more thoroughly in other aspects of movement strategizing and carrying out of activities.

Movements turn to the cause lawyers in their midst at all stages of movement activity for the legal and extra-legal support they can offer. In the movement building stage, they often turn to cause lawyers as partners in their efforts to raise consciousness of a particular issue in the public sphere and provide a catalyst for growth of the movement. Just as lawyers and legal strategies can contribute to building early-stage movement participation and momentum, so too can they be used as tools in later movement stages that focus on compelling concessions from opposing forces. In this way movements use lawyers and legal strategies as one of their leveraging tools.

To answer the third part of the research question, *why* social movements turn to and use lawyers and legal strategies, it makes sense to look to the legacy of rights discourse in American social movement history. This research shows that, even aside from judicially upheld rights claims, social movements benefit in a host of ways from the processes and outcomes of their rights claiming. Because of this, even in a context in which rights are unlikely to be upheld in court or enforced in practice, social movements continue to turn to lawyers to assist in the process of framing and claiming rights to the movement goals they pursue.

*How do lawyers shape movements and how do movements shape lawyers?*

This research reveals that one way that cause lawyers contribute to the shaping of social movements is by framing the legal system for movement participants. The cause lawyers in this

study indicate that they often find themselves in the role of “managing expectations” for achieving success related to movement goals in the realm of the courts. They say that this is especially true in the current political context in which they see courts as especially inhospitable to the claims of the causes they support. In this way cause lawyers shape movements by encouraging multi-faceted approaches to movement activities that do not rely too heavily on the courts for relief. Interestingly, this understanding gained in this research contradicts suggestions by other researchers that lawyers shape movements by encouraging them to rely too heavily on legal tactics.

This research also adds to the understanding of how lawyers are shaped by their participation in social movements. The nontraditional strategies that cause lawyers employ in their work with social movements are ones that they develop in the context of their work with movements. Lawyers in this study report that they develop these nontraditional skills in large part by learning from the experienced community organizers with whom they work. Cause lawyers learn nontraditional ways of taking action from movement organizers including direct engagement and organizing of collective action, public education, media outreach, human rights reporting, and political organizing and campaigning. Through such skill transfers movements shape lawyers in ways that expand their professional roles such that cause lawyers often merge their roles as legal specialists with essential elements of community organizing.

Throughout this research it has been clear that social movements and cause lawyers operate in a dynamic environment and collaborate to respond to the constraints presented by particular legal, political and social contexts and to the opportunities that they provide. Social movements respond to the relatively inhospitable legal, political, and social environments with

which they are confronted by persevering in their struggles and adapting their tactical responses of which legal tactics are but one type. Similarly, cause lawyers, in their primary commitment to the causes for which they work, respond to such inhospitable legal, social, and political contexts by persevering with the skills they have at hand and by seeking out new skills and strategies for action. This research reminds us of the complexities and challenges of this social justice work, but it also reminds us that it is grassroots collaborations such as those between cause lawyers and social movements that give social movements their distinctive character and power to persistently work toward elusive goals of social justice.

Law is likely to continue to be an arena in which movements and cause lawyers engage in their efforts to realize a more just society, and cause lawyers are likely to continue to struggle to understand how to best work in solidarity with the movements they support given particular changes in movement dynamics and legal, social, and political contexts. As one of my respondents said, “The pendulum will swing back our way sometime, but it only swings when we all keep pushing it in every way we can.”

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## **Vita**

Peter O'Connell was born in Nashville, Tennessee in 1973. He received a B.A. from Columbia University in 1995. He lived and worked in Oregon as a school teacher and environmental activist and came to New Orleans in 2005 as a volunteer relief worker in the wake of Hurricane Katrina.