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**BOTH ADVOCATE AND ACTIVIST: THE  
DUAL CAREERS OF CAUSE LAWYERS**

**By**

**Lynn Cerys Jones**

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**A Dissertation Submitted to the Faculty of the**

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**In the Graduate College**

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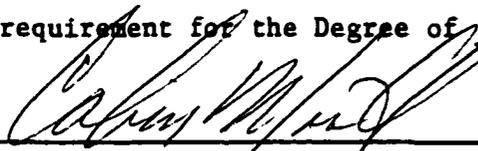
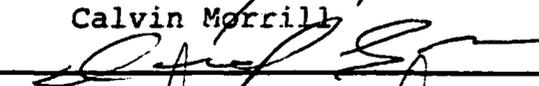
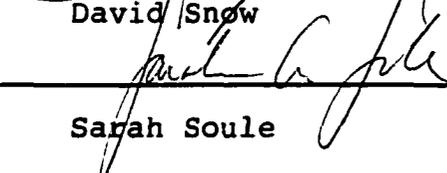
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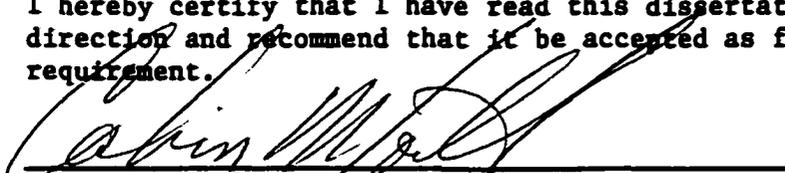
As members of the Final Examination Committee, we certify that we have read the dissertation prepared by Lynn C. Jones entitled Both Advocate and Activist: The Dual Careers of Cause Lawyers

and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy

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## ABSTRACT

Using data from in-depth interviews with activist lawyers, this dissertation addresses the role of lawyers in social movements. Activist lawyers are a subculture within the legal profession who work to reconcile the multiple identities that they experience as "professionals" and "activists". The data illuminates the ways in which lawyers enter into activism, how they manage their personal and professional identities, and what the consequences of activism are for them professionally and personally. This work challenges the assumption that lawyers act according to their professional roles and have a "deradicalizing" impact on movements. With the exception of the hired gun, who may in fact act as a lawyer, most activist lawyers compare to other activists in their range of behavior, identity processes, and consequences of activism. Activist lawyers are not limited to legal roles, and being a lawyer is not always a factor in their activism. Those that are characterized as "core activist lawyers" are embedded in activist networks that allow them to maintain both work and activist roles and identities without much conflict. They have successfully negotiated their professional identities and roles so that they correspond with their activist roles and identities. Findings also contribute to our understanding of professionals in social movements, provide rich data on the role and identity processes in movements, and broaden our understanding of one segment of the legal profession.

## **CHAPTER 1 AN INTRODUCTION TO ACTIVIST LAWYERING**

In research on social movements, most discussion of law and legal actors is limited to tactics, outcomes, or is lumped into "the state". With some notable exceptions, professionals are typically treated as sharing elite interests and goals (however defined) and to act accordingly. This is no less true for mainstream lawyers, who are viewed as carriers of conservative ideologies constrained by professional rules and obligations and belief in the rule of law. Although movements and lawyers may have obvious links, there has been little systematic investigation into the conditions under which law and social movements intersect or the character of the lawyers and activists involved in this intersection. "Cause lawyering" is often understood to be at odds with the larger profession and, perhaps, outside the realm of professional ethics and serving client's interests (Sarat and Scheingold, 1998).

Lawyers involved with social movements have been called "radical" lawyers, "movement" lawyers, "cause" lawyers, "progressive" lawyers, and other terms referring to the political nature of their role.<sup>1</sup> While these terms are somewhat interchangeable, I use the term "activist lawyer" because I am attempting to link and compare what these lawyers do to activism or to other activists. William Kunstler, who defended members of

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<sup>1</sup> Carrie Menkel-Meadow (1998) discusses the problems of defining the goals, practices, and forms of cause lawyering. The variety of terms used to describe cause lawyering generally are used as "generic" definitions to describe lawyering that compares to activism--with lawyers working to further the rights of the underrepresented in arenas

the "Chicago Seven" in the late 60s and was a lifelong advocate of progressive social movements, often comes to mind as the epitome of cause lawyers on the left, and the ACLU is a legal organization that reaches into the realm of social movements. Other organizations, such as the NAACP, are well-known for their significant role in legal and political changes for the underrepresented, and lawyers are part of these movement organizations as well. At the same time, it is possible that cause lawyering could involve representing conservative interests on the right wing of the political spectrum (e.g., lawyers actively supporting pro-life interests). In this project I focus on individual lawyers who work in or for a variety of organizations (legal and movement), with a primary focus on lawyering on the left<sup>2</sup>. It becomes interesting, then, to explore the conditions under which lawyers either step out of their professional role to become activists or combine their professional role with their personal, activist role (and to what degree).

My dissertation, specifically, examines how lawyers involve themselves with social movements, and the ways in which their involvement "fits" with both activism and

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that include, but are not limited to, legal and justice institutions.

<sup>2</sup> I choose a focus on the left as a first cut into studying the broad population of activist lawyers with plans to expand the study to include right-wing cause lawyers. There are fewer right-wing cause lawyers, so sampling also was a concern for this project. Finally, preliminary research demonstrated the importance of lawyers' own definitions of activism and cause lawyering, and most rejected the idea that right-wing lawyering is cause lawyering. While the character of the lawyering differs from right- to left-wing lawyers, it should be noted that the process might not differ. By setting up the process for becoming and maintaining "left" activist lawyering, a comparison will then be available for future research on right-wing lawyering.

lawyering. To do so, I consider the conditions under which activist lawyers work, including their educational background and experiences, past work experiences, and current employment and activity, while at the same time examining their work with movements. Activist lawyers can be analyzed in comparison to other activists (in terms of demographics and, more importantly, the *process* of activism), and to other lawyers (again in terms of demographics, ideology, and process).

The dissertation is organized around several related questions: 1) What roles do lawyers who define themselves as activists play in social movements? 2) How do lawyers enter into activism and maintain activist careers? 3) Are the processes through which lawyers enter into activism comparable to those of other activists? 4) How do activist lawyers reconcile multiple identities that they can experience as "professionals" and "activists"? The evidence to address these questions stems from ethnographic interviews I conducted with lawyers from a variety of public interest and activist positions (see chapter 2 for demographics). I construct a typology of "activist" lawyers and the work they do that is grounded in their own experiences in the legal profession and with movement activity. Using this typology, I show how these activist lawyers compose a subculture within the profession of law, detailing the processes by which they become involved in activism and how they exercise influence on social movements. The lawyers in this study rarely act as social movement leaders. Nor do they consciously aim to "deradicalize" movements. Moreover, they often do not act in their capacities as attorneys in the movements to which they belong. Their legal background may not be

relevant as the primary factor determining their involvement in movements; so, their legal background should be explored in other ways to determine how, or if, it is a relevant factor. Aside from devoting a great deal of energy to activities in social movements, much of the time their energy is devoted to reconciling being an "activist" with professional roles and identities.

I organize the rest of this chapter around the theoretical background for the dissertation, which draws on research in the sociology of law and in the field of social movements. First, I discuss the role of lawyers in movements according to the dominant theories in the field of social movements: resource mobilization and political opportunity. Next, I describe the significance of framing to movements, and how lawyers may be playing a role in this process. I then deal with the legal profession, and whether (and how) the profession impacts or is compatible with activism. The sources of activist lawyering, and whether the processes compare to other activists, are explored theoretically with the sections on the demographic foundations of activism and micromobilization of lawyers. Finally, research on the possible consequences of activist lawyering, personally and professionally, is discussed.

### **1.1 Lawyers as State Actors, Elites, and Resources to Social Movements**

Social movement research does not explicitly define the role that lawyers play in movement activity because they do not separate lawyers from other kinds of professional or state actors. Professionals are discussed almost as a "professional class" whose

interests are viewed as the same, and their involvement is thought to counter the movement's goals (Zald and Ash 1966; Staggenborg 1988). Or, they are discussed in terms of the skills they bring to the movement, and their involvement or commitment is thought to be limited to such technical expertise. So professionals are seen as having too much control in movements, or as a resource whose role is limited to just that. While lawyers are not discussed specifically, three implicit roles can be identified from the available literature: state actors or representatives, professional elites, and professional activists.

The state actor role that lawyers may take includes social control or constraint on movements. While state institutions are occasional allies of social movements, they are more often viewed as the adversary of protest. The state is commonly viewed in terms of its response to protest, and lawyers are one "arm of the law" that may either constrain or facilitate movement strategies and goals (della Porta 1996; McAdam, McCarthy and Zald 1996; Tilly 1978). In contrast, the two other roles allow lawyers to more directly participate in movements. Lawyers act as professional elites when they co-opt movement strategies and goals in line with their own elite interests (McCarthy and Zald 1973, 1987; McCarthy, Britt, and Wolfson 1991). They may bring legitimacy to a movement, but at the same time they may undermine the movement's goals. Or, because of their professional role, lawyers may be inclined to think of litigation apart from other political tactics or broad movement goals (Scheingold 1974; McCann, 1986; Weisbrod, Handler, and Komesar 1978). This can be problematic for movements as resources are diverted to

litigation strategies at the expense of other, potentially effective strategies (Rosenberg 1991; McCann and Silverstein 1998).

Lawyers may not necessarily channel movements by acting in the third role, as professional activists. Here lawyers are more like a resource to a movement, sometimes providing technical skills while other times acting as a rank-and-file member. It is possible, however, that the range of behavior by lawyers involved with social movements, goes beyond the scope of these roles.

Social movement theories do work to explain the micro-processes of social movements, such as differential recruitment to activism or framing, but much of the discussion of lawyers and the law remains at the macro level. The state actor role typically fits into the broader political structure research. For example, political process theories may focus on lawyers as part of the state structure who affect opportunities for movements. They are a set of actors lumped into the state. Specifically, lawyers are thought to act along with state or professional interests and may channel movements into less radical tactics and into the legal arena. However, can we really assume that lawyers involved with movements necessarily carry professional ideologies and/or goals, or can we assume that lawyers necessarily have a state-based impact on movements? What are the conditions under which lawyers may involve themselves in movements in diverse ways that may oppose the interests of the state or power structure?

The second role that lawyers may play, as professional elites, has its foundation in resource mobilization theory and research. Elites were thought to be key players in

movement mobilization, who provided necessary resources, organization, and leadership to groups that were disadvantaged and disorganized (McCarthy and Zald 1973, 1987). Almost since the inception of resource mobilization theory, there has been debate and critique of McCarthy and Zald's claim that social movements need external sponsorship for success, both in terms of survival and achievement of particular goals (1973). Later research demonstrated that external sponsorship was not necessary; indigenous organization could also get a movement off the ground (see Morris 1984 on the role of black churches in the civil rights movement). Researchers also argued that elite patronage and organizing "professionalized" social movement organizations (SMOs) and channeled them towards more moderate goals (Jenkins and Eckert 1986; McAdam 1982; Piven and Cloward 1977). It was argued that mass disruption, the one power that otherwise resource poor groups had, was removed by the involvement of professionals and elites (Haines 1984; Piven and Cloward 1977). Sponsors such as the government, foundations, and religious groups can control SMO activity by threatening to withdraw funding, and therefore legitimacy, if SMOs deviate from moderate tactics. More recent scholarship has challenged the moderating influence of external sponsors by specifying the conditions under which benefactors appeared to help movements without removing the potential for radical action (Cress and Snow 1996). In addition to furthering attempts to define the conditions under which professionals or elites become involved with movements, I also question whether they are, in fact, "outsiders".

In the tradition of resource mobilization theory, there has been much research on

the role of professionals and their impact on social movements (Jenkins and Eckert 1986; McAdam 1982; McCarthy, Britt, and Wolfson 1991; Zald and Ash 1966; Staggenborg 1989, 1991). According to this theory, professionals bring two things to movements. First, they provide some set of resources that is linked to professional skills, prestige or status, or simply money. Secondly, professionals are said to be carriers of a set of interests, usually thought to take precedence over the movements' interests or goals, and thus serve to channel the movement away from disruptive tactics or goals. Although there has been a challenge to whether professionals or elites necessarily channel movements into their own interests, this challenge could be further elaborated if we unpack the category of professionals (or elites). By doing this, I question the assumption that professionals act as a cohesive set of actors in a consistent manner with movements. For example, although one could assume that lawyers and scientists might act differently within movements, we still assume that they act according to their professional role to best meet their professional interests. Perhaps we need to go one step further and question whether professionals and elites truly act in a way that aligns with their professional role.

Resource mobilization theorists might argue, then, that lawyers (or their legal skills) are one kind of resource that movements may draw upon for particular goals. Movements use certain professionals as leaders and technical experts, and lawyers may be one kind of expert or professional. The main challenge offered here is that this theory is limited in that it does not distinguish between different kinds of experts or professionals;

it simply assumes that they are a necessary part of movement activity. The classic debate about the role of professionals in terms of whether they channel movements into their own interests (Zald and Ash 1966, Piven and Cloward 1977) is problematic as well in that it assumes all professionals or leaders operate in the same way. Although professionals and experts may, in fact, be similar in their interests, attitudes, roles, and degree of activism, there needs to be some investigation into whether this assumption holds. Rather than assuming that the professional skill or role matters to the movement, I investigate the possibility that lawyers are like ordinary activists in their involvement in movements and under what conditions that may or may not be the case.

Whether lawyers act as state actors, as professional elites, as professional activists, as none of these, or as some combination of these roles, the research on the causes and consequences of activism become relevant. This research will be discussed later in conjunction with a discussion of demographics of the activist lawyers in this dissertation. However, I elaborate one point about the shortcomings of past research on activism. There has been a tremendous amount of effort spent on detailing the social psychological and structural network causes of activism. We now have a good understanding of the processes of micromobilization and mobilization of the rank-and-file members that are necessary to sustain the movement. What we do not know, however, is how movements mobilize individuals that may not fit into the "ordinary person" category. How do movements mobilize professional elites? How do movements mobilize professional activists that (because of their profession) may be outside of the

typical activist network ties, or at the center of a unique set of overlapping ties? Whether lawyers act as professionals or as activists, defining the processes by which they become involved with movements and sustain their activism (possibly for an entire career) will broaden our understanding of micromobilization processes and the various roles that activists play in movements. And whether they are mobilized as activists or as lawyers may be relevant to the later processes and consequences of their activism.

Although lawyers, again, are not specifically discussed by political opportunity theories, we can position their role as that of a state actor, perhaps a constraint on movements, or possibly, as a key framer (or blamer) that helps initiate a course of action by movements. It seems possible that activist lawyers may fall into the latter category, while other lawyers not engaged in activism may retain their role as state actors with elite interests. Without addressing the actual process by which activist lawyers involve themselves with movements, and by continuing to lump all lawyers together, the roles lawyers play in social movements remains confounded and largely unknown in the literature.

## **1.2 Lawyers as Framers: Naming, Blaming, and Claiming**

One way to begin to unpack the roles of lawyers in social movements is by focusing on their interpretive activities within social movement organizations and legal organizations. Scholars have long understood that some cognitive mechanism is required for individuals to break from their ordinary state of passivity and to act collectively. Such

mechanisms include classical ideas of Marxist "class consciousness" rooted in material relations or Weberian ideas about status consciousness linked to market positions. More recently, McAdam (1982) has discussed "cognitive liberation", and Snow and his colleagues (1986) defined frame alignment processes<sup>3</sup>. Frame alignment processes, in particular, provide the necessary link between the interests, goals, and interpretations of individuals to those of social movement organizations (Snow et al. 1986: 464). Building on Goffman's conception of frames as "focusing and punctuating", collective action frames also function "as modes of attribution and articulation" (Snow and Benford 1992).

The punctuating function of collective action frames occurs as activists single out some existing social condition and redefine as unjust what was previously viewed as unfortunate, yet tolerable (Snow and Benford 1992). Activists now interpret conditions as no longer tolerable and deserving of corrective action (Snow et al. 1986; McAdam 1982; Piven and Cloward 1977; Turner 1969). Although this redefinition process includes a call to collective action, the course of action is not known until the attribution process occurs. Activists must include in the frame a sense of blame or causality for the conditions as well as a corresponding sense of responsibility for corrective action (Snow

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<sup>3</sup> Although this article served mainly to define framing processes, there has been a great deal of work following up on this piece, refining the definition of framing, and offering more empirical support for the importance of this concept. See, for example, Snow and Benford (1988; 1992); Tarrow (1994); and McAdam, McCarthy, and Zald (1996)

and Benford 1992). Activists frame the conditions by assigning blame for the conditions, and then by suggesting a line of action and who should be responsible for such action. Finally, collective action frames include an articulation function, as activists align events and experiences in a way that now strikes meaning with individuals.

Social movement organizers are the carriers and transmitters of these collective action frames, and they are "actively engaged in the production of [new] meaning for participants, antagonists, and observers" (Snow and Benford 1988: 198). Group settings and networks appear to be the source of collective action frames and the frame alignment processes. Although political culture may ultimately be the source of frames (Tarrow 1992), the smaller interactive group setting allows for the clear definition and linking of abstract ideas to particular social conditions. Groups serve as repositories for existing frames that can be used and modified in the frame alignment processes.

Micromobilization contexts, or the small group settings that have the "rudimentary forms of organization to produce collective action", are the likely base for framing processes (McAdam, McCarthy, and Zald 1988; Snow et al. 1986). Friendship networks and political groups are examples of these micromobilization contexts. Because of the pre-existing intellectual and emotional ties in these social networks, individuals are likely to realize collective action. Within these micromobilization contexts frames spread easily due to the contact between members and communication network.

Although most attention to the framing processes focuses on the initial generation of collective action, Snow and his colleagues (1986) also noted the importance of framing

in later phases of the movement. Framing should be viewed as an ongoing process that movements and activists use to maintain support for particular strategies and goals, both within and outside the movement. McCarthy, McAdam and Zald (1988) argue that the movement must be able to "generate support among authorities, sympathy among bystanders and...legitimacy and efficacy among movement cadre and members" (p.722). Movement actors must respond effectively to their opponents attempts to **counterframe** (rebut, undermine, or neutralize) the collective action frame (Zuo and Benford 1995). Movement actors need to develop compelling **reframings** (Benford and Hunt 1994). The battle between frames, counterframes, and reframes continues until one becomes more **resonant** than another. A frame resonates when the claims (or counterclaims) are consistent with what participants (or potential participants) know and believe about the world based on their "observations, experiences, and cultural wisdom" (Zuo and Benford 1995:139; Snow and Benford 1988). Lawyers can operate as key actors in the framing process as they re-articulate frames in legally-relevant ways, particularly during this later reframing phase when movements attempt to garner support for activity in the legal system. At the same time, it is possible that lawyers are not effective framers if their use of legalese and reliance on professional knowledge serves to confuse and alienate the movement participants. Further exploration of lawyers as potential framers will enrich our understanding of framing processes, and whether one's professional background impacts the capacity to frame.

For movements, the framing process is the production and maintenance of

meaning, including "diagnostic", "prognostic", and "motivational" framing (Cress and Snow 2000; Snow et. al. 1986; Tarrow 1992). Diagnostic frames specify the problem and identify who is to blame. Prognostic frames define what needs to be done to help address the problem. Motivational framing is the call to action that encourages people to take the actions defined during the framing process (Snow et. al. 1986).

In sociology of law, scholars use similar concepts to describe the framing process, but they do not necessarily extend these ideas to lawyers involved with social movements. These concepts, however, coincide very nicely with the framing concepts outlined above. "Naming" is the first stage of the transformation, in which a particular experience is defined as injurious. Naming is the articulation of a perception or recognition that something is wrong. After naming the problem, individuals then typically attribute fault to some set of social actors. This stage is called "blaming", and this is the transformation of a perceived injurious experience to a grievance. By holding another responsible, blaming also tends to include a call for some remedy. "Claiming" is said to occur when the grievance is communicated to those believed to be responsible and a remedy is requested. Each stage of the transformation to a claim is a necessary part of the legal process (Felstiner, Abel, and Sarat 1980-81).

This process is quite similar to the necessary framing process by which social movements mobilize participants. Similar to naming, social movement groups must engage in the transformation of belief that a situation or experience is "unfortunate" to one of "injustice" (Piven and Cloward 1977; McAdam 1982, 1988). Rather than simply

accepting the bad situation as in the past, a collectivity decides that this is wrong and they will no longer accept it. Included in the sense of injustice is an attribution of blame and a call for action (blaming and claiming), constituting a collective action frame that mobilizes a group to action.

Master frames perform the same functions as movement-specific collective action frames but on a larger scale. A master frame can be used by any number of movements, and similar movements often cluster together temporally due to the use of the same master frame (Snow and Benford 1992). Master frames also constrain the tactics used by movements; the tactics must fit with the attributions built into the frame. For example, the nonviolent philosophy and strategy that developed in the civil rights movement precluded the use of violent tactics (Snow and Benford 1992: 147). McAdam (1983) argued that tactical innovation was a necessary task of social movements if they wanted to maintain an edge. The implication is that movements that become institutionalized by going through "proper channels" are destined to fail. Burstein (1991) counters with evidence that legal mobilization or use of the proper channels can still be innovative and does not alone predict failure of movements. He argues that movements may be able to innovate by turning to legal channels and by developing new approaches to legal doctrine. Again, the role of lawyers becomes relevant as these "new approaches" to legal doctrine might be created by lawyers; in fact they may be the only ones who know the law well enough to know how to innovate and frame accordingly.

Since the rights frame is the master frame used by most movements that followed

the civil rights movement, it seems logical that movements will seek corrective action in the courts or through legislative change. Rights are something defined in the Constitution vaguely, and interpretation is left up to the courts. Movements using the rights frame offer one interpretation of conditions to the courts. If SMOs choose legislative battles as part of their strategy, lawyers may serve as key facilitators, both in helping to frame the grievance "properly" and by linking the movement to legitimate state actors. Lawyers are one set of actors that movements may need due to their knowledge and insight into rights and the way the legal system works.

All lawyers are granted the task of defining problems, of fitting a clients' grievance into a nameable legal offense, of calling attention to additional grievances, and generally of helping clients navigate the jargon-filled arena of law. Lawyers are often involved in the transformation of an "unperceived injurious experience" into a perceived grievance that ultimately can be "claimed" as a legal dispute in need of a legal remedy (Felstiner, Abel, and Sarat 1980-81). Lawyers are specifically trained in the business of conflict, and they become astute observers of experiences or situations that can be transformed into legal disputes.

There has been much research on collective action frames and their role in mobilization, and it is typically thought that existing structural characteristics, such as network ties, indigenous organization, and pre-existing leadership, play key roles in the process of framing. All of these variables can be used in an analysis of activist lawyers, in combination with an understanding of the legal profession's emphasis on claim-

making. The data analysis will further examine these variables and the conditions under which they are relevant to lawyer's actions in movements.

Since lawyers are professionally trained in helping clients with naming, blaming, and claiming, it seems very likely that they will act in a similar capacity in movements, helping to frame grievances and construct a remedial plan of action. Because activist lawyers are lawyers, we might assume that their framing will be limited to legal framing, that is by labeling and attributing a problem in a way that invokes legal rhetoric and legal remedies. The rights frame, which has been ubiquitous in American movements since the civil rights movement (though used before), can be construed as legally-based because rights are defined in the Bill of Rights and Constitution. However, the rights frame may not necessarily be used to call for a legal remedy. Though the overarching rights theme is in many collective action frames, there is tremendous variation in the ways in which it is used (i.e. the naming, blaming, and claiming vary). For example, a rights frame can lead to both attempts for legal remedies and violent, illegal actions that may have a more radical goal. The attempts by feminists to achieve equal pay for equal work are specific activities based in a frame of equal rights for men and women. The animal rights movement, known for several radical groups, may invoke a frame of animal rights while bombing labs that conduct research on animals. Frames and tactics are linked, and it seems that lawyers, if invoking a legal frame, will possibly "deradicalize" a movement. Again, it becomes necessary to explore the circumstances surrounding lawyers' involvement in social movements.

Further investigation into framing and the links to the law and lawyers is needed. In this project I will examine one small part of framing by looking at lawyers involved with movements. A study of their role in framing (or naming, blaming, and claiming) will help us understand: whether they are restrained to legal framing, whether they act as elites and channel movements by conservatizing or deradicalizing the frame (in terms of a smaller grievance, blaming a less powerful agent, asking for small legal remedies, preventing remedies that involve violence, etc.); and how closely lawyers act in alignment with their professional roles in terms of instrumental tasks and capacities (i.e. using legal skills, defining legal disputes)

### **1.3 Professionalism and Activism among Lawyers**

The professional responsibilities of lawyers impact their activism both in terms of the "rules" of lawyering and training in legal skills, and in terms of the more abstract ideology of the profession and the socialization into both the profession and into activism. While activism and lawyering are not necessarily incompatible, it is unknown how much these two roles interact or overlap. Also, to what degree does one's professional role matter to activism? Does commitment to activism impact commitment to the profession, or vice versa? Or, is there a subculture within the profession that allows for the two roles to operate simultaneously and without conflict? Are they really operating as lawyers or with professional responsibility? Are they "bad" lawyers, or were they improperly socialized into the profession, or alternately socialized? Or are the two roles of activist

and lawyer not that different and, in some way, compatible?

Although no one would ever question that we need lawyers to represent the poor and underrepresented, public interest law and activist lawyers still comprise a minority in the profession. Sarat and Scheingold (1998a) argue that the legal profession both needs and is threatened by cause lawyering. By promoting the vision of a better society and the interests of the public good, activist (or cause) lawyers reconnect law and morality.

Although this kind of lawyering may enhance the image of the profession, many argue that it threatens the profession by undermining the dominant belief that lawyers are and should be morally neutral. Lawyers are supposed to represent clients' interests regardless of their own personal beliefs. Is cause lawyering so neutral? No, but it is not necessarily destabilizing the profession either.

It can also be argued that activist lawyers undermine their profession because they are attacking the very system that empowers them (the proverbial biting the hand that feeds you). However, others point to the explosion of legal cases and, therefore, work, that followed the civil rights movement. So activism among lawyers, though not a high-paying or high-status part of the profession, may enhance it as the public becomes more aware of the law and encourages more legal battles. Many activist lawyers can do what they do (i.e. can forego the usual rewards of the profession and take on poor clients) because they worked a while stocking up on those rewards. For example, many law students start their careers in big firms so they can pay off their debts from school. Many would prefer public interest careers, but they just cannot afford to do so. Although some

do return to their preferred career, the socialization into the big firm only further enhances the conservative bent of most lawyers, so attitudes often change.

Some argue that the ideology of the profession is just another tool of domination, that the profession merely reflects the broader ideological structure of society. There are hierarchies within the profession just like in society, and seeing public interest law and activism by lawyers as "deviant" is an attempt to promote the interests of the dominant "class" in the profession. Activist lawyers may best be understood as a subculture within the profession, much like activists typically form a radical subculture within the larger society. Activists in other professions may also comprise a subculture within that profession, such as activist professors or activist physicians. The processes relevant to activist lawyering may provide a foundation for studying these populations.

#### **1.4 Demographic Foundations of Participation**

To move beyond the more abstract theorizing about what these lawyers might do or might believe in or how they fit into politics, we need to be more specific and ask why their personal characteristics might matter in what specific ways. For example, does understanding the demographics or background of activist lawyers tell us anything about their micromobilization? about the roles they take in movements? about their careers as activists or as lawyers? Are the demographics of activist lawyers different in some way than that of other activists? Of other lawyers? What consequences do these differences have? Is there something significant about the backgrounds or personal characteristics of

activist lawyers (or other professionals in movements) that is not significant for other activists, in terms of micromobilization or maintenance of activism?

Much of the research in the field of sociology of law uses individualistic explanations for why certain individuals become public interest lawyers or radical lawyers. Typical arguments are that the individual was socialized in some way (usually before or outside of law school) into radical political beliefs and this "caused" participation in activism. Another argument is that ethnic minorities and women are more likely to go into public interest law because: (1) they are naturally interested in those causes or have a stronger belief in more radical causes; (2) they are discriminated against and prevented from getting "real" lawyer jobs or high-paying careers; (3) they come from poor neighborhoods and want to give back to the community. These arguments all assume that these individualistic reasons are sufficient to "cause" participation in activist lawyering.

The field of social movements has provided strong empirical evidence that such individualistic characteristics, though often necessary, are not sufficient to explain one's participation in activism (see Snow and Oliver 1995). Structural variables, specifically network ties to other activists or organizational membership, have been found to be more predictive of recruitment to activism and the likelihood of "accepting the invitation" to participate. In addition, certain segments of the population are thought to be more "biographically available" because of discretionary time or absence of constraints (McAdam 1988a; 1988b). Some examples of likely movement participants because of

this "availability" are students, young adults, and even some professionals like professors or lawyers (Lofland 1996). Clearly the assumptions in the sociology of law about public interest lawyers can be informed by the data on structural availability.

What is not so well-researched in either field are the processes by which lawyers become involved with movements and whether their demographic characteristics matter. Although we would assume that structure is more important, it is possible that lawyers are not comparable to other activists. For example, can we assume that activist lawyers are networked in the same way that other activists are? If they are members of legal organizations, isn't that a network tie that might pull them into the profession and away from activism? Or, are they members of political organizations as other activists are, which pulls them in? Since lawyers go through professional socialization in law school, is it possible that activist lawyers share some additional socialization (or failed socialization), such as attending a certain "public interest" law school or program? If they do, is this effect ideological or structural? In other words, do these activist lawyers know one another and are they networked? Also, it is typically assumed that professionals are recruited and then act as professionals (i.e. the personal characteristic of occupation plays a role). Are activist lawyers truly involved in movements only as lawyers or in their professional capacity? Finally, do variables such as race, gender, age have an effect in terms of life experience or network ties, or ideologically?

### **1.5 Micromobilization of Lawyers and Elites**

The majority of the research on micromobilization has focused on the membership base, not on leaders or more elite members. It is typically assumed that elites have a different motivation (some notion of class interests), and network ties explanations are simply extrapolated to them. Elites or professionals are lumped together in most theories and empirical research. Here I am offering a challenge to the idea that professionals join movements motivated by professional or class interests, or that they are all similar and can be categorized simply as professionals. I think it is important to unpack "professionals" and "elites" to look at possible variation across different kinds of professionals as well as variation within one profession.

When looking at the mobilization of lawyers, it seems possible that they might be recruited by movements for their technical expertise. How is it that one lawyer comes to accept such an invitation to participate? Do structural arguments explain the process? Or are there other mediating factors defined by the legal profession or professional experience? It is also possible that lawyers are participating in movements in a way that compares to any other activist, and that being a lawyer is irrelevant for mobilization. By interviewing activist lawyers with a range of experiences in different movements, we gain richer detail about the processes by which they become involved with movements and activism. Table 1.1 points out some possible patterns of activism by lawyers.

**TABLE 1.1 Possible Mobilization and Activist Patterns for Activist Lawyers**

<b><u>Mobilized as:</u></b>	<b><u>Act as:</u></b>
Lawyer	Lawyer (professional interests or legal frame)
Lawyer	Activist (movement interests and goals)
Activists	Lawyer (professional interests dominate)
<b><u>Activists</u></b>	<b><u>Activist (movement interests and goals)</u></b>

In this study, I am emphasizing those that are mobilized as activists or act as activists.

Research by others has indicated that "hired guns", or those that are mobilized as lawyers, are one kind of lawyer (McCann and Silverstein 1998; Sarat and Scheingold 1998b).

Since I am more interested in the degree of activism, how involved an activist lawyer can be, and related conflicts, tensions, or compatibilities of the roles, I emphasize those most activist (which happened to be those mobilized as activists).

### **1.6 Tensions Between Lawyer Roles (Professional Activist and Professional Elite)**

Once lawyers are mobilized into activism (not necessarily into one movement or one SMO) what do they do? Previous research on activist lawyers has focused on their technical role and how they act as lawyers. This fits in well with the assumption that lawyers are acting according to their elite or class interests and channel movements away from radical strategies or goals. This ignores, however, the range of behaviors and roles that lawyers play, and that they do not necessarily channel movements into conservative

tactics or goals. Interview data provides a richer understanding of the varied roles and tensions between them.

If activist lawyers act as lawyers, we cannot assume that they are acting in a way that is representative of all lawyers or of the legal profession. Activist lawyers may reject the profession and its role obligations in favor of an alternative. Secondly, activist lawyers, regardless of their political leanings, often refuse to strategize or make decisions because they are aware that their status as lawyers will tend to dominate others. So even when lawyers act as lawyers, they do not necessarily effect movements in a professional "channeling" way.

Activist lawyers vary in their degree of activism, either over time (they may age out of radical activism as other activists do) or across situations (they may be more involved or more radical in certain causes). This variation is exactly why it is important to study lawyers across many movements or SMOs rather than simply within one organization. Although initially assuming that lawyers must suffer role conflict (balancing professional and activist roles), the interviews show more depth and nuances to lawyer roles. Many exhibit the two roles simultaneously without conflict, while others have "multiple personalities" going back and forth from one role to another in different situations.

### **1.7 Career Activist Lawyering and Consequences**

The previous section on roles serves as the starting point for a discussion of career

activism. Some activist lawyers describe the changes in roles over time. In general, I am interested in how activist lawyers sustain their participation in movements over time (in light of what is learned in previous section), and to what degree do they participate in the legal profession? Finally, what are the consequences of activist lawyering?

This project serves as a starting point for exploring the biographical consequences of activist lawyering in terms of one's legal career, activist career, and other personal life choices. The data here is limited to the individual lawyer's narratives, but they do highlight some important consequences for the legal profession and for social movements and SMOs. The possible tensions that arise for those who are both activist and lawyer, as well as an understanding of the conditions under which these tensions arise and are resolved, need to be investigated. This study is a first step in that direction, focusing on the lawyers' own accounts of their roles, identities, and the possible correspondence or conflict between professional and personal identities.

### **1.8 What Lies Ahead**

In Chapter 2, the analytic strategy and analysis will be discussed, along with a discussion of the demographics of the lawyers studied, including their age, race, sex, and educational backgrounds. The first part of the chapter describes the process of defining the sample population of activist lawyers and selecting informants. I conducted ethnographic interviews with thirty-four lawyers from two geographic locales, Tucson, Arizona and Austin, Texas. The rationale for conducting interviews, as well as a

discussion of some advantages to this approach is also discussed. The second part of the chapter provided a description of each of the lawyers interviewed, and offers an initial typology of activist lawyers.

Chapter 3 elaborates the discussion of micromobilization, focusing specifically on the question of elite mobilization. This chapter details how lawyers become involved with social movements. One way to operationalize this micromobilization is by looking at the various pathways to activism among lawyers.

Chapter 4 further spells out the various roles that lawyers play in relation to social movements, focusing specifically on the professional activist role. Some tensions between this role and the other roles, as well as tensions within the legal profession, are explored.

Chapter 5 looks at individual careers, answering the question of how lawyers sustain their participation in both social movements and in their profession. Here I discuss how one individual may face tensions between the various roles of lawyers at one point in time (i.e. role conflict while simultaneously attempting two roles), or the tensions may arise and resolve themselves as lawyers engage in two or more roles over the course of their career. This section also includes a discussion of biographical consequences, including personal consequences, professional consequences, as well as broader consequences on the profession.

I conclude with a summary chapter and offer implications for research on social movements and the law and for the legal profession and activist lawyers in particular.

## **CHAPTER 2 CONDUCTING RESEARCH ON ACTIVIST LAWYERS**

### **2.1 Analytic Strategy**

There is much empirical research in the field of social movements about the possible variables (typically categorized as individual or structural) that contribute to participation and/or activist careers for rank-and-file members. There is less research or theoretical exploration about the processes of recruitment and participation of leaders or elites in social movements, including whether they are acting as elites in movements. For both the membership base and more elite or professional members, the processes of entering into activism and the maintenance of activism over time could still use more detailed explanations in terms of differential paths in the processes of "joining" (Lofland 1996: 237). To help enrich our understanding of the processes of recruitment to and maintenance of activism among professionals or elites (and whether it matters that they are professionals or elites), I have chosen to conduct in-depth interviews with one kind of movement professional: activist lawyers.

In addition to theoretical concerns about participation among professionals in social movements, I am interested in what kinds of activities they engage in once involved and how they balance their professional and activist roles or identities. Because I am interested in the range of behaviors such lawyers exhibit and the range of roles they might play in movements, I chose to focus on the lawyers themselves across many different movements or SMOs rather than focusing on one SMO and the limited range within that organization's structures and goals. Previous research on lawyers within one

SMO served as a guideline or starting point for possible roles that lawyers might play, but this research also demonstrated the utility of studying the "pool" of activist lawyers (McCann and Silverstein, 1998). Studying one SMO's lawyers provides rich data on the interaction between lawyers and other activists and lawyers and the SMO in terms of ideology, strategy, goals, etc. By studying lawyers across many movements and SMOs, the following kinds of data can be collected: demographics of activist lawyers (including background characteristics and socialization), the differential ways in which lawyers enter into activism, a broader range of roles that lawyers play once in a movement (as well as data on the degree to which they remain external to the movement or distinct from other activists), the processes by which lawyers maintain both activism and lawyering (and whether this is problematic), and career activism and changes over time. Underlying my research is the question how lawyers, as activists, can reconcile their professional role or identity with the activist one.

In order to capture the widest range of activist lawyering, and since I did not want to impose my own definitions onto the lawyers, I defined activism quite broadly to include lawyers in many contexts and "degrees of activism". This included lawyers in government positions, private practice, public interest firms, and professors, and I narrowed the definition once the range of behaviors and degree of activism became clearer. I sought information on who comprised the local pool of activist lawyers, and whether such a pool exists in the first place, from the lawyers themselves. I talked with several people connected to the legal profession, either as law students or professors

familiar with lawyers or law professors, and began to hear a few names over and over as representative of activist lawyers or public interest lawyers.

I decided to conduct a preliminary interview with one individual, age 70, because he was described to me as someone who "knows everybody, he was a lawyer, a judge, an ACLU kinda guy. He'll know everything about the history of Arizona and what's going on now." This interview seemed like a good place to start to determine the potential size of the sample, how geographically and institutionally concentrated the lawyers were, and whether Arizona lawyers would even include activist lawyers. Also, on my own I made a list of social movement organizations and public interest legal organizations from the phone book, from a colleagues' dataset on local SMOs, and from the American Bar Association. The list was not very big, so rather than randomly sampling, I decided to attempt to sample all of the lawyers in these organizations (if any) as well as snowball from the initial interviews.

After conducting the interview mentioned above and a second interview, I had compiled a list of 19 names of activist lawyers (defined by the lawyers I interviewed). Through snowball sampling, a total of 34 lawyers were contacted and interviewed. Many of these names (about one-third) overlapped with names that I had discovered through contacting organizations. I interviewed each person in his or her office. The interviews averaged about one-and-a-half to two hours in length. The interviews provided data (as mentioned above) on the backgrounds of the lawyers, the kind of work they currently do, the kind of work they have done in the past, how they became involved with the legal profession, how they became involved with activism, how they maintain their activism

and/or lawyering, what roles they play or attempt to play in movements, and much data on ideology--both in terms of social change or movement ideology and their view of law. Although some of this information could be obtained with survey research, there is much greater detail about the processes of activism and lawyering from the interviews. A copy of the interview schedule is included in Appendix A. This is not a complete representation of all questions asked because many probes or comments triggered additional lengthy responses.

While initially starting with broad research questions about the role of lawyers in social movements, initial interviews and data generated other questions. For example, I assumed that many lawyers would be engaged in role conflict between their professional lawyer role and the activist role. It became evident that many do not experience such a conflict because they reject the traditional lawyer role and are not typical lawyers. So then I became interested in how these lawyers "escaped" the socialization into the profession, or how they "do lawyering" if rejecting the profession as a whole? This led me into more detailed questions about the **processes** by which these lawyers maintain their activism and/or lawyering, rather than just focusing on what they do. Since the underlying purpose of this project is to illuminate the processes by which lawyers are activists, the chosen method of ethnographic interviews offers the best fit.

## **2.2 Coding Procedures**

My first step was to review the interview transcripts to determine if each interview had covered similar information, and what might be "missing" in an

individual's story. This "missing data" was data in itself, perhaps demonstrating factors that the lawyer did not feel relevant or salient in their path to activist lawyering, their career path, or their activism? After comparing interviews overall, I began to make sense of the data by identifying themes and eventually coding into categories.

I kept each interview separate in its own file with the complete transcript and a modified transcript with preliminary coding categories. This modified transcript was edited to exclude the information that was no longer deemed important to the study. I also created files with each category and simply "dumped" relevant lines from interview transcripts into these files, with reference to original file, page number, and line numbers. My first coding attempt was frustrating in that I was not yet familiar with the data, so I often defined things differently or into too many categories that later overlapped. For example, I had many categories that eventually collapsed into a category called "political socialization". The original coding of this category included things like "political values", "family politics", "parent's political?", "early political involvement", and the like. Over time, it became clearer that the same ideas and concepts were being grouped in different places, when they really fit together. In part, this was due to the close reading of the interview transcripts and following the language or accounts of the lawyers.

I sorted the interview transcripts into about 30 categories suggested by the interviews, as well as suggested by my research questions and previous research on activists and on the legal profession. For example, my questions on micromobilization pointed to categories based on family, law school, and network ties, roles, and consequences. These were further refined, as illustrated in Table 2.1.

**TABLE 2.1 Sample Categories from Coding Interviews of Activist Lawyers**

<b><u>Category</u></b>	<b><u>Subcategories</u></b>
<b>Family</b>	<ul style="list-style-type: none"> <li>political values</li> <li>political involvement</li> <li>encourage activism</li> </ul>
<b>School</b>	<ul style="list-style-type: none"> <li>motivations for law school or becoming a lawyer</li> <li>curriculum</li> <li>elite or non-elite</li> <li>student organizations</li> <li>internships</li> <li>ties to other activists</li> <li>ties to non-traditional lawyers</li> <li>barriers in school (to law or to activism)</li> <li>professional socialization</li> <li>political socialization</li> </ul>
<b>Ties</b>	<ul style="list-style-type: none"> <li>before school, during school, after school</li> <li>kind and number of ties (to activists, to lawyers, to activist lawyers)</li> <li>organizational ties (past and current)</li> <li>mentors (kind)</li> </ul>
<b>Roles</b>	<ul style="list-style-type: none"> <li>definition of activist</li> <li>self-identification as activist?</li> <li>lawyer role obligations</li> <li>early political involvement</li> <li>degree of involvement in activism (later defined core and marginal activist lawyers)</li> <li>examples of activism (range and frequency)</li> <li>role conflict or tensions</li> <li>occupational role enables or constrains activism</li> </ul>
<b>Consequences</b>	<ul style="list-style-type: none"> <li>role conflict (conditions)</li> <li>role distancing and/or role exit</li> <li>role compatibility or alignment</li> <li>personal consequences</li> <li>professional consequences</li> <li>accounts of impact on legal profession</li> <li>what lawyers "should do" in movements</li> <li>examples of lawyers impact on movements</li> <li>impact of lawyers on other activists.</li> </ul>

The coding for "ties", "roles", and "consequences" held the largest amount of data, and further subcoding was necessary to manage the data. It became apparent that the processes by which lawyers became mobilized as activists compared to past research on other activists, in part because being a lawyer was not as relevant as other factors. In addition, the processes of micromobilization, activism, and consequences of activism were interconnected in ways that presented a clear path and career for activist lawyering. The data analysis associated with these three categories coincides with the three substantive chapters that follow.

After initial coding, as well as information learned from lawyers I interviewed, I recognized a group of "core activist lawyers", a group of more "marginal" activist lawyers, and a group of less activist, or non-activist, lawyers. The non-activist lawyers are three that I later describe as "preliminary" interviews. For "core" and "marginal" activists, I coded in terms of the number of mentions each person received in other interviews, as well as an analysis of actual behaviors. The majority (nearly all) of the other lawyers in the sample named the "core" activists as someone who is an activist lawyer. "Core" activist lawyers are characterized by their commitment to and involvement in a range of causes and social movements, their definition of themselves as activists, and their range of activist behaviors beyond institutional means. Table 2.2 compares core and marginal activist lawyers.

**TABLE 2.2 Core and Marginal Activist Lawyers**

	<b><u>Core Activist Lawyer</u></b>	<b><u>Marginal Activist Lawyer</u></b>
Mentions by others	nearly all	one to three mentions
Self-identify	activist	no clear pattern
Current Activities	includes extra-institutional; wide range of activities	mostly institutional;
Organizations	many; political; alternate professional	fewer; political
Movements	multiple; generally a part of every local movement	one or two issues or movements
Frequency	participate almost daily; much overlap with work	participate regularly, but not every day

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These categories will become clearer in later chapters as I discuss the relation of each group to micromobilization of lawyers, roles and identities, and the biographical consequences of activism.

### **2.3 Why the Concern with Individual Characteristics and Activist Lawyers?**

In the field of social movements it has long been assumed (for different theoretical reasons) that we need to know something about the individual characteristics of activists in order to explain that activism. Scholars long believed that attitudes explained participation. Those who became activists were “believers” or had a stronger commitment to the cause than those who chose not to participate (see Snow and Oliver 1995 for a review of attitudinal and socialization explanations). Of course the link

between attitudes and behavior is much more complex than that. We know that there are many who believe in the causes of social movement, and most do not participate (Klandermans and Oegema 1987; Klandermans 1984). Rather than viewing beliefs as inherent, scholars now look at beliefs in context. They point out the importance of structure and culture in shaping not only beliefs, but also opportunities for participation, framing, and mobilization of both activist and movement (McAdam, McCarthy, and Zald 1996; Lofland 1996; McAdam, McCarthy and Zald 1988; McAdam 1988a, 1988b; McCarthy and Zald 1987). Those who choose to participate in social movements have stronger links to the movement in terms of ties to other activists and ties to more organizations and more political or movement-linked organizations, for example, teaching, religious, or political (McAdam 1988a). The necessary cultural framing processes (Snow and Benford 1988) and identity salience processes (McAdam and Paulsen 1993) are more evident in these micromobilization structures. One's background characteristics, then, might tell us something about their socialization or beliefs, but more importantly it tells us about their "availability" to be mobilized both structurally and culturally. So, a primary reason to include a discussion of demographics is because past research shows that there are certain necessary (if not sufficient) personal or biographical attributes that are linked to activism (McAdam 1982, 1988; Snow et al 1986).

A second reason for this study and an elaboration of personal biographies is that other research on activist lawyers has focused on one SMO or lawyers in one setting (Scheingold 1998; McCann and Silverstein 1998). This approach, although fruitful in many ways, is limited because the range of activist lawyer behavior may not be

uncovered. These studies are useful for producing data on the interaction between lawyers and other activists or SMO personnel. However, they are less productive on detailing the interaction among activist lawyers and other activist lawyers, or activist lawyers and the profession--which is my interest.

Another warrant of this study is that it can offer rich data on a group of lawyers that relatively little is known about. What we do know about them is often not grounded in theory, and many avoid studying activist or public interest lawyers because the numbers are so small—about 2-3% of all lawyers (ABA 1995; NALP 1997). The small numbers, however, do not mean that we should ignore these lawyers. Activist lawyers may have a disproportionate impact on/in the profession despite small numbers (Scheingold 1998; Handler 1978). What we do not really know is their impact on social movements, and until recently, how lawyers are involved in social movements and social change. We need to explore these actors in more depth and in terms of their relationship to social movements and the profession of law. This study is one attempt to improve our understanding of activist lawyers and social movements by exploring their entrance into activism, the roles they play once involved, any tensions among their professional and activist roles, and the consequences of activism individually and for the profession. Rather than making assumptions about this “type” of lawyer, I hope to show the range of behaviors that go beyond any one limited category. The demographics of the lawyers included in this dissertation will be discussed as a start for exploring their work as activists.

Finally, there are assumptions by about public interest law being the chosen (or leftover) field for women and minorities: that they have no choice because they cannot get other kinds of law jobs due to discrimination or incompetence. For law school graduates in the class of 1998, employment in public interest law was more common for African Americans (5.1 % of employed African American graduates), Hispanics (5.1 %), and Native American (6.3 %) graduates than among white (2.2 % of employed white graduates) and Asian/Pacific Islander (2.6 %). Four percent of women compared to just 2 percent of men are employed in public interest law. For the last five years, 55-56 % of all employed graduates were in private practice, but these percentages drop for African Americans (40 %) and women (51 %) (NALP 1999).

For a link to the social movement literature, an attitudinal explanation seems possible: women and minorities may choose public interest law because that is what they know or identify with, or they chose to become lawyers to give back to “their” community. Other scholars argue that women and minorities are overrepresented in public interest law jobs because they face barriers such as discrimination to the more traditional and prestigious career paths (i.e. partnership) in the legal profession (ABA 1995; Epstein 1993). The lawyers' accounts of the conditions under which they entered into and maintained activism as lawyers will illuminate their understanding of this process and whether gender or race matters.

## **2.4 Brief History of Public Interest Law and Activist Lawyering**

Public interest law saw tremendous growth in the late 1960s and early 1970s. This proliferation of public interest law activity had its foundations in the activities of the

NAACP and the successes of the civil rights movement (and the associated favorable political climate for “rights” causes). The NAACP/Legal Defense Fund (LDF), established as a separate entity in 1939, developed a long-term litigation strategy to eliminate racial segregation in education, employment, and housing. Beginning with the precedent-setting school desegregation decision *Brown v. Board of Education*, the NAACP/LDF successfully challenged the doctrine of “separate but equal” by arguing that separate facilities were inherently unequal (Aron, 1989; Abel, 1997). Although legal strategies have long been part of social movements, the civil rights movement of the 1950s and 1960s may have had a “law-related” impact beyond the specific legislation: the public was able to see the significance of lawyers who represent those who had long been without representation. The passage of the Civil Rights Act of 1964 created a statutory basis for the federal enforcement of equality in education, employment, and public accommodations. Lawyers and social movement organizations now had a clear legal basis for grievance claims and resolutions.

Not only was the public increasingly aware of the law as a mechanism for social change or granting civil rights, but they were witness to the risks that these lawyers took both physically (many were threatened and harmed like hundreds of civil rights activists were) and professionally—many risked losing reputation, status, and a future client-base was questionable (McAdam, 1988a). Who were these lawyers who were so noble yet so crazy to put themselves on the line? Cause lawyering was a new alternative for those wanting to become involved in some way in the larger push for social change.

A few changes occurred in the 1960s that facilitated the practice of public interest law. First, the 1963 case, *NAACP v. Button*, removed potential legal obstacles to the practice of public interest law. The Supreme Court rejected attempts by the State of Virginia to prevent NAACP/LDF attorneys from seeking out and representing questions or clients with clear political objectives or significance. This decision set the course for future SMOs and cause lawyers to seek out clients and openly use litigation as part of a broad strategy of reform (Aron 1989).

In addition to (or perhaps because of) the overall favorable political climate for social and political change, there was a vast increase in the foundation support and funding of law-related programs. Foundations were funding civil rights and other movement organizations as well as public interest law firms, including consumer and environmental law projects. The willingness of philanthropists to support organizations characterized by cause lawyering led to the rapid diffusion of public interest law centers such as the Center for Law and Social Policy, the Center for Law in the Public Interest, the Southern Poverty Law Center, and the Sierra Club Legal Defense Fund. Before 1970 there were only 23 such public interest law centers staffed by fewer than fifty full-time attorneys. By 1975, there were 108 centers with almost 600 full-time attorneys; by 1984 there were 158 groups and over 900 attorneys (Aron 1989). Although the growth of public interest law centers slowed during the 1980s, there are still new organizations created each year and new opportunities for cause lawyering. The number of total lawyers in the legal profession continues to increase, so raw numbers of public interest lawyers also are increasing: there were 732 from the class of 1996 alone (NALP 1997).

However, the percentage of public interest lawyers in the profession has been relatively stable since the early 1980s at 2-3% (2.5% in 1996 up from 2.0% in 1995) after a peak in 1978 where 5.9% of law school graduates went into public interest jobs.

There are regional variations in the opportunities for public interest law or cause lawyering. Specifically, many national public interest law centers and SMOs have their central offices (or only office) in major centers of legal or political activity such as Washington, D.C., New York City, or Los Angeles. However, the proliferation of public interest law centers in the 1970s also included geographic and “issue” diversification (Aron 1989). As these centers and SMOs were able to secure (albeit precarious) sources of funding and gain legitimacy as an organization or cause, other groups then could follow as they recognized not only the resources available, but the larger political opportunity structure opening for their own issues, causes, and legal rights. As new social movements developed, so did new public interest law groups or organizations. For example, disability issues become more clearly defined and vocalized in the late 1980s, and eventually led to legal protection and remedies for the disabled with the passage of the Disability Act in 1990. SMOs and public interest law organizations specializing in disability issues had successfully legitimized their cause and now had secured further legitimacy as people began to file claims and seek legal restitution as many previous groups had done before them. Today, disability law centers (or disability law specialists in other law centers, firms, or SMOs) can be found in every state and major metropolitan area.

Of course there still exist some regional variations in the kinds of public interest law or cause lawyering. For example, Southwestern cities and states are likely to have immigration law specialists and organizations, while midwestern cities and states may not. Environmental groups are found in almost every state, though they may be more concentrated in certain regions where environmental concerns (and, therefore, environmental organizations) have a longer history or more severe problems.

## **2.5 The Study Context: Arizona**

When I began this project, I was at first exploring the possibilities of using Tucson and Arizona as the source for studying public interest lawyers and activism by lawyers. The NALP study of the class of 1996 indicates that 51 % of graduates in Arizona took jobs in private practice, 9.9 % in business, 14.6 % as judicial clerks, 18.6 % in government, and 3.1 % in public interest. While one class does not define the entire population of public interest lawyers in Arizona, it does show that the numbers compare favorably nationally (i.e., that Arizona is not a state with a lower than average proportion of such lawyers). Initial perceptions of Arizona are: (1) it is politically conservative and has a long history of being so, and therefore (2) the lawyers in Arizona may be more representative of traditional lawyers who focus on business and economic law (i.e., represent corporations and conservative, “wealthy” interests) and that public interest lawyers would be few and far between. Exactly because of these perceptions, however, I decided that Arizona lawyers would be a valuable source of information about activist lawyering. First, if these assumptions about conservatism in the state are true, then

finding public interest lawyers here would tell me something about the opportunities for them. In other words, if public interest lawyers can operate here when it seems so difficult politically, then they can be found anywhere. Second, it may be that public interest lawyers have *more opportunities*, or are more crucial in places where the political environment is conservative. In other words, the work that needs to be done in terms of representing those that are underrepresented may be greater in places like Arizona as business/economic interests rule. Overall, the opportunity structure that acts on lawyers and movements will vary from state to state, so future research should consider the impact on the work of activist lawyers before comparing to this project.

Although I had little information about the history of activist law in Arizona before starting this project, I did know a bit about the activist traditions here. First, I knew that Arizona had a tradition of environmentalism due in large part to the efforts of (then) governor and (Secretary of the Interior) Bruce Babbitt. Also, while living in Tucson, I was aware of a wide range of environmental issues that were of widespread public concern. So I thought, at least, that there might be some environmental defense lawyers who had ties to the environmental movement. Second, Arizona borders Mexico, so immigration issues are widespread. I discovered a tradition of activism in support of political refugees during the 60s, to the Sanctuary Movement in the 80s, to the current wave of people seeking asylum or immigrating here from Central and South America and Asia. Third, Tucson has a reputation and voting record for being the liberal stronghold of the state. So I thought there might be activist lawyers and public interest lawyers in Tucson even if not elsewhere in the state or in Phoenix, the state capital. Finally, though

being conservative in many ways, Arizona remains fairly “people-centered” politically in that the people have the alternative avenues of initiative, referendum, and recall. People have another way of bringing to the forefront issues they are concerned about and do not have to rely on elected representatives who may ignore certain issues or interests. Grass-roots groups and activist lawyers can promote causes politically and legally as a way of making the formal government structure consider issues that otherwise may not be addressed. So, the political opportunity structure for any activist group, including an activist law group, may be more “open” than it seems in Arizona.

After initial exploratory research into the public interest law and broader activist communities, I recognized that Tucson had enough activist lawyers and public interest law organizations for an adequate sample and study. Of course this study is not attempting to argue that these lawyers are representative of all public interest lawyers in any city. Rather, I am attempting to demonstrate in more detail the processes by which activist lawyers enter into their careers and into activism, how they manage any tensions that exist between their roles as lawyers and as activists or public interest advocates, and any consequences of being activist lawyers both personally and on the profession and larger society. By studying these lawyers, I also am challenging many of the assumptions about these “types” of lawyers, mainly that there may be no one type. I discuss the demographics of those included in this study for purposes of information about the study as well as for an initial glance at the realities of public interest law.

## **2.6 Participants in the Study**

It is important to note that I will often use “public interest law”--traditionally defined as representing those that are under-represented in a public interest legal organization--to describe those in this study in the same way as I use “activist lawyering”. In this study, I use the terms interchangeably to refer to the character or goals of the work, not to define the specific work setting. Government lawyers (especially public defenders) and public interest lawyers are often lumped under the broader term “public service” lawyer, and many who work in firms also engage in pro bono work or other kinds of law that apparently overlaps with “public interest” or “activist lawyering”. Law professors typically fall under the category of academics, not activist lawyers or public interest lawyers. Of course I am attempting to uncover the range activist lawyering by members of the legal profession, and public interest law overlaps in many ways with activism. Although most public interest lawyers can also be described as activist lawyers, not all activist lawyers are found in traditional public interest law jobs. That is one of the main purposes of this study: to show the wide range of behaviors and work situations in which activist lawyers operate, as well as to challenge the assumptions about the profession and about public interest lawyers. As previously stated, I initially defined “activist lawyer” broadly to include the widest possible range of behavior. It later became evident that a more traditional definition was most accurate, with the modification to allow for varied work settings and activities<sup>4</sup>.

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<sup>4</sup> Most definitions of any variation of these terms such as progressive lawyering or cause lawyering emphasis the use of law-related means to seek change, or the activity towards seeking a change in the law. I diverge from such definitions or concepts because of the

First I will describe the occupation or job title of these lawyers, including “secondary” positions that are held simultaneously, such as sitting on the Board of Directors for a community organization. Activist lawyers are found in a wide range of settings, some legal organizations, others in teaching, still others in social movement organizations or settings. This should provide information about this “type” of lawyer, in particular showing that there are *many* types. This occupational data will also become important in later chapters on roles/identities and consequences of activist lawyering; the occupational setting constrains the roles, identities, and behavior of these lawyers. Next, I will discuss other demographic information such as race, gender, education, and age. It is typically thought that these demographic variables either constrain or enable individuals to become activists, and similar arguments are made about those who become public interest lawyers. Further analysis occurs in the chapter on micromobilization.

### **2.6.1 The Occupations (formal job)**

The lawyers interviewed represent a wide range of jobs within the legal profession, with both current and previous jobs discussed in the interview setting. It is important to note that many of these lawyers hold multiple positions simultaneously,

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potential for activist lawyers to act in ways that have little to do with being a lawyer and more with being an activist. One purpose of this study is to uncover the range of behaviors that might fall under this category, and this may be law-related, or it may be extra-institutional and illegal as activism sometimes is (McAdam, McCarthy and Zald 1996). So, activist lawyering here is defined in terms of activism, not the law, as “any activity by lawyers that seek to achieve social change or social justice for the benefit of some disadvantaged group or individual(s).” Whether their activity is “lawyering” or “activism”, or both, is one of the problems in defining the concept; the data here will address this concern.

splitting time between offices. I consider the office where they spend the majority of their time and where they receive telephone calls to be their primary job. Sometimes the job is funded or located under a larger umbrella organization, such as the domestic violence clinic at the law school that also is tied to Legal Aid (LA). In addition, many of these lawyers are on the Boards of Directors of various community organizations, many of which can be defined as social movement organizations or public interest law organizations or firms. So any description of occupation below may not be as simple as it appears; many of these lawyers are involved in very complex work situations.

Of the thirty-four lawyers interviewed, twelve of them are associated with a law school (one at the University of Texas; eleven at the University of Arizona) either as professors, deans, or directors of the clinic programs. One professor was the former Dean of the University of Arizona School of Law, and the current dean was a professor at a few other law schools before coming to Arizona to fill his position here. Some professors have changed schools or became deans since the original interviews were conducted. Most of these professors, because their primary role is teaching and advising, may not seem to fit the bill of being defined as an activist lawyer. There is a range of “degree of activism” or identification with an activist identity among these professors (as well as among others interviewed), and this will be discussed in later chapters. However, these individuals were included in the study for several reasons. First, a few of the professors and deans had spent some time either in college, law school, or earlier in their law careers, as activists. One worked for Ralph Nader on consumer issues, two others spent time demonstrating and marching for women’s rights, and a fourth was

instrumental in setting up many of the Arizona chapters of organizations such as the ACLU. I was just as interested in why some lawyers may move away from activism or from public interest law jobs over the course of their careers, so these lawyers were included to get richer detail on career activist lawyering. Others at the law school clearly were still active in the community and were more well-known or defined by others as “people I should talk to”.

One individual mentioned continuously throughout my interviews is a professor at the law school, director of all of the clinic programs, on the Board of Directors of several local public interest law organizations, and is the director of one of Tucson’s homelessness organizations/programs. He was described by one as “the guru” of activism in the city, and he proved to be a fruitful source of information about both the traditions of activism in Tucson as well as the network and activities of activist lawyers, both past and present. There were two others that were mentioned by most as someone that was the “most active” or most representative of activist lawyering in Tucson. There was not one interviewee that did not mention one of these three when I asked who they thought I might also include in this study. These two lawyers are in small public interest law firms, and each are well-known for the work that they do. One specializes in large class-action cases, and he opened a small firm after leaving LA because of the new constraints against class-actions in the early 1990s. Throughout the Reagan era, and continuing with the Republican Congress that began in 1994, the government imposed a set of restrictions on the ways in which their money (via the Legal Services Corporation) could be used, and class-action lawsuits were no longer funded. The second of the three

“core” activist lawyers also opened a small firm, and he specializes in cases or issues such as poverty, housing, homelessness, and police brutality. This lawyer also heads the regional chapter of the National Lawyer’s Guild (NLG). This organization was formed in 1936 as an alternative to the American Bar Association for “progressive, liberal, radical attorneys” (Ginger and Tobin 1988).

Four of the lawyers are what are typically called government lawyers: two are public defenders and the other two work for the City Attorney and State Attorney General’s offices. There is much debate about whether government lawyers are public interest lawyers, especially public defenders who typically represent the poor. I generally am not including government lawyers in my definition of activist lawyer, mainly because most others make the distinction between government and public interest jobs (NALP 1997; Sarat and Scheingold 1998b). Public defenders do share the characteristic with public interest law of working for very little pay, yet it seemed more likely that activist lawyering would be something limited to jobs outside of the government since the government may be the target of action. These four government lawyers were included, however, because of activism either in earlier parts of their careers and in areas of their life outside of their job.

Eleven of the lawyers interviewed work in more traditional public interest law settings. Five work for Legal Aid (LA), the other six work for five different public interest law “firms”. I use the term “firm” lightly because typically this word is avoided in the names or titles of the law office. Instead, most use words like “center” or “institute”. One lawyer told me this was a conscious effort to distance themselves from

what people think of firms (money-oriented, greedy lawyers who are too busy). These six lawyers were typically the only lawyer, or one of a few, working in the office. Financial constraints are one reason for the small offices, but “keeping it focused” on progressive interests was another reason given by one of these attorneys. One additional lawyer works in a social movement organization working for human rights in Bosnia.

Three other lawyers work in small firms that are not necessarily public interest firms. These are more traditional firms in that they focus on a range of issues, yet they also include several public interest law concerns such as gay rights and domestic violence. These firms have a few lawyers, and have more traditional financial backing through “fee for service” payments (whereas public interest offices mentioned above often charge nothing, are funded through grants and the government, or charge on a sliding scale).

The remaining three lawyers were part of the preliminary phase of interviewing and do not really fit with the rest of the group in terms of doing activist work or even public interest work. Two work in large firms in traditional legal specialties (securities, employment, contracts). These two were interviewed because of their known progressive or liberal beliefs and prior support of social movements. They both described changes in law school. It wasn't that they lost their interest in public interest or social movements, but they now felt that big firms were really where the power was and they could better work from the inside. This will be discussed in more detail in later chapters. The third remaining lawyer is in a non-law job, deciding to continue with a previous career in social work. She was included because of her activism in her life, and she provides an

interesting comparison as someone that remains active and uses her law background in fields other than law. Table 2.3 provides a summary of occupations.

**TABLE 2.3 Occupation or Occupational Setting of Lawyers in this Study**

<u>Position</u>	<u>Number</u>
Law School Dean	2
Law School Professor	7
Law School Clinic	3
Public Interest Law Organization	6
Legal Aid	5
Government	4
Social Movement Organization	1
Small firm	3
Social Work	1
<u>Large firm</u>	<u>2</u>

Table 2.3 shows that activist lawyers for this study were located in a variety of work settings. I reiterate the point that these occupations tell us very little about the work and activism of these lawyers. Occupational setting may be relevant in terms of enabling or constraining opportunities to work, or providing certain kinds of network ties and support. However, simply knowing the occupational position is not enough.

### **2.6.2 Volunteerism**

Almost half of the attorneys interviewed have additional jobs in that they are involved in community organizations and other public interest law organizations by sitting on the Board of Directors. This contributes to the intricate network that exists among these lawyers. Although these positions are voluntary, it was apparent that they are taken very seriously and that there is a strong encouragement and support for the work that others are doing. This is in sharp contrast to the vast competition among most lawyers. Although there is not a tremendous amount of interaction (occasional meetings), there is some investment in each other's work and more cooperation than competition.

In addition to volunteer work in public interest law settings, many of the lawyers work for community and social movement organizations. For example, one lawyer spends a great deal of time directing the Grand Canyon Association, a non-profit affiliated with the National Park Service. His work with this organization is to help preserve the park for the future. Another lawyer is very active in local women's organizations "depending what the hot issue is" (interview notes). This work will be discussed in later chapters as it relates to the role of lawyers in movements: are they organizers, are they acting as lawyers, etc.

### **2.6.3 Lawyer Demographics**

#### *a. Gender and Race*

Of the lawyers I interviewed, sixteen were men and eighteen were women. They ranged in age from twenty-five to one semi-retired at seventy-two. Just six were non-white (one African-American, the rest Hispanic), and twenty-two were white. Although I did not ask about religious background, five brought up in the course of the interview that they were Jewish.

Gender is an interesting variable here, mainly because it is assumed (like race) to be an important predictor of the kind of law that one might be channeled into or may choose. In the 1960s, providing free legal services for indigent clients traditionally was viewed as a feminine concern (Epstein 1993). Women lawyers were actively recruited, and were disproportionately represented in public interest law relative to other specialties in the legal profession. At the time, women comprised just three percent of the total population of lawyers, yet twice as many women as men were employed as public interest lawyers (NALP 1997). Today, men still outnumber women in the profession by three to one, and there still are twice as many female than male public interest lawyers. The question is why?

The patterns for male and female employment are essentially the same, with the majority entering private practice, followed by government jobs, industry jobs, the judiciary, and then public interest jobs. However, for women, the numbers in private practice are smaller, therefore other categories increase in proportion. For example, in 1980, 56% of women were in private practice compared to 70% of men, and 5% of

women were employed in public interest jobs compared to just 1% of men. By 1995, the numbers evened out a bit, with 70% of female lawyers and 74% of male lawyers in private practice, and 4% of women and 2% of men in public interest law (NALP 1997).

Some possible explanations for the gender difference that others have noted are as follows: (1) women enter into public interest law because it is a feminine concern; nurturing and helping others is compatible with women (either biologically or socially); (2) public interest law is a less desirable specialty in terms of prestige and salary, so it is “leftover” for women (and minorities) who are less qualified lawyers or who are blocked or discriminated against receiving more traditional, high-paying jobs; (3) women choose public interest law because they want to work with issues that concern them personally or all women (ABA 1995). Although viewed as noble, in general, there was a perception of public interest lawyers as less competent than other lawyers, and this was only made worse by perceptions of women and minorities as “less than” in other realms. Although times have changed, I was not so sure that this negative perception of public interest lawyers, and the women and minorities who filled a disproportionate number of these positions, had gone away completely. And, I wanted to hear the accounts of women and minorities about the conditions under which they entered their careers as activist lawyers and about the profession in general.

*b. Age*

There was quite a range of ages among those interviewed for this project. There were several in the over-50 range, which proved to be quite useful for gathering

information on the activist and activist lawyer traditions over time--in Tucson and nationally since many worked or attended school in other parts of the country. Also, I was able to gather richer detail about how things have changed in the legal profession over time, both in terms of when public interest law was “new” or prospering in the early 1970s, and in the 1990s with budget cuts and political shifts to the right threatening the funding support for this specialty in law.

The lawyers at the middle of the range were well-suited (as were the older lawyers) to describe public interest law and activism during the peak in the 1970s. In a sense, these lawyers came of age in the 1960s and early 1970s, and chose law as a career in the midst of a period of heightened activism and support for legal services for the poor and underrepresented groups.

The youngest lawyers that I interviewed—and those most recently graduated from law school despite age--demonstrated the continued career pattern of public interest law and activism in the 1990s. There are many who assume that there are fewer opportunities for activism as the great movements of the 1960s and 1970s (civil rights movement, peace movement, women’s movement) have dwindled or become institutionalized. The same lack of opportunity argument is made for public interest law, though this is more because the federal government continues to cut funding for legal services programs. In general, this study shows some variation due to age in the experiences and perceptions about activist lawyering. For example, it may not be actual lack of opportunities as much as the perceived lack of opportunities that influences lawyers’ experiences as activist lawyers. Those beginning their careers in the 1980s or 1990s typically did not see a lack

of support for activism in terms of an absence of widespread social movements or changing political tides. Rather, they defined their work according to “the need for us”, and that “things have not yet changed for the better—there is still a lot of work for us to do” (interview notes, informant 1). These statements capture possible ideological differences according to age, but there were no real ideological differences based on age.

*c. Education*

My initial assumptions about activist lawyers included a vague idea that they may share some pattern of socialization, such as the school (or set of schools) where they attended for undergraduate and law degrees. Doug McAdam’s study of the volunteers who went to Mississippi in the summer of 1964 (hereafter Freedom Summer volunteers) demonstrated the importance of certain schools as sources of activists (McAdam 1988). Elite private universities, such as Harvard, Yale, Stanford, and Princeton, accounted for nearly 40 percent of the total applicants to the project, and another 25-30 percent came from the more prestigious state universities such as Berkeley, Wisconsin, and Michigan (McAdam 1988: 42). Both the network of community of activists, as well as the “biographic availability” afforded those who attended such schools (in terms of financial ability to “be an activist” and time/freedom from job and family constraints), were strong predictors of becoming an activist in Mississippi. Though I did not ask for this information, a few offered that they were able to do public interest law because their parents supported them through law school and they had no loan debt.

Similarly, I thought that activist lawyers might be mobilized into participation in social movements or political causes based on something related to their educational experiences. For example, were there certain law schools that “produced” a greater proportion of activist lawyers? Or, were law schools in general an obstacle to activism, and that activism by lawyers had to start and be maintained *in spite of* law school experiences? The micromobilization of these activist lawyers will be discussed in greater detail in the next chapter. In general, it seems that undergraduate and law school experiences, including mentoring, getting one’s feet wet as an activist or in public interest law, and the community of other activists and other like-minded lawyers, played a larger role than what schools were attended. Most lawyers typically doubted that the undergraduate or law school they attended had anything to do with why or how they became an activist lawyer.

Many of those in my sample attended the University of Arizona College of Law. About 30 percent of the graduates from the Arizona College of Law do, in fact, remain in Tucson, and another 30 percent work in Phoenix and other areas in the state (The University of Arizona College of Law, Career Services, 1998). While not considered an elite law school, the Arizona College of Law was recently ranked 36<sup>th</sup> out of 181 accredited law schools (U.S. News & World Report, 1999).

Several of the lawyers attended Harvard Law School, a fact that immediately challenged the notion that these lawyers might be less than competent, as this is one of the most rigorous and prestigious law schools in the country. Other law schools represented by the lawyers include: The University of New Mexico, Stanford, Cornell,

New York University, Georgetown, Texas, Minnesota, and the University of Denver.

Most of these fall into the top 25 rankings of nationally accredited law schools, and these are defined as “elite”. Other than those who attended the University of Arizona, there is no “grouping” of attendance for these lawyers’ undergraduate careers. In all, eight of the lawyers in this sample attended elite law schools. A few of the lawyers have multiple graduate degrees, including two with advanced degrees in education, a few with masters in social work, and several with masters in law (necessary to teach at the law school level).

The intention of this study is not to generalize to other activist lawyers; rather the purposes include getting a sense of the character of legal involvement in activism, and the range of activism by lawyers. However, some might ask whether those included in this sample are typical activist lawyers that might be representative of activist lawyers in other states or locations. This sample contains roughly the same number of men and women, perhaps indicating an over-representation of women since men still comprise the majority of the overall lawyer population. The proportions of African Americans will likely be higher in other regions that have higher concentrations of this racial group; Arizona has a very small African American population. For type of legal practice, my sample diverges from other data sources because they offer a more limited definition of these lawyers. Since I am particularly interested in the range of behavior, I felt it necessary to offer a broader definition of work settings. Table 2.4 provides a demographic summary of the activist lawyers in this study.

**TABLE 2.4 Demographic Summary of Activist Lawyers**

	<u>U.S. Lawyer Population</u>	<u>Dissertation Sample</u>
Gender (% female)	25.0 (43.0 class of 1995)	52.9 (n=18)
Race (% non-white)	5.8 (Arizona only) (17.0 class of 1995)	17.6 (n=6)
Legal Education		
Elite	N/A	23.5 (n=8)
Non-elite	N/A	76.5 (n=26)
Setting of Legal Practice		
Law School/Education	1.0	35.3 (n=12)
Public Interest Org.	0.5	17.6 (n=6)
Legal Aid	1.1	14.7 (n=5)
Government	8.2	11.8 (n=4)
SMO	N/A	2.9 (n=1)
Small firm	16.0	8.8 (n=3)
Other firm	56.8	5.8 (n=2)
Judiciary	2.6	0
Industry	9.5	0
Other	4.5	2.9 (n=1)

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(Information on U.S. Lawyer Population comes from the ABA (1995) reports, including the following sources: the American Bar Foundation, the annual Martindale-Hubbell Directories, the U.S. Bureau of the Census and the Bureau of Labor Statistics, and the National Association for Law Placement. Some figures are estimates for the current population.)

### **CHAPTER 3 THE BURDEN OF KNOWING: LAWYERS' ENTRANCE INTO ACTIVISM**

Over the past few decades there has been a tremendous amount of research that has improved our understanding of the processes by which individuals become mobilized to participate in social movements. Following Lofland's discussion of why people join social movement organizations, the relevant dimensions are (1) individual vs. structural factors and (2) background vs. situational (during the joining process) variables. Although Lofland's focus is on joining SMOs, the research he cites includes the joining of SMOs as well as more general processes of participation that may or may not specify organizations per se. Activist lawyering "participation" can be viewed in the same way with a similar process; thus the same empirical research applies or can apply.

Background individual variables consider how movement participants differ from non-participants in terms of personality, attitudes or motivation, cognitive orientation, and socialization, to name a few. A common misconception about movement participants is that they must have some "deeper motivation" that explains their participation (Lofland 1996). Zurcher and Snow (1981) considered a variety of these motivational factors and found no empirical support that these individual background variables predict participation. In spite of empirical evidence that these background factors may be less important in explanations of activism, two concerns remain for this study of activist lawyers: (1) activists, including those in this study and in other research, often describe their beliefs as the reason why they do what they do—thus confounding ideas about causes of participation, and (2) scholars in the sociology of law do not use

this evidence in explaining public interest law or activist lawyering. In response to the first concern, (something about accounts and vocabularies of motive). For the second concern, it is clear that research on social movement participation needs to be extended to include lawyers and to inform research in the sociology of law. Rather than assuming that public interest lawyers are somehow special or more “altruistic” or more willing to be poor (from fieldnotes, and accounts of several lawyers)—though this may be true—and that this causes their “participation”, we should consider these factors as contributing in the sense of making someone available, but not *causing* their entrance into public interest law as a specialty. Although the data in this dissertation offer no direct comparison between activist lawyers and non-activist lawyers overall, the interviews do provide a sense of the assumptions (by others) about the reasons for becoming activist lawyers, as well as the accounts the lawyers give and the structural factors that also contribute.

Even when “deeper motivational” factors are ruled out, there still is an assumption that “less deep” beliefs do influence the decision to join movements (Lofland 1996:221). Long before the actual decision to join, individuals may develop the propensity to act due to the socialization into the values and goals of the movement in an abstract sense. People may develop attitudes and beliefs that are consistent with those of a movement even though they are not yet aware of the movement. Once presented with information about a particular movement, the individual can simply continue the development of these attitudes through participation. So activism is seen as a continuous rather than a discontinuous act (Lofland 1996).

With activist lawyers, two contradictory assumptions might be made:

(1) similar to the process mentioned for activists, these lawyers might have been socialized into the larger cultural traditions of activism by their families or others, and that these values and attitudes were maintained over time and can explain the type of law in which they chose to specialize (as well as participation and activism before law school), or (2) professional socialization during law school is somehow discontinuous with activism, so some “alternative” socialization must occur to counteract this professional socialization to maintain or produce activist proclivities. Most explanations about why most lawyers are *not* in public interest law fits this second assumption: that it is difficult to maintain attitudes in support of public interest law during the socialization that occurs in law school (Stover 1989; Erlanger 1978). Attitudes certainly contribute to behavior, but a complete understanding of behavior does not follow from simple discussions of individual characteristics such as values or beliefs. Menkel-Meadow (1998) points out that the motivations for cause lawyering are varied and are not sufficient to explaining the behavior of such lawyers.

There are also a number of situational individual factors that have been offered as explanations of activism once an individual comes into contact with the possibility of joining. Rational choice arguments emphasize how individuals, presented with opportunities to participate, will act in a way that maximizes the expected benefits (and minimizes costs). Rational choice theorists also emphasize the potential free rider problem for social movements, that is, that most people will make the choice to NOT participate because the costs or risks will outweigh the benefits, and others can act and

individual non-participants can still reap the benefits (Olson 1965). For lawyers, it is more rational to go into other specialties; there are more benefits of prestige, money, etc. Social movement research has focused on incentives, including solidary incentives within micromobilization contexts (McAdam and Paulsen 1993), as an important source of participatory action. With activist lawyers, what are the incentives that might explain participation? Is there any evidence here that might speak to rational choice explanations?

The second kind of individual situational explanation deals with the “trying-it-out” nature to participation in social movements. Rather than viewing activism as acting on strong beliefs, some argue that activism may start out tentatively with individuals participating in low-risk (or low-commitment) activities but not embracing the broad goals or ideologies of the movement (Lofland 1996:226; Balch 1980; Bromley and Shupe 1979; Beckford 1978; Straus 1979). Here the process of joining compares to the interactionist explanations of role taking and playing at roles. These explanations work well theoretically, but there is still room for empirical support for how, why, and when individuals either embrace roles or distance themselves from roles. With activism, it is particularly important to understand the conditions under which people just “play at” the roles (low commitment or participation), whether they embrace activist or other roles, whether this embracement of the activist role is maintained and how, and when distancing from activist roles (and therefore an end to participation or a lesser commitment to it) might occur. All of these are concerns for social movements in a practical sense. In addition, these are concerns theoretically and empirically for

researchers of social movements and activism. This study provides data that demonstrate the conditions under which individuals embrace the role of activist lawyer, and whether they later distance themselves from this role, and why.

### **3.1 The Importance of Structural Factors**

We know that having a belief in the cause does not alone explain the process of mobilization of activists. Among the individual factors typically thought to produce activism are strong beliefs in the goals of a movement and a well-articulated set of grievances consistent with a movement's ideology (McAdam 1986). Structural factors such as ties to other activists, membership in organizations that are linked closely to a movement, and the absence of countervailing ties or constraints, such as full-time employment or family obligations, all contribute to movement participation (McAdam 1988a, 1988b, 1986.). In addition, a prior history of activism is found to be a strong component in the mobilization of participants in social movements.

Our understanding of public interest lawyers and activism by lawyers can be informed by this literature on social movements. The processes by which individuals become involved in activist lawyering can be compared to the micromobilization processes for other kinds of activists. Rather than asking why someone joins a movement, it is often asked why *more* people do not join. If so many people seemingly support movements ideologically, why do such relatively few numbers take that extra step and devote themselves to working towards its goals? The above structural factors offer some answers. For activist lawyers, a similar question can be asked: why do so few

lawyers decide to work in public interest jobs or as activists when so many enter law school with beliefs in using law “for justice” or “to help people”? (Stover 1989; Erlanger 1978) Stover (1989) suggests that the commitment to public interest law may be found in a “subculture” or “network”, but he fails to flesh out these concepts or processes.

### **3.2 Sociology of Law and the Emphasis on Background Factors**

Some argue that those who become public interest lawyers are simply more progressive politically than other kinds of lawyers. It is thought that they have some “political bent” that is maintained during law school, and that they “find” the kind of law that best suits them (Erlanger 1978). Although variation in political beliefs among kinds of lawyers exists, we cannot be sure that one’s belief in social causes is the sole motivation for becoming an activist lawyer. The attitudes about representing those who are less well-represented are likely to be there, but these cannot tell us much about the causes of “participation” in public interest lawyering.

Another common “attitudinal” explanation concerns women and minority lawyers in particular. Some have argued that they are more likely to enter public interest law careers because they are “closer to those issues” or have personal identification with the causes as women (Menkel-Meadow 1998; Harrington 1995). Again, an individualistic explanation based on attitudes is being offered. A female lawyer that becomes involved in domestic violence law, for example, is thought to do so because she can relate to that better than, say, business law. Even though that woman may have no particular personal experience with domestic violence and may have had experience opening her own

business, others still make broad assumptions about her likely specialization in law due to her gender (ABA Commission reports). Also, there may be many female law students that strongly believe in fighting the problem of domestic violence, yet do not choose this specialization. Why not?

It is obvious that the profession offers many “incentives” or rewards that will steer many away from careers in public interest law and activism. For example, the starting salaries at large firms typically are close to double that of public interest jobs<sup>5</sup> (Dean, Career Services). Many students have large student loan debts from law school, and often from undergraduate school as well, and cannot afford to give up the high-paying salaries of firm jobs. One study of Harvard law students found that financial concerns were a significant factor in students’ decisions to go into jobs that were not compatible with their progressive political concerns (Granfield 1992). Also, the allure of prestige that accompanies these high salaries is another factor that may be difficult to set aside. One lawyer I interviewed gave this as her reason for not working in a public interest law setting:

It’s not that I don’t want to help others, or continue with my interest in women’s causes—you know, I’ll still do things for that. But, I just felt that this was the best thing for me. You know, I’ve been at

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<sup>5</sup> Starting salaries in private practice vary regionally. In the last few years in Arizona, these salaries have increased to \$60,000-\$70,000 in Phoenix, which allows firms to compete more directly in hiring with other western cities. Salaries for public interest jobs are in the \$25,000-\$35,000 range nationally (in spite of cost-of-living issues which sometimes offer a boost to salaries in other specialties).

this for so long and finally thought it was time to live like a real person. I was able to by a new car—not a used one!—and didn't have to eat cheap pasta anymore. I could go out when I want, I could pay my rent and my student loans. I just hope that I can find some way to work on some important issues at this job. Right now it's all labor contracts, but I hope to get into discrimination and harassment cases—that's where I can make a difference.

This lawyer, excluded from later analysis, is not an activist lawyer because her work is in a large firm representing corporations against discrimination cases or in contract disputes. Though she said "I'll still do things for [women's causes]", she does not engage in any activism. Her beliefs are still strongly feminist, but her work is quite different from public interest or activist law. Though she mentions some rewards of being in private practice such as the "new car" and paying her rent and student loans, we know little about the process of her career path. She also mentions how she feels this job is where she "can make a difference" on "discrimination and harassment cases". It is not clear whether this is a reality (that she can have a significant impact on these feminist causes) or an account or rationalization to herself to justify her more traditional path in the legal profession.

### **3.3 Structural Variables and the Beginnings of Activist Lawyering**

Again, the research from the field of social movements can inform the processes by which lawyers become activist lawyers. A number of structural variables were relevant to the process of entering into activist lawyering. First, having mentors, either in law school or in the community, played an important role in connecting lawyers to public interest careers. The term “connecting” is particularly useful in that mentors do more than just teach skills or provide support to an individual, they serve as important network ties to jobs, to other activists, to community events and organizations, and often to past activist subcultures. Second, ties to other activists, including other activist lawyers, provide another important source of micromobilization. Third, involvement in organizations such as the National Lawyer’s Guild or Public Interest Law Organization (PILO) provides opportunities for activism as law students and may reinforce one's beliefs and identity as an activist lawyer (see McAdam and Paulsen 1992 on the organizational sources of identity salience for activists). Organizational membership outside of law school is also relevant, as many become involved in community projects before and during law school. Also, summer work experiences, internships, and volunteer experiences (often through the organizations) also serve as an initial foray into public interest careers for many of the activist lawyers.

#### **3.3.1 Mentors**

Of those lawyers considered most activist, or core activist lawyers, all had a mentor in law school or elsewhere that provided important information about and

connections to public interest law and the activist community. For the more marginal activist lawyers, some said that they had no mentor, yet these statements also proved useful. One claimed to have no mentor, that he was really just a loner in school, kind of shy. He is one of the most active lawyers in environmental issues, yet he works by himself in an office, and many others described him to be quiet and soft-spoken, but very involved. It seems that the lack of a mentor here tells us something about the future ways in which he practices law. A second activist lawyer, one of the core who works on immigration issues, claimed to have no mentor in law school. However, she later talked a lot about another, older, activist lawyer as someone who “really supported” her and “showed me how to go about things”. She continued to come back to this other lawyer in the interview as someone who really influenced the decisions she made. So even though she initially stated that she had no mentor, she later made many more statements that indicated how significant this lawyer was in setting the course for her career as an activist lawyer.

More typical, however, were statements like the following that illustrates mentoring:

I think I had multiple mentors. One that I can think of...I always considered him to be one of the more significant mentors or influences on my career. He was someone who was and still is very active in the NLG and who as I became marginally involved with the guild, he was one of the Guild members. And I guess

I became more involved by, you know, he was one of the influences in pulling me more into the Guild and giving me more responsibility in the organization.

This lawyer is quite aware of the impact that this mentor had on his career as he describes the mentor as "significant" and someone who "pulled me more into the Guild". Here the lawyer is describing how the mentor got him involved in a progressive, radical law organization. He continues to describe how he worked on a case with the mentor suing the city of Tucson and the police over the harassment of homeless people, and how that had a significant influence on the early development of his career. Although this lawyer was already involved in the NLG on his own, he argues that his involvement was strengthened as this mentor gave him "more responsibility" and served as a role model for activism.

In addition to promoting involvement in activist lawyering through creating network ties, this particular mentor also had a more ideological influence as well:

[He] would give me books to read and suggest reading. I think that reading is real key for left people...you learn about the history of not only the political struggle but also political lawyers. I mean, I was born in 1961, so whereas a lot of people were politically active in the 60s, I was a child. I consider myself to be like a newer generation of the people's lawyer, progressive lawyer. [Can you

remember some of the things he told you to read?] A great book about the 60s. Kirkpatrick Sales wrote that book. I remember he suggested I read Trotsky on the Russian Revolution. Now I'm reading about left political movements. I read left theory on Marx and I did a little studying on Lenin last night. A biography of Che Guevara has to be, as you can see [points to poster of Che], is a particular favorite of mine [grins]. As a matter of fact, my son's middle name is Che.

He continues to describe the suggestions made by his mentor about readings, and that these are things he still reads today. This lawyer highlights the importance of understanding "the history of...the political struggle but also political lawyers." This history is one part of an activist subculture, which includes links between activists, a repertoire for action, and an activist ideology or worldview that serves as the context for (and source of) collective action frames (see Snow and Benford 1988 on "resonant" frames).

Several of the core activist lawyers and the marginally activist lawyers talked about the importance of mentors in opening their eyes to social justice. The following two quotes illustrate a change in perspective that these lawyers attribute to contact with certain individuals:

Yeah. The clinic director, actually was a mentor. He had been doing Legal Services for years and years, so he also

approached it from a social justice perspective and also the power of the attorney to create change. (others?) In Tucson, the woman who started this clinic was a very important mentor. Again, she just approached it from a social justice perspective. What it does is just feeds the person's passion and your approach to it. She was Legal Aid, became an adjunct professor.

The fact that this attorney can think of just two individuals who taught her to approach law from a "social justice perspective" indicates the rarity of this perspective among other potential lawyer mentors. While it is not unusual to recognize the role of law in social change, it was more unusual for this lawyer to come across individuals who encouraged her to see "the power of the attorney to create change".

A second lawyer described mentors in the same way:

And I think looking up to these people, and people who had been doing it for many years. They were really anchored. They were older people and were anchored into it, and...I was in my mid-20s. Was like, "wow". And when I did the JVC (Jesuit Volunteer Corps), it pushed me from "I want to help" ...and by the time I got to the House of Ruth, working with these really radical nuns who were

just full of energy and... Their philosophy was give yourself up on a daily basis. Wasn't just 'we're gonna go to this protest today'. I mean, how they ran that shelter, with the respect that they showed every single individual in that shelter was just profound. And because we were anchored in "we're here to create change, so let's do it on a daily basis".

The first few lines indicate how these mentors were serving as role models of commitment and dedication to a career of activism because they were "doing it for many years" and were really "anchored". Again, this shows how mentors serve to pull someone into an established activist community or subculture. Next, the lawyer describes the "philosophy...[of how to] create change...on a daily basis". The example that these nuns were setting was that activism is not just an occasional action that took you out of your everyday life, such as going "to a protest". Rather, activism defined everyday life.

A number of activist lawyers mentioned their parents when I asked about mentors, even though I distinguished between parents and mentors in the interview. The two may not be conceptually different in every case. One described how his parents "just really set that example of giving back to the community" and another described the "moral values" of her family to be important in setting the groundwork for her future

activism. More specifically, the family was an important first exposure to activism for one core activist:

My parents have always been involved in helping people-- especially my mom in politics... We had the kind of dinner table where you always talked about politics and what's going on, and my mom's now on city council... [She was] always on Mothers for Peace, and I marched in the rodeo parade at age 8 with one of those signs that says "war is not healthy for children and other living things". [There were] Common Cause meetings at the house... always exposed to what's going on in the community and politics.

Her mother was an example for participation in politics, both institutional and "extra-institutional". From a very young age, this lawyer was exposed to a range of activist issues, organizations, and individuals, and she may have learned that activism was part of everyday life ("dinner table"). She goes on to describe how her parents' emphasis on helping others and how "being Jewish" increased her identification with specific causes:

And just the moral values that you should help people.

And, learning about the Holocaust—and being Jewish, sort of—not really practice—but seeing the films, and just

identifying completely with the little girls. Learning about Anne Frank, people who've died. And at the same time, it was that, and exposure to what was going on in Central America, and linking those two things was totally obvious. And the Sanctuary Movement going on, and learning about that, realizing these people are in the position that "righteous gentiles" were in at that time.

Not all of the activist lawyers had a background like this, but for those who did, their parents were generally described as "involved" or "aware". But none of them characterized their parents, or family members, as activists or direct mentors into their own activism. It was more that the family may have been a place where "the seed was planted" or morals were learned. Another core activist claimed that part of his involvement was due to "the model set by my father".

One of the lawyers who is less activist (mainly due to his recent move to the community) and runs one of the clinic programs at the law school described mentoring a bit differently. He discussed important teachers that he had and how they had an important effect on him. This lawyer is primarily a teacher and talked a bit about wanting to write and publish more academically. Because of his academic interests, it was not surprising that he would describe teachers as role models and important source of information about his career as an academic. However, in addition to an emphasis on

teaching, this lawyer talked about “the guru” (one of the three core activist lawyers) as having a profound influence on him in the two years since he’s lived here.

He is just a great human being. I’ve been here for just, not quite two years, so I’m not doing much yet. But he’s been terrific, he’s so involved and just someone to really be admired. His work, you know, just shows you what can be done. He does so much, and it just inspires you.

The word “inspires” comes up again, here to characterize the example set by a core activist who is now taking on the role of mentor to other activist lawyers. Mentors are someone to emulate, and this can include the mentor’s career and activist path. As someone at the core of the activist community, this lawyer can pull others in by showing them the opportunities and techniques for activism (“shows you what can be done”).

### **3.3.2 Ties to Other Activists**

It is important to remember that mentors are not just teachers, but they are important connections into communities and subcultures of activism, both lawyer and non-lawyer. So, the mentors described above should also be viewed in terms of network ties. Network ties to other activists help pull someone into activism; countervailing ties to

non-activists will pull someone away from activism. What is often ignored in the analysis of lawyers is the impact of ties to alternative individuals and lawyers. While it is possible that attitudes change during law school, thus making a student "unavailable" for participation in an activist lawyering career, it is more probable that a stronger influence is one's ties to certain kinds of individuals.

One activist lawyer described how coming into contact with certain people makes it harder to sustain the goals of a public interest or activist career:

I think unfortunately a lot of people go to law school with very high ideals. Like the public interest students come in—they've seen an injustice, or experienced it, or want to be part of social change. They go to law school and they meet all these conservatives with what I would call "frat boy" mentality. Just this unbelievable narrow-minded thinking, and it really burns them out. And people during law school, a lot of my friends during law school, thought I can't handle this, and how am I gonna make it in law when the majority of the lawyers are of this mindset—so conservative and narrow-minded, and so forth.

This statement about running into those with a "frat boy" mentality and "narrow-minded thinking" was typical of many that felt frustrated by the dominant character of law

students. She emphasizes how many, when faced with these students whose politics are not about remedying some injustice, then feel pressured because they must bear a greater burden of what they feel is a responsibility. This "burden" can result in burnout and turning away from activist lawyering:

And so they get very discouraged in law school, and law school becomes a burden. And so, unfortunately, I think that's the beginning of the burnout. Burnout starts not when they graduate, but when they first got there their very first year. I think that actually they're doing it much longer than they realize, and if they don't take care of themselves, they're gonna quit.

The last sentence in that quote again highlights the burden for the individual as "they [must] take care of themselves". There may not be the social support available for this kind of lawyering as there is for the more traditional path.

She goes on to explain her own immunity to these influences:

But...when I was in law school, I was kind of immune to the whole "frat boy" mentality. That's them, they're just these young puppies who are doing their, like, thing. Whatever. But a lot of my friends were really discouraged

by it. It unfortunately affected them. (partly because of your work experience/commitment?). I think my age. My age. I went to law school when I was 30, and most people go in their 20s. (not more committed). No. I also had been out of school for a while, and so it was fun to be back, even though law school was filled with games and weird professors and stuff like that...preparing us for things we're gonna need to know. I think people get burned out starting in law school... But a lot of my friends who were into public interest law felt discouraged that way, too. Why does it have to be this way? Why does it have to be filled with the Socratic game?

She describes how her age and her life experiences allowed her to view the others as "young puppies who are doing their thing"--she is looking down on them as almost childish and as if they don't know any better. By trivializing the mentality of the others, she was able to distance herself from much of "the game" that goes on in school.

Perhaps more important than her age and prior experiences acting to buffer her from these influences, she also describes the ties to other law students who were "alternative" like her, and how this helped encourage and support her entrance into activist lawyering:

I was really lucky because my particular class in law school, there just seemed to be a lot of us who were interested in public interest. And the year before us, and the year after not so much either. It was luck of the draw that I was in a class where we were loud (laughs) and numerous. And we would talk about it...I didn't take a particular area and say this is where I'm going to focus in on. When I would interview for jobs I'd say, "look, it's all connected, so I can't choose one.

Using the term "lucky" indicates that it is not as likely to come across other interested in public interest law, and that her class was unusual because there was a disproportionate number of "others" to support this alternative lawyering. One can imagine that without ties to other law students with these interests, a student would either have to find these ties (and supports) outside of law school, or face alone the pressures of the countervailing ties to the more traditional law students.

### **3.3.3 Organizations as Source of Activism**

Like other studies of activists, the core activist lawyers here belonged to more political organizations around the time of law school. Some had heavy involvement before law school (see next section on prior activism), while others became more politically aware and involved while in law school. The more marginal activist lawyers

had fewer political organizational ties. Participation in a traditional legal organization (like law review) would not prevent one's activism (and was more typical of the less activist lawyers), but other more alternative ties were usually more salient and integral to the entrance into activist lawyering. Membership or ties to a non-legal activist organization or political organization seems to be strongly connected to whether one becomes a core activist lawyer. And, the core activist lawyers were also more likely to participate in a range of activist causes and organizations because they understood how "they were all connected to one larger issue". While some of the participation in organizations depends on the sociopolitical context and what is available to them, here are some typical issues that activist lawyers mentioned: housing, poverty, and homelessness, women's rights, border issues, environmental issues. The following is a typical example of the multiple ties to organizations of activist lawyers:

[I was] involved in Women's Law Association as well. I was involved outside of law school in an activist group around Central American issues and solidarity with the Nicaraguan ...and against some of the atrocities in El Salvador. ...I can't remember if there was a public interest group or not in the law school that was separate from the NLG, but I was very active in the NLG during that whole time period. I did internships my first summer. The national conference of NLG occurred in (her state) at some

point in law school and I was one of the coordinators for the conference. I believe that I was active in trying to get law students paired up with lawyers doing progressive things and those kinds of mentoring or internship situations...I had a large social network of people not associated with law school.

Not only was this activist lawyer involved in an alternative legal organization such as the NLG, but also she had ties to the broader community of activists through her involvement in Central American issues. Like other activist lawyers, she describes her involvement in relation to "what was going on at the time", in this case "the atrocities in El Salvador" and "the conference". The ties to other activists and other activist lawyers make it easier for these individuals to be aware of activist causes and opportunities, as well as to understand the connections between the range of causes and their work as lawyers.

### **3.3.4 Internships and Early Work Experiences: The Burden of Knowing**

Several of the activist lawyers in this study are involved in the clinical programs at the Arizona College of Law. They have their own experiences with clinics, as well as years of contact with students who relate their own experiences during the clinics. Of course there are many students who work in the clinics and realize it is not for them. Further research on students in the clinics over time would help illustrate the reasons why

some students leave public interest, while others are hooked. Typical of those that go on to become core activists is the statement that "once aware, once involved, it is hard to see things otherwise" in the profession and in society.

One core activist lawyer explains how the clinic is often the one alternative place during law school where students are exposed to progressive lawyering:

But usually, people who do public interest law—you do it, and you're hooked. You become addicted to it. You can't give it up. You give it up, and you're like "whoa, this is boring". Whatever else you're doing is boring. You want to go back. You're on the edge. And then there's that thing called "the burden of knowing". Once you know, you can't un-know. Once you know what's going on out there, you can't all the sudden say "never mind. I'm taking my Visa card and I'm outta here".

This was a typical response of core activist lawyers. Many described the feeling of really making a difference and being challenged because "people's lives or basic rights are at stake". The lawyer's quote above indicates how other work is "boring", which others described as due to the "lack of connection to the 'real' issues facing the world". Clinical experiences might be the first time an individual becomes aware politically, but even for those who are aware prior to the clinical, they can be further politicized by the work they

do. The "burden of knowing" describes the rationale that many provided for their willingness to "be poor" even though more lucrative legal positions were available. By recognizing and identifying with the issues facing their disadvantaged clients, these lawyers are able to distance themselves from the rewards of the profession and define their work as "truly helping others".

This same lawyer acknowledged that the motivations for taking clinical work in law school and the experiences of each student would vary. But, she is certain that all students are "affected by what they learn here", even if they don't choose the career in this work.

But I've also seen, especially here, now being on the clinic side, and watching students go through, some really interesting changes. The students that take our clinic take it mainly because they want in-court experience. They want practical experience. And many of them are afraid of the issue. They're like "oh no, the clients are going to be emotional..." Once they get into it, they realize every client is upset, whether it's domestic violence or whatever. I've seen students who've come in with a conservative mindset or misunderstanding, and leave with a better understanding of not just this issue, but of the entire court system. And there's pros and cons to that. Because I think the court system is not a quick fix for anything, and I was telling

students this past year that justice is not the inevitable outcome of our court system. [You] really need to kick, fight, and scream to get it. For students, a clinical experience can open their eyes to the injustices within the system itself, and then encourage them to do something about it.

It is not her mission to persuade others to join her in activist lawyering, but she does argue that "a good number" can never go back because the clinical experience just changes them. The awareness of the injustices of the system coincides with broader activist ideals of system reform. Here, the clinical programs appear to be an important link into the frames and subcultural understandings of the activist community.

Other lawyers did not emphasize clinicals and law school as much as their first jobs during summers and out of law school as key in setting them on the path to activist lawyering. Here is one core activist's story:

During law school I was involved in all types of progressive legal groups. I was a member of the NLG. And my first summer in law school. I did an internship in the national office of the NLG in New York. It was clear that what I wanted to do in law would be something that would affect people's lives in a positive way and use the law as a tool for positive systems change. During law school....my second year I clerked for a law firm that was very active in representing Indian tribes on issues of Indian sovereignty.... After law school, my first job was at the Legal Aid Society of (city)...a little less than a year, and then I moved to AZ... Then I worked at Legal Aid as a staff attorney for 2 years. I then moved to Tucson where I worked for a private law firm and at that law firm I did

plaintiff's personal injury cases, some medical malpractice plaintiff's employment discrimination, as well as odd cases people who bought houses that had defects and the like—consumer type cases. I did that for approximately 6 years. At that point I felt that I didn't really want to be in private practice. I really wanted to be working more in the public interest area. Although I did feel that my private practice was representing persons for the most part who were individuals fighting larger battles. There was a position open at that point and time at the Arizona Public Law Center, which I took. In 1995 we split off from the APLC and I became Director of this organization (which specializes in one kind of public interest law).

Not all of the activist lawyers involved themselves in such a variety of work experiences, but all had the following in common: (1) after each year in law school, they had summer experiences in public interest law; (2) they considered or accepted a position with a Legal Aid organization; and (3) they had early involvement in a public interest law center. All of these experiences provide a template for how activist lawyers can do what they do, as well as provide contacts for these lawyers for their own entrance into activism.

### **3.3.5 Prior Activism**

Comparable to involvement in public interest work experiences, prior activism was a way for activist lawyers to "get their feet wet" and try it out. Before entering into risky or potentially costly activist careers, many will start with smaller actions that are easier, not in conflict with other roles and identities, and relatively risk-free (Wiltfang and McAdam 1991). Early experiences with activism are a common element in the path to careers in activism. For these activist lawyers, the same is true. In particular, the core

activist lawyers were most likely to have prior experience with activism before entering into activism as a lawyer.

One activist described her involvement in various causes for many years before she went to law school and how this influenced her activist lawyering in the future:

I think, I mean I really was working for about 8 years on the homelessness issue, and most of that was women, and I think I just became more and more interested in women's issues. When I worked at Skid Row, it was mostly male population. It was really, really sad when we would see women in Skid Row because it was not a good place. And just to survive, they had to hook up with a guy, a really dysfunctional situation...So, during law school I was still working on homelessness, but more interested in women's issues. And when I moved here, and started talking to people, the big issue was "my, God, there's no program for victims of domestic violence". So when I opened the law office, I knew that I wanted to do public interest, something with women's issues, and as I began talking to people I heard again, and again, and again, "we need something for victims of domestic violence". I said, "great".

For this lawyer, coming into contact directly with the issues facing homeless women magnified her interest in helping women. These experiences also put her in a position to define the problem and know what needed to be done. She is pointing out the context underlying the process of framing for a particular issue (either domestic violence, or women homeless).

Another described her involvement in women's issues. She is no longer involved in women's issues on a regular basis, but she did mention how she always "helps" when there is a rally on abortion rights; she lobbies and protests for that issue. Her earlier activism does not directly impact her work as an activist lawyer in that she is involved in litigating issues other than women's issues. However, her prior activism is significant for her entrance into an activist subculture:

[I was] interested in progressive issues, probably from the time I was in high school and at college at (her school) and was very involved in the women's movement there during the mid-70s. I graduated college in '77, then I spent a couple years—one working at an alternative newspaper in Albuquerque which was presenting progressive issues and was concerned with social change. I also worked at another newspaper during that time (weekly paper). I also was very involved with issues regarding the Central American solidarity movement, and trying to get women into non-traditional jobs and the like.

Here, the early work experiences tied this individual to a progressive subculture in one city. The "alternative newspaper" linked her ideologically and structurally to activists in the community.

Another described how she didn't do that much at an early age, but that she was always part of little things. Also typical of the activist lawyers is that they always find a way to be involved, usually linking early activism to contact with liberal others:

Although I grew up in what was a very conservative area—  
Oklahoma City in the Bible Belt and traditionally  
Republican and conservative--my family was not. They  
were fairly liberal. I don't think I was involved in that  
much organized things in high school. When I hear of  
people who lived in large cities or where there was a  
significant anti-war movement, there was nothing like that  
where I grew up. But on kind of a smaller level, I can  
remember my group of friends and I, we didn't stand up for  
the pledge of allegiance because of our protest for the  
Vietnam War. Things like that.

Despite the apparent lack of movement opportunity in her area, this individual describes her awareness of the larger movement community and how she contributed. Though the

anti-war movement was not in her community, there still were ways to be activist like refusing to stand up for the pledge of allegiance to the American flag.

### **3.4 A Note on Occupational Opportunity**

In popular opinion, people often argue that the sixties are over, and that there just are not the same opportunities for activism today because there are not as many broad social movements (see Loeb 1994 for a challenge to this belief). For lawyers, especially if they are acting as lawyer activists (as opposed to ordinary activists), there are other issues of opportunity that arise. Most importantly, opportunity for lawyers is really about opportunity for employment. The number of positions in public interest settings or social movement organizations is quite small relative to other areas of the legal profession. The director of the National Association for Public Interest Law (NAPIL) argued that the small numbers of students who enter this area is due to lack of jobs and financial constraints, *not lack of interest* (U.S. News & World Report; March 29, 1999) While the low numbers have to do with a range of complex issues (including politics and public support), the scarcity of opportunity is usually linked to scarcity of resources or funding for a position. There are some “objective” measures of opportunity, like the percentages of lawyers in these positions over time, or the amount of money allocated to the Legal Services Corporation over time. Though fluctuations are apparent, indicating higher funding and percentages of lawyers in the 1970s, this data does not provide a sense of the lawyer’s beliefs about opportunity. It is perhaps just as important to hear the lawyer’s

accounts about how they perceive(d) the general atmosphere surrounding their work and their activism.

Many of the lawyers in this study talked about the limited opportunities for public interest law as a career. While most talked about the limited funding for such positions, there were some differences. The core activist lawyers were most “political” in their responses: typically they were vehemently anti-Reagan and criticized the Republican budget cuts to funding the Legal Services Corporation. Most of the activist lawyers “educated me” about the problems faced by Legal Services—primarily the limitations placed on class-action litigation. One activist lawyer who had been around since the sixties remarked:

I was involved in Legal Services from the very beginning, and clearly it was much more of—and again because people were coming out of the sixties—it was much more an activist group of people in the late sixties and seventies. Reagan really was the start of the deathblow for Legal Services, even though it’s still around and I’m involved with it, and so on. It’s not dead or anything, but there’s been a lot of restrictions, a lot of cutbacks and money. Even though Clinton is fairly supportive... When I was director of a Legal Services program, Hillary was president of the LSC in the 1970s appointed by Carter. There’s no doubt the conservative Congress, the beginning of Reagan, the Legal Services (programs) in this country has really taken its blows. Just the Legal Services organization here in Southern Arizona has lost over a million dollars. It’s been difficult. Money was much greater when I was director. The activism I think was much more there. We didn’t have restrictions to do the kind of class-action that we are now restricted from doing. We were suing the government. We were suing big corporations. We were doing outreach, organizing poor people, doing interesting stuff. Some of it in the rules, some of it probably skating the rules at times. So, the Legal Services [Corporation] is smaller and much less active... There’s still interesting and

**important issues that activist lawyers are involved in...(but) activism on the left is probably not as great. I mean the left has taken more of the hits.**

**This lawyer is putting activist lawyering in the context of the larger political and financial structure. Many characterized the cuts to Legal Services (and therefore to the smaller organizations that it funded) as an intentional action to undermine the work being done to benefit those disadvantaged populations.**

**Most lawyers interviewed held a generally negative view of the limitations placed on the Legal Services Corporation and any program that received funding from the LSC. Republicans were blamed. Reagan in particular. However, this financial barrier (which created a structural barrier in its resulting lack of job opportunities) may have been more of an impetus to activism, rather than an impediment. One lawyer, who was unavailable to interview for this study, was described by all others as “the one who does all the class-action suits”, was forced to open a private firm just to do class-action work. Others explained how he left Legal Services once the restrictions on class-action litigation were put in place, founding a firm to continue the work specializing in class-action work for the poor.**

**Core activists were also most likely to account for the path to activist lawyering by getting involved politically outside of their profession. For example, one described his work before law school:**

**I considered myself probably at the time to be a Democrat, considered myself to be generally liberal...I started looking for things to get involved with. Started out doing some**

work for the ACLU, just, you know, stumbled into their office one day and started doing some volunteer work there. I started getting involved with local Democratic politics. I started doing other local things, getting newsletters from organizations.

All of the lawyers who are core activists (or were more activist earlier in their careers) had stories like this—they were involving themselves in politics before law school. It is important to note that these are the lawyers' own perceptions of their entrance into activism. Clearly, their current activism, and the salience of an activist identity, may alter the way they see their path to activism. Whether other, less activist, lawyers, also were involved politically may not be as relevant as the accounts they gave. Activist lawyers identify this early political involvement as a key part of their entrance into activist lawyering; less-activist lawyers do not have this in their past, or do not consider it significant enough to be worth mentioning.

What is important in terms of political opportunity structure, is that these perceptions about opportunity may be just as relevant as actual structural opportunity (Snow and Benford 1988; 1992). The ways in which opportunities are defined by the relevant populations are key to whether that population will mobilize and take action. In the case of lawyers, if they define the occupational structure to be "closed" in terms of opportunities for activist lawyering, it becomes harder for them to "mobilize" as activist lawyers. The core activist lawyers became active during different political eras, and

many of the same era were differently affected by the same political opportunity structure. Some of this is due to the more micro-structural factors mentioned earlier such as network ties and mentors which also play a key role in framing opportunities. One core activist lawyer describes how "the need for activism" (how he defined opportunity) is always there, even if the issues may change:

It pisses me off that concept that activism in this country began and ended in the sixties. People say like "sixties are over"... They want us to believe that activism was some sort of aberration of the sixties. But look at the 30's...the Communist Party and the Old Left which was like radical to the max. I mean they were ready for the revolution... Now in the nineties we have this welfare reform, and the Republican Congress is just nuts! Welfare reform, take away housing benefits, taking away every sort of public benefit. What they don't understand, if they would read their history, they would see that what quelled the movements in the thirties and in the sixties was government programs because you give people a little bit and it quiets them down. The nineties, you're removing the safety net, and when people hit the ground, man, they're gonna be madder than shit. And they're gonna get up.

Clearly this lawyer is able to define the variety of issues relevant today, even if the widespread support for activism is less apparent than in the sixties. This particular core activist was interesting to me because he became an activist lawyer during the eighties, a time that is more well-known for its lack of protest activity (“doldrums” or downturn in a protest cycle), than for opportunities for activism. In addition, there were fewer and fewer “new jobs” in public interest law, most of which were created and funded in the 1970s. I asked him about becoming active during a time of apparent “lack of opportunity”, both ideologically and structurally:

You know what’s interesting? I tell people in the Guild who are from the sixties and are ‘Oh, the sixties’ this-and-that (making fun of them). I said, the thing about it is that it’s almost easy to do it at the time, even though, there were so many people involved in it. I said, ‘you should have come of age in the eighties and tried to be a people’s lawyer in the eighties.’ You weren’t looked upon just as an aberration; you were looked upon as a freak, as a traitor, as a whatever to your family, to your country, whatever. You were looked upon as a freak! To pick up a protest sign at the law school in the eighties, when I was in law school, we had a lot of that going on. People looked at us like ‘what the fuck are you doing? That shit is over. That shit is done.’ I think the eighties was a hard time. Because, you

know, the age of conspicuous consumption, you know, Reagan and Bush. BMWs, man. That was the norm... They looked upon you as pretty weird... to come out of law school and say 'I'm not really interested in this.' I mean, granted, I need to pay my rent, but I'm not getting into the law to see how much money I can make.

He describes the lack of support by the statements about being seen "as a traitor" and how people thought activism was out of place in the eighties because of the so-called "successful" economy associated with yuppies, Reaganomics, and conspicuous consumption--which this lawyer recognized as simply hiding the ever-present system inequalities. He continued:

The eighties was a tough time to come out and... I always thought I would go and work for a Legal Aid office. They were so impacted in the eighties (by budget cuts) that I came out and they were like, 'oh, wait a minute.' Not only was there not a lot of jobs, but they were a little skitty of the radicals coming in and saying "I just wanna work with poor people". That's all I ever wanted to do. "[they'd say] Wait a minute, what are you talking about? We've got a hostile administration." I think it was an unusual time... the pressure to conform is intense.

Here, the lawyer was talking about how there was little support for activism by lawyers (or law students), and at the same time, how there were few job opportunities. Even those in the public interest arena were not as strongly supportive of the activism as indicated by the statement about being "skitty". At the same time, he clearly perceived a need for activism, and throughout the interview characterized the eighties and Reagan as horrible, and key to his development politically. In some sense, the Republican control of politics in the eighties was a clear target of the problem for this lawyer. He had a clear opponent, and viewed the "lack of opportunity" as exactly the opposite: *it was the reason for, or source of, activism.*

The previous statement by the activist lawyer alludes to another theme: commitment. Several of the activist lawyers described how the sixties, with its broad social movements, made it easy for anyone to be an activist, including a lawyer. The commitment to a cause, not denying that it was potentially risky or costly, was relatively easy in terms of knowing the issues, contact with protest activities, national support, etc. The activist lawyers described the time since the sixties differently—that the absence of broad social movements and job opportunities in activism made being an activist lawyer harder in that it took more individual effort:

There seems to be less of the (sweeping her arms) broad stuff that was going on in the sixties, the whole civil rights movement. It seems like it takes more energy for just the

normal Joe Shmoe lawyer to get involved. Things are not right there (to join). It's not this big social movement or social justice movements you can hook into...that's happening and you're just jumping on board. Now, there's organizations and so forth, but they all take time and effort...and there's been funding cuts, not just to Legal Aid, but even for not-for-profit organizations.

The people who became activist lawyers in these later decades, while not necessarily more committed to the causes they represent, perhaps had to work harder to maintain their commitment in the face of obstacles. Some of these barriers and tensions will be elaborated in the next chapter.

Another core activist described how legal activism typically follows the pattern of general activism, but that the sixties was not the end for either:

I don't buy that activism ended in the sixties... When I was at this law school dinner where I got a little plaque after being here 25 years... I remember when I got up and said something about, 'Geez. It doesn't seem like 25 years to me. It still seems like the sixties to me.' That's when I looked like a hippie. So, a lot of people around here think I never left the sixties. But, if you want to be active, and

want to be an *activ-ist*, there's lot's of important issues that arose since the sixties. I mean, the women's movement clearly is a very important one that mobilized, particularly women, but a lot of other people. Diversity issues, that continued, particularly with Hispanic immigration stuff. Homeless, was something we never knew of in the sixties—though it was there. The rights of the disabled. Yeah, the sixties was a fun and interesting part of my life, but I found interesting active times since then as well.

This core activist lawyer demonstrates the common view that activism is defined by "the need" and not just "the opportunity". By defining their work as activists more ideologically in terms of issues, they redefine opportunity to be more of a constant than a variable that is dependent on political and financial constraints or opportunities. Though the tone is less apparent here, the previous few quotes from core activists also reflected annoyance at this question about the sixties compared to the nineties or other time periods. This was a question they had heard before, and, to them, it was as if they were continually pressed to justify their existence outside of the activist 1960s.

However, many others coming of age during the eighties did not interpret things in the same way. Here, an activist lawyer describes how many others were "sheltered" from the traditions of activism:

Historically, I think we have a long tradition of radical activism in this country that I think continues, despite the fucking brutal...I mean I cuss a lot...the brutal eighties. I became political in the eighties, which is something I've been bringing up at the Guild. And we have to deal with a whole group of people that came of age in the eighties. I met law students who are Guild members who believe in what we're doing, but they're all like (nervous voice) 'Protest? Aaah, protest?!' It's so foreign to them because the 1980s was a brutal damn time to come of age under Reagan and Bush. It was horrible.

Again, the role of activist subcultures in producing future activism becomes clear. If the political opportunity structure restricts certain activities or issues and movements demobilize or are less active, then future generations of activists may not develop as readily. Here, the eighties are described as a time in which activism was restricted in some ways. However, activist communities can retain a level of organization through ties that go beyond the issue of the moment, and lawyers may be one such "abeyance structure" (Taylor 1989).

Those that are marginally activist were less critical of Republican politics and talked with less passion about the need for activist lawyering or activism in general. Most of the core activist lawyers talked "indifferently" about a lack of opportunity and

how they “always managed to find something”; it was as if they ignored any apparent lack of opportunity and focused more on the need for activist work. A typical statement was “Well, yeah, I didn’t really want to be in private practice, and there was this positions open that I took.” The core activist lawyers also were typically the same as those who created a job for themselves by founding an organization or office, describing opportunity more in terms of “community need”.

To summarize the structural factors relating to activist lawyering, I will reiterate some differences between core and marginal activist lawyers. Predominant among core activists were people with family support, politically active mentors, links to activist networks or subcultures, and early work experiences in public interest law either through clinical work in law school or summer work. All of these factors served to foster further ties into the community of lawyers and activists that supported the activist lawyer role. In additions, these structural links set up the process of becoming a core activist lawyer by providing specific information about opportunities (and the need) for further activism as lawyers. The structural supports define the worldview of these activists so that they cannot turn back to a more traditional path in the legal profession. The system-challenging views and the recognition of the needs of disadvantaged peoples are continually reinforced and made salient in these networks.

Marginal activists share some of these same structural characteristics, but the process to becoming an activist lawyer was not as consistently tied into the activist community. So, these are individuals who did have enough contacts and supports to choose the path to activist lawyering, but not of the same quantity or quality as the core

activists. In essence, the degree of activism varies because of the variation in degree of ties to activism. It is possible, then, that there is "room" for more traditional ties and influences to impact them as lawyers.

### **3.5 Lawyers as Professionals**

The social movement literature on micromobilization of professionals must be modified to challenge the assumption that lawyers who are activist lawyers must be mobilized as professionals. The data here suggest that the answer to the question is: sometimes yes, sometimes no. Under certain circumstances, and for certain kinds of activist lawyers, they will be mobilized as ordinary activists, in much the same way as other activists. The rich literature on micromobilization processes absolutely applies to core activists and marginal activists. This literature describes the complex combination of structural and individual factors that must be in place to produce activism. The data here reinforce that research by emphasizing how mentors, ties to activists and activist lawyers, and organizational membership all play a role. More specifically, the kind of mentor is important: more activist mentors produce more activist lawyers. Ties to activists and activist lawyers help support activism; whereas, ties to more traditional law students, lawyers, organizations, and work experiences all pull someone away from these communities and opportunities for activism.

The ways in which activist lawyers are mobilized appear to be relevant to how they then act in movements. If mobilized like ordinary activists, and tied into activist subcultures, the activist lawyer will act most like other activists and view lawyering as "a

skill” brought to the movement just like others bring their skills. Lawyers without these ties, and who are mobilized as lawyers (sought out by a movement, or the lawyer involves himself or herself as a lawyer), will likely act primarily according to their professional role. Because these lawyers do not have multiple ties into the movement through a broader activist subculture, they are likely to be more narrow in their thinking, and movements may fall into the trap that critics pose: deradicalization, legalization, or diverted goals and resources.

## **CHAPTER 4 ROLE AND IDENTITY AMONG ACTIVIST LAWYERS**

Identity is a concern for scholars of social movements, in terms of the personal or individual identities of activists or potential activists, and how these become aligned with organizational (or SMO) or other collective identities. Snow and McAdam (1998) outline this issue of “identity correspondence” between individual and movement identities. Much of the emphasis on identity in social movements centers on the micromobilization process, or how identity factors into the conditions under which individuals and movements are linked, thus encouraging activism. Recent movement scholars have challenged an overly deterministic (or structural) view of identity and argued for a more interactionist (or social constructionist) understanding of identity and social movements (Melucci 1989; 1996; Hunt, Benford, and Snow 1994; Hunt and Benford 1994; Snow and McAdam 1998). Rather than viewing identity as another element of “preconditions” that precipitate activism, the current emphasis is on the *process of identity construction*, which influences immediate and future micromobilization and actions once mobilized. Here, personal and collective identities are products of interaction: “they are constructed, reinforced, and transformed by the interactions between and among movement participants and outsiders” (Hunt and Benford 1994: 489). While organizational and network affiliations are not deterministic of identities, these ties and structures are the foundation and “guidelines” for interaction. Individuals draw on their particular structural roles or identities, yet they retain a degree of agency to construct and align their personal identities with those of the organization or

other collectivities, and they construct their own personal variations of the meaning and presentation of such identities.

The possible variation in salience and centrality of identities is also a concern of the social constructionists. Snow and McAdam (1998) point out that the link between individual and collective identities cannot be assumed just because someone holds a certain structural role (e.g. membership in a movement organization does not tell us about variation in identity salience or commitment across individual members). Individuals can participate in social movements or SMOs without adopting the group's identity or ideology. Snow and McAdam caution against inferring identity correspondence between individual and collective identities based solely on structure (membership, participation, affiliation) (1998: 3).

The constructionist approach to identity and social movements moves away from the deterministic assumptions and arguments that ignore the ongoing processes by which individuals and movements negotiate, interpret, construct, and maintain activist identities. Although previous work in this area has dealt with processes through which collective identities are created and maintained (Taylor and Whittier 1992), there is a need for outlining the conditions under which personal and collective identities are *aligned* (Snow and McAdam 1998). Rather than favoring interaction over structure, most scholars emphasize the importance of both sets of variables. Knowing something about organizational membership, networks, occupational or professional roles, and other structural variables provides an important foundation for the understanding of movement identities (and their alignment with individual identities). However, richer data on the

processes of interaction, the identity work and identity talk by movements and activists, and the salience of various identities provides information about construction that goes on within those structures (thus accounting for variation).

The data here on activist lawyers provides one illustration of the process of identity correspondence, and I use the concepts of identity work defined by Snow and McAdam (1998: 8-17). I focus on the organizational or professional roles and identities and how these correspond with activist identities. I use the more general “activist identity” because this study does not focus on one movement or a particular activist identity such as “feminist”. Certainly the salience of a particular activist (or other) identity will link that person to particular movements and not others. For example, a salient environmentalist identity might link the person to an environmental movement more so than a feminist movement.

Here, I started at a broader level because of the level of analysis. My data consists of interviews of lawyers and their involvement across a range of organizations and movements. I wanted to explore whether lawyers “specialized” by being involved in one movement or organization, possibly holding one kind of activist identity more salient, or whether they involved themselves with a range of movements and SMOs? Again, the issue of affiliation with one or multiple organizations does not presume the salience or correspondence of particular activist identities. Rather, this information was a starting point, and later proved to be relevant as a basis for identity work. Also, I wanted to explore whether their professional identity was salient to the degree that it made activist identities incompatible, or was the professional identity “changed” in a way that

made it more compatible with activism? This last question is based on assumptions that the professional role and identity of lawyer carries certain meanings, ideologies, obligations, and ties that might be opposed to those of activists. So, how is it that the correspondence between lawyer and activist identities occurs? Is it that the two converge in some way? Are they really at odds with one another? Are there structural bases for one or the other, or both (in other words, do the profession, the organization, or the network ties support the correspondence of the identities)? Does correspondence occur even when structural “barriers” (i.e. lack of support) exist? The data here cannot answer all of these questions absolutely. However, this study does define the process by which one group of activists faces the potential conflicts and negotiates correspondence between a professional identity, personal identities, and various collective identities.

Understanding identity in the context of interaction allows for the extension of the concept beyond the micromobilization stage. The continual process of shaping and reshaping of individual and collective identities then tells us about the conditions under which individuals may become more or less committed to their activist roles, how they manage potential tensions among their roles and identities (in this case the lawyer and activist identities), and how the meaning of collective and personal identities changes (or does not change) over time. For activists, identities are often constructed and aligned in social movement organizations (SMOs) or more informal networks of activists (Snow and McAdam 1998). For lawyers, the range of SMOs and the informal networks to which they belong are varied, so the identities will also likely vary—again underscoring the importance of unpacking the concept of “professionals” in social movement research.

This chapter simultaneously addresses two concerns about roles and activism by professionals. First, my data on activist lawyers contributes to the study of role and identity in social movements. In this case, a professional identity (lawyer) and a personal identity (activist) come together in various ways. I examine the conditions under which there is correspondence between the two identities and/or roles. I also examine whether the two roles are compatible, whether tensions arise between the professional and activist roles, and what consequences follow from compatibility and tension. I do not assume that correspondence means that the identities blend so that they always occur simultaneously or become one. Though this is possible, I also allow for the possibility that the identities do not occur simultaneously, but that they are “correspondent” in the sense that one can move between the identities easily. If they cannot move between the identities easily, is that an indicator of non-correspondence or conflict? Also, one may hold both identities (activist, lawyer) while performing or acting in just one role (i.e. they may not really be acting in an activist role, yet they self-identify as activists).

Second, the data also serves to unpack the category of professionals, and within that, it unpacks the category of lawyer. Rather than viewing lawyers that also are activists as acting in one way (typically assumed to be according to their professional role), this study explores the degree of involvement in activism by lawyers and the range of roles played. Not only can activist lawyers act in different ways as lawyers in movements; they also can act in ways that have little to do with their professional roles. In additions, not all public interest lawyers share identical characteristics, identities,

**lifestyles, ideologies, etc. The variation within this category of lawyers further illustrates the structural and interactionist sources of identity, salience, and commitment. I present the data to elaborate the conditions under which these varied actions take place.**

**The use of the term “professionals” risks a return to assumptions about “preconditions” of individuals that “cause” their participation in social movements (i.e., the doctor became an activist in the women’s health movement because of her medical background and skills). In addition to the micromobilization assumptions, the emphasis on professional roles or identities limits our understanding of what these activists (who are also professionals) do once involved, in what capacity or role do they act (as professionals? As ordinary activists?), and, perhaps most importantly, the range, variation, and conditions of their behavior (i.e., the doctor in the women’s health movement provides technical knowledge that can be included in other activist’s efforts to formulate strategies and goals for the movement).**

**McCann and Silverstein (1998) discuss the common criticisms about lawyers’ involvement in social movements and try to demonstrate how lawyers do not always create the problems that critics have suggested. Most of the criticisms are based on the assumption that lawyers will “overwhelm movements with this single-minded commitment to litigation as a tool for social change” and that movements often “fall under the spell of legal professionals and their legalistic biases” due to “widespread acceptance of the ‘myth of rights’ and deference to professional expertise in our society”**

(McCann and Silverstein 1998; Rosenberg 1991).<sup>6</sup> Lawyers in movements are thought to have a negative impact on movements for the following reasons, summarized by McCann and Silverstein (1998: 263):

1. Litigation is costly because of its sap on time, energy, and monetary resources
2. Expenditures of resources are inefficient because inherent institutional weaknesses and constraints impede the judiciary's ability to deliver on the promise of promoting reform
3. The legalistic propensities of lawyers tend to directly and indirectly inhibit alternative movement strategies by depleting scarce movement resources and by diverting concerns away from long-term projects such as grass-roots mobilization, alliance building, or more radical tactics such as public protest
4. The inclination of lawyers to frame movement goals in terms of disputes among discrete parties can narrow the range of movement goals as well as undermine broad-based movement organization and alliance building
5. The limited ideological biases of legal professionals, which privilege individual controversies to the detriment of collective struggles and goals, unconsciously narrow lawyers' conceptions of movement ends.
6. Problematic tensions between cause lawyers and their clients often develop as lawyers come to dominate movement efforts

McCann and Silverstein (1998) take a step in the right direction and challenge the above assumptions about, and criticisms of, cause lawyering. Their study of activists in the pay equity movement and the animal rights movement includes an analysis of the role of lawyer and non-lawyer activists, and the relationship between legal and extralegal tactics.

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<sup>6</sup> See Joel Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (New York: Academic Press, 1978); Jack Katz, *Poor People's Lawyers in Transition* (New Brunswick, NJ: Rutgers University Press, 1982); Stuart Scheingold *The Politics of Rights: Lawyers, Public Policy, and Political Change* (New Haven, CT: Yale University Press, 1974) on movement lawyers' tendency toward litigation. See also Gerald S. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: The University of Chicago Press, 1991) on how lawyers often waste the scarce resources of a movement in litigation while ending in nothing more than a hollow victory in court and little substantive change. Rosenberg argues that movement lawyers, by emphasizing court, often steer the movement away from alternative, and perhaps more successful, political actions.

In their research, they suggest four categories of movement lawyers: (1) *Staff activists* work for movement organizations and tend to function as movement leaders and organizers; (2) *staff technicians* work for movement organizations in a more traditional, professional sense of serving clients without much concern for activism; (3) *independent cause lawyers, or hired guns*, work for a fee as special counsel on particular movement cases; (4) *nonpracticing lawyers* who have stepped out of their professional roles to contribute in other ways to the cause—they were formally trained as lawyers but do not use legal credentials in their current role (McCann and Silverstein 1998).

By categorizing lawyers in this way, McCann and Silverstein (1998) address some of the criticisms of cause lawyering. For example, they suggest that the “staff technicians” are characterized by an emphasis on formal counsel and litigation as strategies. “Staff activists” on the other hand were “the most strategically oriented, the most wary about formal legal tactics, and the most connected to activities outside the judicial realm” (1998: 280). Thus, it should not be assumed that lawyers necessarily impact movements in a negative, controlling way, as suggested by scholars of movement professionals (Staggenborg 1988; McCarthy and Zald 1973, 1987).

In contrast to McCann and Silverstein’s (1998) typology of cause lawyers in a particular organizational setting (SMO), I identify **roles** that activist lawyers play, including those in and out of movement organizations. By looking at roles, rather than “types”, I emphasize the more flexible and mutable nature of the work and selves of “activist lawyer”. Though McCann and Silverstein do call these “ideal types”, thus allowing for an imperfect fit of a person to these roles, they limit our understanding of

activist lawyers by ignoring the following: the conditions under which these roles are played, the possibility of simultaneously playing multiple roles or shifting among roles over time, and the potential for conflict between these and other roles within one person or across individuals. While some of the roles do overlap with the types outlined by McCann and Silverstein, this data covers a broader range of behaviors by activist lawyers. In addition, the processual approach allows for an exploration of how the roles played are potentially linked to the ways in which the individual is mobilized.

My data builds on the above findings by further challenging the criticisms about cause lawyering. Rather than assuming that lawyers either act as lawyers or as non-lawyers in their roles, I extend the challenge to the critics by leaving it open, and looking at the lawyers themselves across multiple contexts and multiple movements. It is not just that lawyers may act as staff technicians, but that under various conditions, they may be staff technician, fundraiser, strategist, or simply rank-and file member. All of this role-playing by lawyers depends on organizational constraints, network support (both to constrain and enable), other role demands, and individual identification and ideology. In addition, the ways in which lawyers are mobilized into activism also helps us understand the roles and identities involved in their cause lawyering (and the degree of activism). It is not just that “lawyers are socialized to be ABC” so they act in “XYZ ways”. They, like other activists, come from varied backgrounds and socialization, have a variety of motivations, and can act in a multitude of ways in a movement(s) or SMO(s).

The lawyers in this study characterized their own behavior and roles in movements in numerous ways. Sometimes the lawyers talked generally about what the

role of lawyers “should be” (in society, in politics, or in movements). Other accounts specified behaviors and examples of activism or lawyering, or skills or characteristics of the work or activism. Since most of the previous scholarship on movement lawyers emphasized their tendency to control strategies or take a leadership role, it is important to understand what leadership in a movement might entail. Bernice McNair Barnett (1993), in her study of black women leaders in the civil rights movement, created a useful typology of movement leadership roles and behaviors:

**Leadership activities or roles in Social Movements:**

Articulate/express concerns and needs of followers  
 Define/set goals  
 Provide an ideology justifying action (compare to framing)  
 Formulate tactics and strategies  
 Initiate action  
 Mobilize/persuade followers  
 Raise money  
 Serve as an example to followers and leaders  
 Organize/coordinate action  
 Control group interactions (e.g. conflict)  
 Teach/educate/train followers and leaders  
 Lead or direct action  
 Generate publicity  
 Obtain public sympathy and support

According to the critics of cause lawyering, these “leadership roles” are exactly what lawyers should not be doing because they are viewed as “professionals”, or otherwise as outsiders, who do not share the interests of the movement participants. By taking a leadership role in a movement, lawyers are thought to remove the potential for disruptive and often illegal strategies and channel a movement into costly and time-consuming litigation strategies and institutional goals. These categories or dimensions

of leadership are useful in looking at the work of activist lawyers. In my own research, I wanted to determine how much lawyers actually do these things, as well as determine how much they act in “lawyer” or “legal professional” roles. If a lawyer does not really act as a lawyer, then the challenge to the literature on movement professionals is supported. Finally, I wanted to determine whether, and under what conditions, an activist lawyer might act in movement roles, such as “ordinary activist”, “sympathizer”, “expert”, or some leadership role that was not necessarily linked to being a lawyer. Also, if an activist lawyer engages in a leadership role, how does that role interact with other roles? For example, does the lawyer “take over” as a lawyer, or is it that the “lawyer role” is suppressed in some way, and the activist role takes over? The tensions between the multiple roles of activist lawyers will be further discussed in this chapter.

The following is a list of possible roles and behaviors in movements from the movement literature and coding my interviews with the activist lawyers:

- Leader (organize, strategize)
- Ordinary, rank-and-file activism (protest, demonstrate, write letters)
- Teacher (educate others about the legal issues)
- Advocate (represent protestors who are arrested)
- Spokesperson
- Problem-solver (somewhere between leader and rank-and-file—may help focus issues or frame issues and goals)
- Sympathizer
- Fundraiser

When coding, it was necessary to distinguish when these behaviors were done for the organization and for the movement. For example, a lawyer may be the lead fundraiser and strategist in the organization or work setting, but that lawyer does not necessarily act in that capacity in the movement.

#### **4.1 Lawyers as Activists**

Challenging the assumption that professionals who are also activists act according to their professional role obligations, this data on activist lawyers suggests that being a lawyer sometimes, but not always, is part of their activism. Most of the lawyers interviewed were conscious of the perceptions of others of their profession. In other words, they understand that even if they are not acting as a lawyer, others still might view them as lawyers and react or interact with them according to their own expectations about them as a lawyer (rather than as an ordinary activist). In fact, many were almost amused that others reacted to them as something “more than just another activist”. I made every attempt to ask the lawyers to clarify and elaborate this issue as it arose. A typical statement was “People knew I was a lawyer, but I was not involved as a lawyer”.

The previous chapter demonstrated that many of these activist lawyers are often mobilized as activists, and not necessarily as professionals. This chapter continues that line of reasoning with data that shows that once involved as activists, these lawyers *do not necessarily behave or act as lawyers*. Their behavior in movements, SMOs, and the profession tells us something about the salience of their various identities in various social settings or over time in the same settings. When they do act as lawyers, it is described as “a skill” rather than as a role or identity. For example, a lawyer described her involvement with local movements:

Not so much as a lawyer, though I certainly feel my training  
and experience has given me certain organizational skills, abilities

to logically map out, plan out things, that are not acting as a lawyer, per se, but using some of those skills.

So, law school may not be about professional socialization into particular professional identities or roles. If lawyers emphasize the skills or technical expertise that was learned, and not a professional role, then perhaps we cannot assume there is alignment between the profession and the actual roles or identities held. Lawyers may "pick and choose" the parts that are relevant, rather than assuming a predetermined, or over-socialized, professional role. She then went on to describe how others may see her as a lawyer, and how that can be a concern for the movement in terms of "taking over where you shouldn't be". She elaborates the issue of whether she acts as a lawyer:

I think people [in movements or organizations] tend to see people as a lawyer, and certainly if anybody has any legal questions in a group that isn't all lawyers, they always look to you...I don't think I come across a real kind of lawyer type. Some people do. If you do, it can be an impediment... It's this whole chicken and egg thing. I often in groups take charge or some leadership. Is that because I'm a lawyer, is it because that's my personality, and did I become a lawyer because I tend to be like that? I mean, I don't know.

This appears to be a form of identity work (Snow and Anderson 1987) known as "identity talk" (Hunt and Benford 1994), in which the lawyers resist being cast as lawyers and attempt to downplay that identity in favor of the activist identity or collective identity of the particular movement. The "chicken and egg" dilemma defines "being a lawyer" as less important than some individual characteristic or skill. By downplaying the significance of being a lawyer, the lawyer identity is thus presented to others as secondary to the activist one.

Other core activists described how others might turn to them as a lawyer, for example to help write the by-laws of the organization, but that they do not say, "I'm the lawyer". One argued that "I am not involved as a lawyer. People knew I was a lawyer, but that's like a commodity."

Although not necessarily acting as a lawyer, many characterized their role, or the role of lawyers in a general sense, in movements in terms of "taking the lead". The lawyers described this in a variety of ways, with those core activists differing from the more marginal activist lawyers. Those that are most activist, or were so in the past, described this as potentially harmful. This underlines the assumption in classical social movement research that professionals or elites may deradicalize the movement or can disrupt the movement in some way. Lawyers are not necessarily professionals and elites, but there are also assumptions that they may decrease the "power" in the movements because of their legalizing professional interests. Again, I do not have data about an actual deradicalizing effect—just their sense of whether this occurs. One mentioned the

potential conservatizing influence of legal strategies for social movements, especially in terms of the limits of the law in the 1990s:

It used to be that all kinds of injustices were done, and you could go to the law and say...and have great victory in the federal courts. There's more and more conservatism among the courts, having been passed by Reagan and Bush. So now, the laws are going to be interpreted more likely than not against the poor and against the minorities. The better way to go might be the legislature, or politically. For example, with immigration law, there's only so much you can do because the Constitution has a limited role. Their rights are due process, whatever the Congress says is due. So, it's important that people know who are immigrants...what impact these laws have. 'Cause the laws box you in, and the only thing to do is change the laws.

The first and last few lines indicate the awareness that this lawyer has of how the political context is an opportunity structure, and that the legal outcomes may have impacts for future opportunities for the movement.

One core activist lawyer, who works primarily with immigration causes, described how lawyers could be good or bad for movements:

Well, lawyers can have a special role in social movements. It's a tricky thing. They can do harm or good, it depends. Sometimes the lawsuit takes over and becomes a big drain on energy and then lawsuits...in civil rights, I mean, it can take years and years, and you spend all this money and energy to support the litigation, and then it can divert attention from other things. Or, it can really bring about major change for people, like, it can be a way of getting more attention to a cause. I mean, having lawyers, because of the legitimacy that society lends lawyers, having lawyers involved can perhaps lend legitimacy in the eyes of society to a particular movement.

This was a typical response by the core activist lawyers in that she recognizes the potential significance of lawyers, both positively and negatively, for movements. The first few lines show the potential harm that lawyers and lawsuits can bring by draining the resources and energy of the movement. It is important to note that this is more about the strategy (the lawsuit) than the professional role (as lawyer)--lawsuits are not inevitable. That is her point exactly--that lawyers should know when litigation can harm the larger movement and work to avoid that strategy. On the other hand, lawyers can have a positive influence because of the status associated with their professional role. Lawyers can be powerful because of this professional role, and activist lawyers described how they would "take advantage" of this perception in ways to help the movement. It is

important to remember, though, that the lawyers think in terms of the movement and know that there are times when lawyers should not be involved. Another lawyer furthers this comment that the movement should come first:

Often a lawsuit **kills** activism because you let the lawsuit control. Lawyers can have a role in movements—lawsuits, representing, challenging—but it should be the people first.

Another core activist reinforces these ideas by arguing that activist lawyers have a responsibility to movements or to communities. This quote helps to define some of the role obligations that many core activist lawyers felt:

**YES!** (pointing at me emphatically) Lawyers and community change...They shouldn't...it's wrong when a lawyer takes over. They are not listening to what the community is asking for. It is more about their ego. Strategies, etc., are important. Lawyers need to listen more to what the community is looking for. Also, they have a responsibility to stay on the cutting edge and stay proactive as well. Like with the police—when someone should sue the police. No one else will. You can have community

meetings out the wazoo. ENOUGH! Don't be afraid to sue. That's where lawyers are good because they aren't afraid and know when to give a little push.

The last few lines highlight the "proactive" role of lawyers who may be in a position to take action that others do not. While lawyers should listen to the movement and its needs, it is also possible for lawyers to "give a little push". If anything, suing the police is not seen as an institutionalized practice--this is not an activity that is commonly undertaken, so lawyers may be suggesting the "radical" action, not a moderate one.

Those that are less active, and perhaps those that compare to what McCann and Silverstein (1998) call "hired guns", do not emphasize "the movement" or "the people". They are much more technical and see a job to do, with an emphasis on the particular legal issues or cases, and their role in legal strategies. So, it may be these lawyers that are "harmful" as previous scholars argued: their own interests, or their emphasis on legal strategies, are pursued without concern for consequences (for example, that movement resources might be better used elsewhere). Also, these lawyers that are less active will see fewer tensions between their role as activists and as lawyers because they have really distanced themselves from being an activist. These are lawyers who typically do not call themselves activists; nor do they see any harm with lawyers in movements.

The core activist lawyers also talked about lawyers as bringing about positive social change, and that they often have a vision that ordinary citizens do not. Lawyers serve an important "signaling" function for movements. One lawyer described how

lawyers are often the one's who point out the injustices and can push through the beginnings of change:

I think that they can actually take the lead in certain areas because, our understanding of the law and its impact, and the media response to it as well...Like when California passed some of their referendums, it took the immediate jump by the attorneys. The public schools, that one where they said that undocumented children couldn't go, the attorneys jumped on that as unconstitutional. I think they can take an important lead.

This quote illustrates the framing capacity that lawyers may have, or may develop in movements. This particular frame, "unconstitutional", is not limited to lawyers, but it seems likely that lawyers may be quick to define the situation in that way ("jumped on that").

She went on to describe how the lawyers were ready as soon as that referendum passed—they knew that it could be challenged. This reflects the “naming, blaming, claiming” function of lawyers. Lawyers may be acting more as leaders in that they may be helping frame an issue or strategy, but they insist that this is something “anyone can do” and has its roots in grass-roots organizing, not the lawyer's own (professional or elite) interests.

Another core activist pointed out how activist lawyers understand compromise, and they see when compromise may be the only possible result:

There's a difference between law and reality—the term 'fair'. Lawyers may lead, may help things move forward. They may compromise—a fix. But it still may not seem fair. But it's a fix for right now. For example, many people hear lawyers saying "you can't do this, can't do that". Many [law] students at the clinic said, "it's not fair." "Yes! You're absolutely right," I tell them. But lawyers are absolutely committed, yet they compromise.

Here, this activist lawyer attempted to explain how sometimes movements or organizations have to compromise, but that does not have to mean the movement "lost" or should demobilize on that issue. She sees compromise as a necessary part of "winning the big one". Again, the long-term movement goals are being considered, rather than the outcome of one case. Compromising may, in fact, encourage future action and lay the foundation for future organizing and activism.

Other core activist lawyers also described the positions that lawyers often hold in recognizing the readiness, or vulnerabilities, of the political opportunity structure. Though they did not argue that lawyers are the carriers of important social change, they did argue that they often recognize when change is possible, or when society is ready for change. In fact, most argued that legal strategies and lawyers may have no impact if

society is not already accepting of the change. One described the early civil rights efforts in the 19<sup>th</sup> century noting how lawyer's themselves play a much smaller role than the broader political environment itself:

In the 19<sup>th</sup> century, there was a famous case that went up before the Supreme Court, the Dred Scott case, which basically held that African Americans had no rights, they were slaves. Well, 1952, seventy years later, with pretty much the same Constitution (his voice filled with sarcasm), the Supreme Court found to the contrary! Was that because the lawyers in 1952 were better than they were in 1860 or whenever that case was? NO! Society had changed. On the other hand, what Thurgood Marshall did in that case was move things to the next logical step. There was already much broader support for civil rights in the early fifties than in the 1860s...it helped to move the social agenda forward, but it could not have done so in a vacuum.

The lawyer points out how the "readiness" of society was there in the 1950s, and that lawyers, while enormously important, were not *the reason* for the success in civil rights. The lawyer is situating the movement, and its legal strategies, in the larger context of public support. It is not that the lawyer had some special skill or unique strategy; he simply "moved things to the next logical step". Here, the lawyer is defining

the importance of a larger movement strategy and goal, and that lawyers are just one part of that.

The core activist lawyers differed from those less active in that they mentioned the importance of the grass-roots, both in terms of “organizational readiness” when issues came up, and in terms of the power of “ordinary people” to bring about change. Again, they downplay the significance of their professional role. Those lawyers that are less activist, or not the core activist lawyers, were less likely to mention the dangers of lawyers’ involvement in movements, or the importance of grass-roots organizing. In general, they spoke less about movements as a whole, and focused more on the lawyers in movements. Most spoke only about the strengths of lawyers and what they bring (positively) to movements or SMOs.

All talked about legitimacy, credibility, and skills that lawyers bring to movements. Most spoke of the credibility that lawyers have in society, and that movements can benefit from this. For example, one mentioned how she was not saying anything new, but that because she was a lawyer, “now people listen”:

I remember one of my friends said to me, ‘I call press conferences, and people come, and they quote me. I’m saying the same stuff that I used to say as a member of the church, and a member of political organizations, but now the difference is they listen just because I’m an attorney.

At the end of the quote she highlights the typical rejection of status by these activist lawyers. They are very conscious of the fact that their professional identity carries a certain status, yet they do everything they can to reject this unless it works to the advantage of the movement. So, personally, the prestige or status of the professional identity is not as meaningful. Again, this is a form of identity talk (Hunt and Benford 1994).

I do not have data from the movement's perspective about the roles and behaviors of these lawyers once involved, but the lawyers themselves gave their own accounts of whether they were acting as a lawyer. I also did not observe their day-to-day work, so other ethnographies (such as Scheingold 1998) provide more detail from the movement or SMO level of analysis. Here, the lawyers speak about their own meanings and sense of their work, which is important for understanding identities and motivations on the micro level.

I will now turn to a discussion of the organizational conditions that both constrain and enable particular identities among lawyers, including the professional identity.

## **4.2 Aligning Organizational and Personal Identities**

### **4.2.1 Organizational Support for Lawyer and/or Activist Roles**

Organizational roles both constrain and enable professional identities. For lawyers, working in different organizational settings provides different guidelines for what is the appropriate "lawyer identity". Individuals may self-select into certain

specialties of law or particular work settings, hoping to find organizational roles that fit with their own view of what it means to be a lawyer, or what a lawyer “should be”. In addition to this self-selection, once lawyers are on the job there may be factors acting to encourage or discourage certain aspects of their various identities. This typically refers to professional socialization that takes place during training for and continuing during the job, including schooling, internships, having mentors, professional associations, and a variety of informal, yet work-related gatherings. In addition to these profession- or work-based sources of identity, there are external influences such as family, friends, and affiliations with organizations such as churches, social clubs, recreation clubs, neighborhood groups, and other associations. The organizational roles, as well as the individual “others” who react and interpret your playing of certain roles, set the stage for negotiation of identities, the norms for what is appropriate, and the salience of certain identities in personal, professional, and other public situations.

Organizations may work to encourage (or discourage) certain aspects of individual’s identities by setting rules for appearance, for conduct, and for professional advancement. Some other aspects of the organizational culture that shape individuals identities may be more informal, such as jargon or lingo that is unique to that organization (or a department within it), social situations such as happy hours or lunches, and reactions or attitudes toward “the boss”. Lawyers, for example, may be told to wear suits when in the office and when in court. They may be taught the way to speak when in court. They may be taught how to “bill hours”. They may learn the way to conduct research for cases (doing it themselves or assigning to clerks or interns, depending on the

firm or organization), etc. Within large firms, small firms, corporate law departments, government agencies or departments, public interest law centers, and all other work settings for lawyers, there will be both similarities--because all are law jobs with "rules" of the professional role, and differences--due to organizational norm differences and individual interpretations of these rules and roles.

The data presented here is limited to activist lawyers and do not encompass the range of all lawyers. However, these are activist lawyers in a range of work settings, thus allowing for an analysis of these similarities and differences. It seemed that certain settings might stifle any activist tendencies by lawyers, either by demanding too much in terms of time and energy for other activities or by forcing salience of particular ideologies and identities that run counter to activist ideologies. Again, assuming a particular identity just because of organizational affiliation is avoided by interviewing lawyers about these concerns. It also is not assumed that lawyers are committed activists just because they work in a public interest law setting (which might be more encouraging of activism through work and outside of work). By exploring the various work settings in which these lawyers work, as well as their own sense of the work they do and identities they hold salient, this study illuminates the ways in which organizations, both directly and indirectly, constrain and enable a professional identity that corresponds (or does not correspond) with activism (Snow and McAdam 1998). It is important to remember the agency of individuals here as well—organizations do impact the individuals' identities, but the individuals also engage in identity work. (Snow and Anderson 1987) This section will focus more on the formal organizational constraints,

whereas the next section on networks will address more informal supports and personal identity work.

In some ways, the kind of work or the organizational setting in which the lawyers work serves as a typology of their activism. Those that are the core activists are in the least traditional work settings, those that are marginal activists are in “mixed” settings (e.g. law clinics, in which lawyers are both professors and operate the clinics), and those that are the least active, or are no longer active, are in the most formal, or traditional, settings. The more traditional the work setting, the more traditional (read: more lawyer, less activist) the professional identities. It is also important to note that the “role” may be more that of a lawyer, while the “identity” (self-identification) may still be activist. In other words, there are conditions under which the lawyer may still see himself or herself as an activist even though their work or professional role is not manifest as activism. These conditions will also be elaborated. There is a greater range of acceptable identities in the mixed or less traditional settings; in large part this seems to be due to the fact that there are fewer rules and obligations, thus allowing for much individual variation and agency. The more traditional settings have more of the imprint of the profession: rules of attire, demeanor more formal, offices more formal, etc.

The work setting clearly had an impact on the personal and professional identities of these lawyers. When asked whether they identified themselves as activists, or as lawyers, there were definite patterns according to the work setting. Also, when asked whether they were “an activist who does law, or a lawyer who does activism”, the responses matched the variations in the organizational environment for their work. For

example, all the lawyers who worked in some kind of public interest law setting (Legal Aid, law centers for poverty, housing, disability, the environment--note: they rarely specialized in the title of the organization; most were called something like "Center for Public Interest Law") identified themselves as activists. Those involved with clinics, who were also professors, also identified themselves as activists. The other professors were not as definitive in calling themselves activists: some said no, others said "sort of", still others said yes, but after some discussion. Those in administrative positions at the law school did not consider themselves activist; though the one who was former-dean did. It is important to mention that most of the lawyers in public interest law centers also could be considered administrative because they were directors or presidents (typically these offices employed just a few people, so the lawyer was often fulfilling multiple job tasks and titles simultaneously); yet their activity, and the nature of the work setting, did not compare to the other administrators.

Those that are the core activists are found in either the public interest law centers, or as professors involved with clinics. These are two settings in which a more flexible role and identity for "lawyer" is allowed, and even fostered. Not all those in public interest law centers are core activists, but those that are most involved are typically the founders, or directors of their particular agency. Age appears to be a factor in being a core activist and a director in that it has something to do with being around for a long time and being known by other activist lawyers, other activists, other lawyers, etc. These are the people and the places or organizations that have a tradition of being activist and involved in either a variety of causes (any issue that is hot at the time) or in one issue

(became the center of lawyers working for that particular issue). In both cases, the lawyers and/or the organizations are part of the core of activism in the community (and sometimes nationally).

There is the most freedom from traditional professional constraints in these two settings, and thus the most freedom to be activist alongside being a lawyer. Freedom to be an activist lawyer, however, is not the same thing as support for being an activist lawyer. The lawyers did not really describe how their job impacted their identity in so many words, but there were definite patterns among the lawyers in the different categories of jobs in how they described their activism.

Core activist lawyers' interviews consisted of lengthy discussions of movements, activism, and social change. Most described their activism, or that of activist lawyers in general, as being involved in "protecting individual rights" and "social change" or "justice". One professor who runs the clinics at the law school described activist lawyers in the following way:

Doers, as someone who does things. Someone who cares about people. Someone who is interested in issues, causes, principles. Is not concerned or interested in any financial remuneration or compensation that they get from what they do. ...I'm active. I mean, I'm busy, and I'm active, and I'm involved in a lot of things, so, I guess if that makes you an active-ist. Sometimes I do law, or sometimes I don't, but I'm

**always an activist.**

**The above quote shows how the lawyer role or the profession does not necessarily define the role of this individual. Rather, the activist role or identity is more enduring.**

**Another lawyer who runs one of the clinics, who is also a core activist describes activism in a similar way:**

**[An activist is] somebody, first of all, who knows what's going on. Secondly, vocalizes their opinion on it. Either by going out to a protest, or writing a letter to their congressman. That takes time, effort, but has a huge impact. I think I am. Definitely!**

**This lawyer defines herself as an activist, and this was something that not all activist lawyers did. The more activist the lawyer, the more likely the self-definition as activist. Identity salience in this case may not be about one's professional role, as much as one's position in a subculture (professional or otherwise) that supports the activism and keeps it salient. The discussion in Chapter 3 on network ties is particularly relevant here.**

**There are a great number of assumptions, especially in the literature on lawyering and careers, that describe the constraints against activism in terms of the prestige and status of the profession, as well as the overwhelming ideology to be conservative and work for and in the interests of those with money and power. One lawyer describes the expectations of most lawyers for their professional career:**

Transactions. Corporation law. Basically, you don't even like people. You're not even thinking about people in [activist] issues at all. I think the people end up at large law firms, make a tremendous amount of money, and that's what they want to do. They want the power and prestige of the law. In the back of their minds they thought someday I'm gonna be partner, I'm gonna be judge. They were on the fast-track of law. Big bucks, big corporation. Totally different lifestyle... That's not my thing.

The correspondence between professional and personal identities is harder to imagine in relation to this traditional career path. Buying into "the power and the prestige of the law" is partly a lifestyle, partly ideological, and neither is compatible with activist concerns about uprooting the power structure or inequalities in the system.

Another lawyer described how the lure of money is a hard thing to overlook: "Many want to do it [public interest law], but they're not sure how they're going to afford it. Law school is very expensive, and you graduate with a lot of debt." This is a commonly cited reason why there are not more public interest or activist lawyers: that they can't afford it. One activist lawyer directly challenged that by saying that it wasn't that they couldn't afford it because they had too much debt ("WHO DOESN'T?!"), but because they had the opportunity to make money. He argued that most lawyers have a hard time turning down the tremendous opportunities to make money that exist in the

profession. Many argue that this money issue characterizes the difference between activist lawyers and other lawyers: that activist lawyers are “willing to be poor” and that this is a necessary characteristic. The profession itself makes it hard to define oneself as a lawyer if not holding to the ideals of prestige, money, power, and status.

Most of the core activists reject membership in the American Bar Association (ABA), which is the traditional organizational affiliation for members of the legal profession. Many are members of the “alternative” professional organization, the National Lawyer’s Guild (NLG). Membership in the NLG is another indicator of core activist lawyering. Those that are most activist in the community are either current or past members of the NLG. In fact, for many, it seems that membership in the NLG during law school (the student chapter) seemed to be an important source of ties to other activist lawyers, as well as ties to activists in the community. Those that are marginal activist lawyers are typically not members of the NLG. One core activist lawyer described her attendance at one of the NLG conferences:

I remember at the National Lawyer’s Convention in the summer of ’90 when they were...The American Baptist Churches (ABC) vs. Thornburg was this litigation on behalf of all the Guatemalans and Salvadorans who had been arrested or were subject to arrest. One of the main attorneys got all these people in a hotel room at the convention trying to get people involved. ‘Okay, we’re suing the immigration court, and the INS for bias and

prejudice against Salvadorans and Guatemalans, and we need proof that, say, if you're from Romania—the same facts-- you'll be granted, but denied if from Salvador or Guatemala. I was just thinking this is nuts. And by December of '90, the whole case was settled on behalf of hundreds of thousands of Central Americans, and they got this status and a whole bunch of rights. Including the right to have an interview conducted in a certain way, with certain protections and without prejudice. That was HUGE!

She was emphasizing how important the informal networking, as well as the alternative organization, proved invaluable for activism by lawyers. In this setting, a subculture of the profession allowed for the correspondence of activist and lawyer identities.

However, this is a small segment within the profession, not the profession as a whole.

Involvement in and ties to this alternative legal organization seem to follow a distinct pattern. The most activist of the lawyers were heavily involved with the student chapters of the NLG during law school, and typically maintain their membership after graduation and currently. However, the degree of involvement in the organization varies according to the current work that the lawyers do. One of the core activist lawyers is involved nationally in the NLG and is the local/regional chapter president. He is the most radical of the lawyers interviewed, as well as the one mentioned most by others as “the guy to talk to” about activist lawyering. Other core activists were all involved in the NLG on paper, but may not have been as involved in the organization in terms of

attendance at meetings. One lawyer explained this to be a result of the nature of the work:

Here in Tucson, there's a NLG chapter, and I joined, and was actively involved. And then I got really busy at Legal Aid, and became less and less and less involved with the NLG. And one of the things that I noticed here in Tucson is that there are a lot of people that are on the mailing list, but very few people go to the meetings. I think there's lots of reasons for that, but the big reason is that most of the (activist) attorneys in Tucson are solo practitioners. Or they're in small offices. They're not working in big firm, and they're very, very busy. So it's hard to create time for outside work. Really, really hard. They're probably taking the case volunteer and they're thinking, this is my volunteer effort for the community, and I don't have time to go out and do additional work

The issue of "solo practitioners" is not unique to activist lawyers, but it may be more of a strain because of the typically limited resources of their office. They are not solo practitioners with a huge staff of paralegals and interns. They are the only one, often with a part-time secretary or paralegal. Because of the time issue, it may be easiest for these lawyers to combine their activism with their work. For example, an environmental lawyer is limited in his activism to primarily environmental issues. This does not mean,

however, that their activism is limited to just their legal work. They may not be active in organizations or in leadership roles because of this; yet, they are still quite committed to and involved in a range of movement activities. All of the activist lawyers in the study talked about time and role conflict, but the core activists were unique in that they rarely “removed themselves” from membership in the NLG. Even though it was a time conflict, all of the activist lawyers “found the time” to continue their involvement in the NLG. Even if they were not attending meetings on a regular basis, the core activist lawyers were in contact with each other and aware of others through the NLG membership list. So, NLG membership, while variable in terms of commitment, clearly served as an important “location” in which professional and personal identities could merge:

...we identify issues...we usually have one big community event, like a few years ago we brought in Angela Davis to speak...the Guild is just part of the progressive community here, and just gets involved in most of the progressive issues.

Here, the importance of community supports for one's activist identity are emphasized, again the implication is that the profession does not provide these supports.

While fostering an alternative place in the profession, and rejecting much of what the mainstream profession entails, the core activist lawyers still were faced with tensions that their professional role obligations produced. Most of these lawyers talked about the importance of reputation as a professional, and this was more of an issue the more traditional the setting in which the lawyer worked. While there may have been things they would do as an activist, such as blast the press or certain individuals, these lawyers were aware of the potential problems with doing so. Lawyers used particular strategies to get around some of the professional obligations:

There are tensions because you, at least in my field, you need to deal with people to benefit your clients—with people you might as an activist be blasting in the press. And you can burn bridges very easily. And if you get this reputation, I mean, reputation is all-important as an attorney or a businessperson or as anything else. Scientists, for sure. So that reputation, a good part of what you bring besides your knowledge and skills, to help this client. And, so, a lot of times, if you're respected by the district counsel of INS, you can call up and say "this is what I want to do" and they'll listen to you as someone they respect. As opposed to if you've been speaking out in Human Rights Watch, or the press in a way that MADE them angry or in a way that they feel is false, or even worse lying, then that's gonna be a problem in your work. There's a balance you can establish though. But you obviously are going to have to be very careful about what risks you take, or what issues you speak out on. It doesn't mean that I wouldn't write a letter to the editor about some issue or, if I was sure about what I was saying, give information to Human Rights Watch. But, if I was going to do that, I would call up the District Counsel and let her know, or try some other way first.

The profession appears to constrain activism, but only to change the form. This lawyer shows how she does not so much curtail her activism as channel it in different ways. She

mentions the concern with "taking risks"--mainly this was described in terms of the risk to the movement or the future abilities as an activist lawyer, not in terms of suffering in the legal profession or career. Another lawyer also mentioned the importance of presentation of information in the press, and he noted how acting like a lawyer and using the appropriate jargon was necessary, but also could really signal the underlying activist meaning. For example:

Well, sure there are tensions. For example, the rules of ethics preclude you from arguing in public about the merits of the case when it's pending in court. There's always a tension there because most of our litigation involves issues that are in the public eye, that are probably before the legislature, before Congress at the same time they're before the court. And so you get asked a question by a reporter about "do you feel that what the government is doing here is right?" As an activist, I'd like to say "Hell, no it's not right! It's an outrage! These guys ought to be thrown out of office for interpreting the law this way!" But I can't say that. I have to say, "Well, in the lawsuit, we are contending blah-de-blah-de-blah" --be very careful about how I say that.

**He maintains compatibility between his professional and activist obligations by speaking out in a way that can satisfy both.**

Another core activist described how being an activist was not about stepping outside of the bounds of law. Even the most radical of the activist lawyers understood the importance of professionalism, and this would only enhance the success for clients and for movements. The lawyers seem to perform identity work here—acting to meet the standards of their professional role expectations while simultaneously keeping the fire going as activists. Changing the way they speak and dress for court, or to the press, is a relatively easy way for these lawyers to “please the professional community” without changing anything in terms of their activist identity and role. One demonstrated how being a radical may help his clients, even within the rules of the profession:

Then people say to me, ‘well, if you’re a radical, you should use any means necessary.’ I don’t need that shit. I’m a good lawyer. And a radical. I can win cases because of my abilities, because of the rightness of the case, because of the client’s interest. I don’t have to use that shit. ‘Well, if you’re a radical, you should just not give a shit.’ No, I don’t do that. It’s my personal philosophy because we’re taking the moral high ground, and I’m certainly not gonna get down in the mud like that. I mean, I’ll work like crazy for my client. I’ve been characterized as a zealous advocate. I can be a nut, just go in there and argue like crazy and fight like crazy. And I can be a

complete asshole when I need to be, but I won't do shit like that. I'm surprised how easily I've run across lawyers who will lie to the court, lie to opposing counsel. I don't do that. Don't need to. I've filed plenty of lawsuits that are *creative*. But they have a real basis in the law. I don't *have* to file frivolous lawsuits. There's too many *good* lawsuits out there to file.

While this quote appears to illustrate a challenge to his activist identity, this lawyer argues that that was not the case. He explains how it was important for him to redefine what being a radical meant in terms of behavior and ideology. Being an activist behaviorally means knowing which strategies will work in which contexts, all the while remaining consistent with the beliefs and goals of the movement. Being an activist is not just about protesting all the time; it is about "being in for the long haul" and recognizing the big picture. And working through the tensions of one's professional position as a lawyer and tempering the outward expressions of one's radical beliefs in certain contexts are key to maintaining a positive activist lawyer identity.

When I was first learning about politics, I thought to be a radical meant just be a nut. Just get up in the middle of a meeting and say 'Fuck you!' that was to be radical. But that is the downfall of so many movements. I don't

necessarily believe that. I put on a tie, put on my suit when I go to court. I go to city council meetings. I do all that shit because being a radical is that my ultimate goal is really empowering the people, and making a real drastic change of reworking the system. Someone said 'you know, I've talked to a number of people about you and they say, despite your radical beliefs, you're a reasonable person.' Of course! It's not like I'm insane. I can achieve a lot of positive things as a lawyer.

This lawyer demonstrates the impression work that has to be done both as an activist and as a lawyer. Others' definitions of what it means to be a radical, and how that alters their interpretation of that person as a professional, are demonstrated by the lines referring to how people say "despite your radical beliefs, you're a reasonable person." The lawyer does not see the incompatibility between the two, but he is well aware that others do see activist lawyering almost as an oxymoron.

The core activists were typical in their explanation of how those in the activist community "knew them" and supported their activist lawyering. Others talked about the ties into "specialty" networks as a source of support for their work. For example, one lawyer who is active in immigration causes explained numerous sources of support. She participated in many sessions at a recent NLG convention (much like an academic conference) and networked with others working in immigration law. The important

difference from an academic conference is that here, information about legal cases and movement strategies was shared, and spread. She described an affinity for other lawyers in public interest work, and also in her specialty: “certainly the colleagues in private practice immigration law here, I know and mostly respect. So there is the tie that comes with being in the same, similar work.” She also describes her embeddedness in the activist community for immigration issues as a strong source of information and support for her. By maintaining ties into the immigration law and activist communities, and since there is overlap among the two, she has a continual source of reinforcement for her activist lawyer identity. The professional and personal identities and roles correspond because of their links into this network. And obviously, lawyers who were activist before entering law school will likely have stronger ties into these communities than those who “begin” their activism during law school, with its pressures that oppose entering those communities.

There is less correspondence between the professional and personal identities of the more marginal activist lawyers, primarily because the activist and professional subcultures do not overlap, are not as developed, or are in conflict. For example, one lawyer, who is primarily involved in employment law and is less activist than others in this study, found it difficult to maintain her activism in law school; and once she took a job, it was in a large, traditional firm. She defines herself as a feminist and talks about her interest in activism, but she never was quite able to become an activist in spite of her desire. Does that mean her commitment or belief in the cause is less strong than others who do act? Possibly. But it is also interesting to look at the organizational pressures she

faced. During law school, she joined a women's law organization—apparently on the right track to developing her interest in women's issues and the law. However, she also understood the importance of “making journal” (or law review), and worked successfully toward that goal. She did not join any public interest law organizations or become involved in the local activist community. As she became a member of the law review, she was further pulled into some of the traditional networks of the profession and came into contact with countervailing beliefs about the appropriate path for her law career. By the end of her law school career, she rarely called herself a feminist, was more likely to amuse others with the self-deprecating “lawyer jokes” that now applied to her, and she earned a prestigious clerkship with a district appeals court judge for her first year out of law school, to be followed by a partner-track position at an elite law firm in a large, Midwestern city. In her words, she felt that “she could best change things by working from the inside”. She redefined her activism to fit with her professional role obligations. Activism was not really compatible with her new position, though she assured me that she would “definitely work on pro bono cases”. For her, the tensions between the two roles were “removed” as she was pulled further into traditional networks and organizations and away from more activist or political ones. It is impossible to predict whether this lawyer will ever become activist, or what her career will entail professionally and personally, but it seems unlikely that she will easily find her way back to activism as she moves further away from its supports over time.

Typically those lawyers in Legal Aid, in public interest law centers, and in clinics at the law school are most able blend their professional and activist roles and identities. While typically suffering under tremendous time pressures, individuals in these settings are most able to express their activism outwardly and reject and criticize the system, including the legal system and their profession, without suffering any consequences professionally. In fact, it is within these work settings that activism is encouraged.

The following is a summary of organizational role expectations for the lawyers in this study:

- Deans--less activist; work is not activist; yet deans can bring their own personal style or leave their mark on the school—quite a bit of freedom because ‘at the top’
- Professors--flexibility allows for correspondence; work can be activist; though typically they work, and then they do activism on the side, flexible time
- Clinics/professors--very close correspondence; compares to those in public interest law centers; activism can be part of work or overlap; more alternative or “liberal” side of the law; “core” activists here
- Legal Aid--more constrained by rules of government funding, so a bit more tension as frustration; yet work is activist
- Public defender--less fusing, less activist; more general constitutional ideology or protection of due process rights; ideology of activist, but not necessarily the behavior
- Public interest law center (“firm”)—much correspondence or fusing; “core” activists here); tremendous overlap between work and activism: work is activist; social movement organizations also fit here

- **Small firms--not public interest center, but do some public interest work; more freedom to do activism like in public interest centers, but typically balance those cases with others because of embeddedness in both networks**
- **Large firms--not activist because constrained from being so—demands of organization role leave no time, energy, or ideological support for activist concerns. Tensions usually result in distancing from activist role even if identity is maintained (which is difficult).**

Certain organizations seek to “engulf” an individual’s personal identity by fusing it with their organizational identity. Different organizations embrace people’s personal identities differentially. Specifically, organizations not only differentially embrace personal identities, but also encourage or constrain activist roles, depending on the type of organization and the position within that organization. Even with the constraints placed on them professionally, there is always room for some role distancing to allow for activism. Lawyers who might be considered marginally activist demonstrate such role distancing. Those that are core activists, however, usually avoid the underlying tensions of role management and probable role conflict by working to find positions that allow for the two to correspond more directly. The informal organizational supports for the activist lawyer identity will now be discussed.

#### **4.2.2 Network Support for Lawyer Identity and for Activist Identity**

Social networks (within or external to organizations) can create tensions, reinforce, or have no effect on organizationally induced roles and identities. The effect depends on the strength of the network ties (investment individual has in it) and the content of the identities/roles in the network. Network ties, discussed in chapter 3, were shown to have an important effect of supporting activist identities and alternative professional identities, thus making the two more compatible (fewer tensions). When in a network that is not as supportive of activism (or of left activism), there are more tensions as the lawyering role and activist role are more incompatible. Lawyers who feel tensions can seek out such networks, or they can distance themselves from one of them, thus distancing themselves from either activism or traditional lawyering.

One lawyer described the significance of her law school classmates as a source of alternative views of the legal profession and support for activism. This shows how the network of individuals within the larger organizational structure of the law school worked to enable the activist identity and shape the specialties chosen by law students:

And we would talk about it...I didn't take a particular area and say 'this is where my focus is'. When I would interview for jobs, I'd say 'look, it's all connected, so I can't really say I wanna do this, or I wanna do that. I just want to do public interest. Like, it goes beyond one issue. There are landlord-tenant issues, debt issues, bankruptcy issues. It's broader.

By talking with others who supported her activist beliefs, these beliefs and identity were allowed to progress to the point of becoming an activist lawyer. The view that "everything is connected" is characteristic of those at the core, who often defined their activism in relation to "the movement"--generally opposing system inequality.

One lawyer described how his ties to other activists are an important way for him to become aware of issues and events, as well as maintain the salience of his activist identity and behavior. He describes how people may turn to him as a lawyer for help, or to answer certain questions, but ultimately his involvement with other activists demonstrates to others, and to himself, that he is "just an activist":

There's no doubt that because I'm a lawyer people will look to me for certain help, certain answers, and so on. But I try to come to it a lot of times just as another person in the movement. Not say "I'm the lawyer" I'm out there sleeping for a month at the county courthouse with the homeless people and everyone else. I wasn't there as a lawyer. I was there sleeping on the cement along with everyone else. That kind of thing.

Rather than emphasizing one's professional background, these lawyers prefer to be more anonymous in the sense of being "just another activist". And being a lawyer may never come into play, as in the case of protesting homelessness by "sleeping on the cement" like everyone else.

Sometimes there are tensions with the lawyer role and identity, and developing ties to other alternative lawyers, or the subculture of activist lawyers best helps this. The core activist lawyers were least likely to describe tensions they feel professionally because most have secured a position in the subculture within the profession, in addition to other ties to the broader activist subculture. They have not so much distanced themselves from the professional identity; rather, they have *created* an alternative one. The alternative identity does share some aspects of the more traditional lawyer identity, but it blends the activist identity as well. Activist lawyers identify with other activist lawyers, with public defenders, with some government lawyers, as well as with other more traditional lawyers who work in their area or on the same issues. Activist lawyers do not identify with the profession as a whole, with corporate lawyers, with industry lawyers, with prosecutors, etc. There is a different shared philosophy for each of these categories of lawyers, and activist lawyers do not agree with the latter.

## **CHAPTER 5 CAREER ACTIVISM BY LAWYERS: CONSEQUENCES FOR THE PERSON, THE LEGAL PROFESSION, AND SOCIAL MOVEMENTS**

### **5.1 Personal and Professional Consequences for Individual Lawyers**

After reading other research on the personal consequences of activism, I realized that the lawyers in this study are not that different. Though there may be additional consequences for them because they are lawyers (such as professional consequences), these are not unique to being a lawyer. Activists in any movement and from any profession can expect that their activism will have some impact on them personally and professionally. What this data helps us understand is that there are important differences in consequences *within* a professional category because this category is not the overarching way to define their activism. Rather, knowledge of whether a lawyer was a core activist, or simply a marginal activist, or a hired gun (as described in other studies), tells us more about their role and resulting consequences for them as individuals.

One thing that these core activist lawyers had in common with activists in other studies was that they became politicized by their involvement in activist lawyering, and in social movements more generally. McAdam's well-known research on Freedom Summer volunteers indicates how those individuals who went to Mississippi were forever changed by their experiences there (McAdam 1988a). Activism affected their life choices in terms of spouse, career, and future activism. Similarly, the core activists here were likely to mention the impact of activism on their families, their careers, and their career as activists.

In terms of the impact on families or choice of spouse, one core activist described how his activism has “affected the way I raise my kids”, and another described how his spouse was “just as active as I am. She shares the same beliefs politically, and that was really important in getting us together.” Some of the lawyers that are very involved in activism remain unmarried. One described this more as a “time thing” than “some political statement”. She went on to argue that she has changed her views on marriage, as an institution, because of her political involvement and understanding of power, but that she would still marry under the right circumstances.

### **5.1.1 Activist Careers**

As described in the previous chapter, one activist lawyer mentioned “the burden of knowing” and how political awareness cannot be unlearned. The core activists typically described their activism, both as lawyers and in general, as an inevitable result of “becoming aware” of injustice, inequality, and other political concerns. It is hard to separate effects of activism in general and effects of activist lawyering here. The lawyers rarely distinguished between the two when discussing consequences.

The core activists are characterized by their continued activism through the law. None of the core activists “could ever see themselves” in a corporate law type of position. The most activist lawyers were certain that they would remain involved in activism in some form or another, and that they would continue their legal practice in an alternative way (refuse traditional setting or role). The more marginal activist lawyers were more likely to have changed positions already (away from activism), to have done

some traditional work, to emphasize barriers to public interest work, and to see activism as something in their past. As described in earlier chapters, network ties and support for identity are key factors over time. One more marginal activist lawyer who had recently moved to the area, and who was activist earlier in his life, felt that he would “probably become more involved” once he became aware of the people and issues here. He was well connected to one of the core activist lawyers, so it seems quite probable that he will have good information about possible outlets for activist lawyering. However, he also mentioned the financial obligations of his family:

Well, back in 1976, when I was making around \$9,500 a year, I could live like that. I was young. Now I have two kids in college, and that’s just not an option living like that.

This illustrates some of the tensions faced by activist lawyers, and how one has chosen a career path accordingly. He has moved into a clinical/teaching position with a more secure financial outlook. Yet, he still has some flexibility and distance from the traditional firm roles and obligations. His contacts with a core activist lawyer will not only make him aware of issues and local activism, but he may also receive further mentoring and learn by example how activism easily can fit into his academic career.

Another marginal activist, who was once very active and is marginal solely because he nears the end of his career, followed a career path that appears somewhat traditional, but he and others remark was quite the opposite. During his career, this

lawyer went to a small conventional law school, clerked for a Supreme Court Justice, worked in a small firm, was dean of a law school, and taught as a professor for over thirty years. Where was the activism? Well, this lawyer's career path is not what it seems. He clerked for one of the most liberal justices, worked in a small alternative firm, and radically changed the curriculum while dean of the law school. He was one of the founders of the local ACLU chapter, and was involved in the sanctuary movement. As dean, he recruited younger, public interest-oriented faculty, recruited women and minority faculty and students, and developed a more progressive curriculum. Of course he acknowledged that "a law school is a law school" (meaning that you still have to have the bare bones curriculum, which can be "traditional and conservative"), but that he came to the law school "to change things and revamp it". He also argued that law schools should be "ahead of the profession" in terms of change, rather than simply reflecting society or the legal profession. In the late sixties, he created a course on law and poverty. While the issues have changed, he argues, there are still progressive courses being created at the law school: "Now it's feminism and employment discrimination". He mentioned a new course on critical race theory and the law. He was also a key force in bringing the clinical program to this law school, and this is widely acknowledged as the sign of a progressive curriculum (and laid the groundwork for an ongoing network of future activist lawyers). He argued that all of the work throughout his career was consistent with his interests in legal reform and rights for individuals. While the work setting does tell us something about the work of the lawyer, more information is definitely needed to uncover whether the individual and work identities overlap, and in

what ways. The activist lawyer, while in many “traditional settings”, avoided a traditional role in those settings and avoided the one setting that most opposes activism and progressive thinking (in his words):

Being an activist lawyer or being interested in those kinds of movements is inconsistent with my being a senior partner in a law firm. I might enjoy that, making a million dollars a year. I can do that, but it isn't the thing I set out to do...being in a small firm is not inconsistent with that.

So, the traditional partnership path in a large firm is perceived to be at odds with activist lawyering. The partner track is also the path most defined within the profession as elite in terms of the professional rewards of income and prestige. The view of lawyers, particularly those involved in movements, as elites, then, should consider the fact that most who consider themselves activist lawyers would not “fit” this definition of elite lawyers. “Hired guns”, on the other hand, may be elites who locate themselves in large firms. For them, activism is not as consistent with their work, and their “degree of activism” and their impact on movements will likely reflect that.

### **5.1.2 Relative Wealth and Stability**

A number of activist lawyers mentioned the impact of their activism on their career in terms of the rewards of the profession that were generally not available to them.

The previous chapter mentioned some of the tensions felt by lawyers who are faced with the great amount of money and status that comes with big firm jobs. Those that were activist before law school, or involved in activist networks during law school, appear to be those most able to resist these rewards. The activist lawyers who continue to be active typically described other rewards, as well as their view on the financial status of lawyers. For example, one describes the relative wealth they feel:

I'm a lawyer with nine years' experience making \$30,000 a year, which I think is a decent salary. But in the greater scheme of things, that's what maybe a starting associate would be making. Not even, they'd be making much more than that (at least \$50,000). I'm not working crazy hours, and to my clients? Raising a family on that? I'm rich!

Many activist lawyers described this "perspective" gained by seeing such terrible conditions for their clients, or for those affected by larger issues that they supported through their activism. In a sense, they are rejecting the rewards of the legal profession, as well as the expectations of American society to be monetarily successful.

Another describes how money, though rewarding, is not worth sacrificing what you believe in or what you really want to do:

I certainly investigated—there were a few firms in NM and possibly in AZ too, that I looked into that were doing civil rights types of things. There was one firm in Santa Fe, but they were clearly not hiring anybody new. I remember they told me I could work for one summer, but they couldn't pay much. I had certain financial obligations as well. So I don't think I was tied to working for a public agency, but there were definitely certain things I didn't want to do. I would not have worked as a prosecutor. I would not have worked for a large firm doing commercial types of litigation, or representing primarily corporations against individuals.

This was typical of core activists—they balked at the “financial obligations argument” for choosing a more traditional path in law. It is important to recognize that debt is a significant barrier for many, but emphasizing debt also ignores the other variables that impact one's activist and professional career (such as network ties, mentors, and prior activism and work). And, it is not likely that debt is the sole reason why others choose a legal career with a large firm.

The core activists were sometimes critical of the money available to lawyers, and the greed that seemed to follow. A self-proclaimed Marxist lawyer said:

More money, more money, more money... There's a lot of lawyers out there that just don't give a shit. Whatever case comes through the door, you take the money. As long as the money comes in, it really doesn't matter what the outcome is. If someone gets thrown out of their house, if someone goes to prison, whatever. Who gives a shit. And, I also think there's a block of lawyers out there whose basic goal is to prop up and perpetuate the capitalist system because they're making damn money at it. And they're protecting their class interests. But I think a good chunk of lawyers out there just don't give a shit. They just see it as a job, and as long as the money comes in, pays for the Beemer and all that stuff, then that's cool.

Here, the lawyer highlights the "elite interest" assumption by commenting how many lawyers do approximate capitalists as they accept cases just for the sake of the money, with little consideration for others' interests. So, the apparent rewards of the profession are rejected as "class interests" that have little to do with fighting for the causes of the disadvantage populations. Core activists invariably argued that activist interests should not be sacrificed for the money. All cited examples of cases that were turned down because they refused to support that issue or interest at the expense of disadvantaged individuals or another, more worthy cause.

Another core activist described two important consequences of her activist lawyering. First of all, a common concern for many in public interest firms (or other not-for-profit organizations such as social movement organizations) and activist lawyers is funding. There are obvious problems with depending on government funding, and private funding is not always easy to come by, and may take time and effort to secure, thus using another scarce resource. Because funding is not stable, many of the jobs are not stable either:

Well, I don't have in my career stability. I've chosen to sort of do what I want. The benefit of that is I get to do what I want (Laughs)...in terms of what I think is useful, or for helping people. The disadvantage of it is that I don't have any stability in my career. Tomorrow, or at the end of two semesters...right now I have only 50% funding...It's more the way that I've chosen to do it. Because if I had to try to get a job at Legal Aid, well you can have a certain amount of stability, but maybe that is the fact of it. If I were working for TCA-well TCA's always about to go under. Legal Aid...society has this sort of backlash.

The lack of secure funding was a source of stress for these lawyers, but it was described as more of a "hassle" than a potential "end" to a career path. And, rather than viewing turnover as "burnout", these lawyers describe the search for secure funding as one reason

lawyers often move from public interest to small firms, or vice versa if the funding opens up. Most of the activist lawyers work quite hard at securing funding because they feel that they are so needed.

Another stability issue relates to the “traditional” obligations that secure one’s tenure or standing in a position. One lawyer, whose funding is linked to her role in the law school, elaborates:

I haven’t chosen to write academic papers, or chosen to try to do Law Review. I didn’t do mainstream things. I didn’t try to get a clerkship with a judge. So I haven’t set myself up for a more mainstream place in society. So if I want to, it’s gonna be a lot harder for me if I finish here. ...if they get funding for this position, I have to apply for it against everyone else, but I may not get it because I don’t have the credentials.

Her position through the law school is quite flexible and allows her to be activist, but, at the same time, her career choices in favor of activism and a less traditional path in the legal profession may be exactly what keeps her from maintaining that position in academia. By involving herself in activism, she has less time for “writing academic papers” and otherwise earning accomplishments important in the academic community.

### **5.1.3 Risk-taking**

The core activists seem willing to take financial and professional risks. Most do not see it as a big sacrifice. They typically describe the positive side to their choices professionally. Though not using these words, the activist lawyers described happiness because their personal and professional identities overlapped, or correspond in some way. They spoke of “being able to do what I want” and “working for what I believe in”. A core activist talked about the strains that are evident for all lawyers in terms of time commitments, but that the personal consequences of traditional lawyering do not always live up to expectations:

We just opened this office in Phoenix and it will model what we have down here, and they have...no office that deals specifically with victims of domestic violence, which is amazing in [such a large city]! But now we're opening this office, and the interest we're getting from the community is growing. The attorneys up there call us “This is fabulous, how can I help?” So I think that there are a lot of attorneys out there that do want to get involved, it's just they're not quite sure how, and they're worried about how much time it will take. But they do want to get involved. They're tired...they want more. In what they're doing in their day-to-day stuff, thinking, “wait a minute—

I've got tons of money and tons of prestige, I want more. I want to get down to the grass-roots stuff." If opportunity is there, if it's easy, then they're gonna be involved.

While there are some strains for activist lawyering in terms of finances and stability, it seems that they remove the strains personally as they find work that is consistent with their personal identities and beliefs. The above quote indicates how the activist lawyers sense that the more traditional path creates such a personal conflict as lawyers "want more". It is almost as if the activist lawyers feel sorry for those who are trapped by the traditional profession and view the consequences of traditional lawyering with pity. In addition, these lawyers point out how other lawyers "are not quite sure how" to get involved, perhaps indicating their relative isolation from activism professionally.

The activist lawyers in this study describe high levels of job satisfaction. Though many of the lawyers complained about the frustrations of their job, most of these frustrations were about the injustices and inequalities that they continually have to face as activists. Sure, there were also concerns about money. But not once did these lawyers falter in their conviction that their job as an activist lawyer was rewarding and meaningful to them, both professionally and personally. Obviously the pressures to conform to traditional legal practice always exist, but, as described in the previous chapter, these activist lawyers have found an alternative career path and are able to distance themselves from the pressures with ties to other activist lawyers and activists, thus enabling a positive, alternative professional identity. While there are some negative

effects on them professionally and personally, these activist lawyers would not change a thing.

## **5.2 A Positive Image for Lawyers**

The consequences of activist lawyering for the legal profession are primarily positive. The specialty of public interest law, which many thought would fizzle out after its sudden creation and increased popularity during the 1970s, continues to thrive as activist lawyers continue to choose it as their career path. Though the opportunities for public interest law may be determined by funding concerns and limited resources typical of these positions, the individual lawyers who choose these positions continue to find support. While law schools remain institutions of professional socialization, the networks of activist lawyers and organizations within their walls can and do challenge the traditions of the profession. The lawyers in this study demonstrated the range of influences that act upon lawyers and how these impact their careers. By sustaining the flow of lawyers into public interest law positions, funding for these positions might become more regular.

As lawyers continue to go into activist lawyering, rejecting the financial status of a more traditional path, they further define the identity and path of activist lawyer for future lawyers. By demonstrating that “it can be done”, and that there are rewards such as job satisfaction, challenging work and interesting cases, others will follow. Many have the view that public interest law was a path for less smart, non-white, non-male, lawyers, and that the traditional path of big-firm corporate law was not only more

rewarding financially, but more challenging and more interesting in terms of legal skills (cite?). The more activist lawyers successfully challenge these beliefs, the better the chances they will sustain their practice. Activist lawyering is typically viewed as a noble career path

Though less true of the marginal activists in this study, the core activists worked hard at fusing their professional and personal roles and identities of lawyer and activist, showing that it is more than just a possibility, but that it is a rewarding life with its own challenges and rewards. The flexibility in public interest occupational roles may help to prevent the burnout or tensions that arise when a personal identity (e.g., want to help others) is at odds with the organizational role obligations and expected professional identity (e.g., bill more hours, discourage pro bono work indirectly).

A more intangible effect on the profession is the potential change in the overall image of lawyers. Many lawyers joke about being on “the wrong side” when they work defending corporations against individuals. Activist lawyers are adamant in their refusal to represent corporations against individuals, all of them espousing individual rights as a primary concern. Rather than lumping all lawyers together under one negative stereotype, activist lawyers stand out as different. Also, by showing that there is variation within the category of activists lawyers, it becomes clearer that even activist lawyers cannot be stereotyped (as “radical”, or “incompetent”, or “less smart”). The lawyers in this study do shed a more positive light on the legal profession.

### **5.3 Consequences for Social Movements or Social Change**

It is important to remember that my data does not directly address the impact of lawyers on movements since it is from the lawyers' perspective, not from the movement perspective. However, the lawyers' vast experiences with various movements throughout their careers, as well as their perceptions of their own and others' involvement, approximates knowledge and provides a richer understanding of this impact (which previous studies simply assumed was negative).

#### **5.3.1 Legitimacy**

Though many of the lawyers rejected the prestige and status associated with their profession, they were also very conscious that this status could be used to advantage movements. And, many also pointed out the dual status that lawyers often face. One described the irony:

Well, it's ironic, isn't it? There's so little respect for the legal profession today, and yet, as an attorney, you're taken seriously...Society somehow has this respect for attorneys, even if it won't admit it.

This lawyer recognizes the legitimacy that lawyers carry, and this is true for even those that may not present the obvious signals of status, such as partnership or wealth. Even though there are negative judgments about lawyers, she recognizes that this may be more a perception than a real barrier to their work ("respect, even if they won't admit it"). She

went on to describe how people often say they hate lawyers, yet, at the same time, lawyers are automatically listened to, and “that’s true in movements, too.”

Another spoke generally about the role of lawyers in movements of the sixties as a positive presence. She argued that lawyers “have a credibility in society. This was evident in the sixties with racism and sexism movements. People take a movement more seriously.” She was highlighting a common theme in most of the interviews, regardless of how involved in activism the lawyer was. Activist lawyers felt that the lawyers brought a positive attention to movements, and this would have the effect of groups such as the government (or other opponents) and possible participants taking the movement and its goals more seriously.

The involvement of lawyers in a movement may unwittingly help movements because of the common assumptions that lawyers will necessarily turn to lawsuits. Whether or not activist lawyers, or hired guns for that matter, even consider litigation is not the point. Society as a whole, as well as scholars, government, and opponents of movements, typically believe that lawyers are there as advocates for legal action. This perception in itself can positively impact a movement. An environmental activist lawyer explained this intangible effect:

I think it’s the case that a lot of these public agencies that operate in the environmental area and some of the other areas that we’ve litigated in are affected by our presence even when we are not litigating because they know we

might sue. It's sort of like why do people try to be truthful on their tax returns. It's not like they're likely to be audited. Their chances of being audited are like 2/10 of a %, right? (Laughs). It's because there's that chance. That's true here. Now that doesn't mean by a longshot that they do the right thing, but I think it does temper their actions in a number of cases because they know they might be subject to public criticism and maybe even lawsuits.

Here, the legitimacy that lawyers bring can expand the potential "power in movement". For disadvantaged groups, their only power may be in disruptive tactics because they may not have other resources such as financial backing or leaders (Tarrow 1994). Whether or not the lawyer actually provides litigation support, this is a new "power" or resource available to the movement because opponents recognize the costs and may grant concessions to the movement. He also mentioned the importance of publicity, and lawyers, because of their credibility, often can garner an adequate amount of publicity, even with just a threat, to help the movement.

### **5.3.2 Knowledge and Skills**

One lawyer talked about how lawyers not only have legitimacy in the political realm, but that they also have an "insider's knowledge" and know how to get things done according to the proper channels. Lawyers know how the courts work, and they know

the language and norms of legal actions. However, non-lawyers also have access to the legal system, it just may be a little more difficult and require learning some of the legal norms and skills. A core activist talked about how many non-lawyers can be effective, and many lawyers can be ineffective—just being a lawyer did not guarantee legitimacy and knowledge or unique skills. A non-lawyer activist could certainly forge a successful legal strategy for a movement. And, legal strategies are always just one in a range of possibilities available to lawyers, and to movements.

Yeah, I would hope it's more effective (laughs). I would think that their ability to make change becomes greater.

Lawsuits then become a possibility. A lot of legislative and administrative advocacy is done by lawyers—a lot of non-lawyers as well. I think their ability to accomplish what they want is greater. They become more effective because the involvement of lawyers.

Proponents of resource mobilization theory would agree that lawyers provide important resources to movements (McCarthy and Zald 1973, 1987). I diverge from this theory primarily by allowing for lawyers to act beyond their capacity to provide legal skills and resources such as the ability to make litigation possible. This allows us to distinguish between “hired guns”, sought by movements in need of legal advocacy or resources, and “activist lawyers” (as described here) who may occasionally, but not necessarily,

contribute their legal skills. Also, the theory would assume that being a lawyer matters, while I have shown that it is often irrelevant to activism.

As discussed in the previous chapter, many of the activist lawyers view their role in movements as more than just being a lawyer, and even the skills they bring to movements are often seen as beyond their legal background. It is important to remember, however, that these individuals do have a professional training in law, and that they can bring this unique knowledge to movements when necessary. Again, I do not have data from the movements themselves about particular skills or knowledge that lawyers bring, and the previous chapter covered many of the specific skills used in movements. I turn now to a more abstract or intangible knowledge that activist lawyers bring to movements—that of understanding the broader role and impact of law in society, and its context.

### **5.3.3 Recognition of Timing and Potential Impact of Legal Strategies**

The core activist lawyers differed from those that are less active in their discussion of the impact of legal strategies. Though many talked about the possible negative impact of legal strategies for a movement, only the core activists talked about the broader impact on a movement over time, including the importance of timing of strategies. For example, the core activists mentioned the importance of organizing and grass-roots mobilization in general, as well as the possible impact that a particular case might have on future mobilization. They also were likely to mention how litigation, or the involvement of lawyers (acting as legal strategists) in movements, was best

understood in the context of the broader **process** of the movement. One activist lawyer explained:

I think lawyers are not usually that effective in the process if there isn't grass-roots movement to begin with. (come in at different phases, but if come in too early...) Yeah, yeah. What kind of movement can you do when it's just the case by itself? When it's the whole situation to build up—some kind of pressure cooker builds up to the point where there needs to be a lawsuit, or there's some avenue through which you can channel the lawsuit, then that could work.

Note the use of the word “need” with “lawsuit”; this shows how activist lawyers do not automatically turn to litigation, but work to recognize a point where a lawsuit might work best or is the only solution. The framing capacity of lawyers again becomes relevant. They may not be acting as lawyers, but they may be the individual activist who defines the efficacy of particular strategies in particular “windows of political opportunity”. Others may react to them as if they are lawyers by accepting their frame. At the same time, the first few lines of the quote indicate the awareness of other necessary conditions for movement action. “Organizational readiness” is key to political opportunity: if a group is not ready for action when an opportunity arises, even with a resonant frame, they will be unable to act (McAdam, McCarthy, and Zald 1996). Or, because they are

not organized, the framing process will not take hold if communication structures and ties are weakened (McAdam, McCarthy, and Zald 1996; Tarrow 1994).

Activist lawyers also described how the courts and litigation might not be the way to go at all; they may be the experts who recognize for the movement the potential harms rather than steering them into harm:

Or sometimes, you see the issue coming up and you need a test case, so you're looking for the right case or trying to find the vehicle. A lot of the solutions that used to be in law are not anymore. And the solutions are more political now. It used to be that all kinds of injustices were done, and you could go to the law and say and great victory in the federal courts. There's more and more conservatism among the courts, having been passed by Reagan and Bush. So now, the laws are going to be interpreted more likely than not against the poor and against the minorities. The better way to go might be the legislature, or politically.

Core activists also thought more about the overall impact of lawyers or legal strategies on a movement (or movements), while the less activist lawyers may be limited in their role to just "winning a case". However, activist lawyers more typically recognize the long-term consequences for the movement or disadvantaged group, and they factor this into their decision-making as potential legal strategists.

Core activists also expressed the concern found in classic resource mobilization views of professionals. They were very clear that lawyers should not take over:

I think that there's a tendency of lawyers who want to take over and direct. And make the decisions. And that is something that we should not do. Because, law is a funny thing. It's very narrow. It's got causes of action, and it's got particular remedies. And you may WIN a case, only to find out the whole movement's dissolved, or that it's split, or that nothing has really been accomplished except for years and years of litigation. So that, it's just easy for the lawyer to think of himself of herself as the expert who knows what should be done. And it's much harder and more draining to get the decisions, especially depending on the client, to get decisions made by the people if there's a particular movement.

Rather than viewing lawyers as necessarily taking over and channeling a movement according to professional interests or concerns, this lawyer expresses the awareness that activist lawyers have about the dangers of the law or legal strategies. She recognizes the dilemma of wanting to get something accomplished, but also not wanting to kill the

movement or its resource base. She points out how “success” in a case can actually mean “failure” for the movement, a concern that compares to “putting all your eggs in one basket”. Scholars have also pointed out how successful litigation can be “symbolically” dangerous, as people believe the movement’s job is done. For example, following *Roe v. Wade*, the pro-choice activists felt secure that reproductive rights were guaranteed and “rested”, while their opponents in the pro-life movement mobilized quickly and with great passion to counter the loss they had suffered (Staggenborg 1991; Luker 1984). Not only can long courses of litigation suck the resources of movements, they can also impact countermovements and public supporters who witness and respond to the outcome in the public arena.

Another core activist described his thought process when working on particular cases:

My thing is that I view myself as...I have no illusion that filing cases is going to, you know, bring on the revolution. I think it's going to be made by people. By oppressed masses. But they can't do that when they're being evicted from their houses or they're being thrown in jail, or they're having all these other instances of oppression. So we, as radical lawyers, progressive lawyers, people's lawyers, have to try to change those circumstances. See I view myself as being part of a movement...I'm out to file lawsuits to, you know, change the world. I don't

necessarily believe they will, but they can have real impact on progressive movements. When I look at a lawsuit, I'm like, 'what's the potential for organizing around it? What's the potential for empowering and motivating people?' Not just, 'what's the potential for getting a law struck down.' What is the movement potential of it? Is it going to motivate people to protest around it? Are people going to organize around it? Is a particularly oppressed group gonna get fired up around it?

This activist lawyer shows how he views the power in movements to be "the people, the oppressed masses." Lawyers can help movements by making the lives of the oppressed a little better. It's as if they are leveling the playing field by helping people fight everyday concerns like housing, which may prevent someone from being "available" for mobilization (McAdam 1988a). Lawsuits are also viewed in the context of mobilization as the last seven lines demonstrate; this lawyer hopes to increase the potential of the people. He went on to describe how he rarely looks just at a case, and its fact pattern, just to have a case to do. He describes the importance of holding off on litigation to see what else is going on first. Specifically, he wants a sense of the people and the degree to which they are organized because he knows that is "more important than any lawsuit". He describes his involvement in one case:

**If I had a group of clients I'm working with, like the tenants of this Brittany Apartments where we won the big settlement from, I'd be at their meetings (slaps hands together). We'd be organizing. Before I went in, it was a housing case, before I'll even litigate a case, you need to organize. You need to organize and flex your political muscles first to see how far that will go. You meet with them; you take direction from them. You do all those things. And that's part of being a movement lawyer.**

**So here, the lawyering is set aside ("before litigate case") and the "movement organizer" or activist role comes out. As a core activist, this lawyer puts the movement first, and legal strategies are just one option. It appears that the lawyer recognizes the potential dangers of "taking over" by channeling a movement into legal strategies and goals, again a concern of resource mobilization scholars (McCarthy and Zald 1987).**

**A lawyer involved in environmental activism highlighted the importance of organizational readiness before the lawyer or legal strategies emerge. He downplayed the role of lawyers in general, arguing that legal action really just acts as the icing on the cake of wider movement success and changes:**

**I think legal action tends to take principles that have already gained fairly wide acceptance and put them into effect, or that are on the verge of being accepted and puts them into effect. Legal actions usually do not themselves**

**promote major social change that society is not ready to accept ... You know, abortion rights is a good example. I don't think abortion rights litigation (would have won) if 99% of the public thought that abortion was the greatest immorality there could be. It succeeded because there was actually fairly strong support for abortion rights. And we see that all the time where we might win a case that produces some great result, and it's overturned by Congress or state legislature.**

**This quote clearly illustrates the concepts of political opportunity structure and cultural framing (For overview, see Snow and Benford forthcoming; McAdam, McCarthy, and Zald 1996). Internal characteristics of individual movements, such as organization and resources, are key to the mobilization, development, and consequences of movements. At the same time, the “external” context in which that movement operates also helps determine whether the movement can get off the ground, how it will maintain itself, and what the impact of particular strategies will be. The role of lawyers is situated in this political context. As this lawyer points out, cases that were successful in were not due to the legal actions themselves, but to the political climate. As in the 50s with civil rights, society had changed, the members of the Supreme Court had changed, and there was broad public support for civil rights (Morris 1984).**

**Another lawyer described how lawyers may “save” a movement from destruction, or tremendous loss of resources, by recognizing that a lawsuit (or resolution to a case through settlement) may be the best answer for now. She described this as a skill that lawyers have—of knowing when to compromise. She argued that this is often interpreted as taking over, or limiting a movement, or as “unfair” to constituents, but she**

was adamant that this was not the case. She said: “there’s a difference between law and reality. Compromises are a fix, but it still may not seem fair. But it’s a fix for right now. Lawyers are absolutely committed, yet they compromise.” Activist lawyers may be viewed as “selling out” the cause by compromising, but typically the movement is their primary concern (sacrificing one case for a larger movement objective).

Again, I have no data on the actual impact of lawyers on a movement, but most mentioned how they did not necessarily encourage legalistic strategies. The lawyers own accounts of their behavior indicate that they do not deradicalize a movement in any way. They may or may not participate in the radical, sometimes illegal, activities, but they go out of their way to emphasize that the people and the movements are free to choose whatever strategy works for them. When asked about the potential loss of disruptive power to a movement, one core activist said the following:

Well, it depends on the lawyer. You bring in me, or you bring in (names a local core activist), no! You bring in more traditional lawyers, I’m sure they may object to some of the disruptiveness. They may object to civil disobedience, may object to going out and chaining yourself to the door of a building, or going into a courtroom and yelling or screaming. But I don’t think Arthur Kinoy, or Bill Kunstler, or (local core activist)...I don’t think the disruptive side of a movement is lessened

any by the involvement of those kinds of people. Yeah, I'm sure it does (sometimes). Lawyers will sometimes bring a calming force, a let's go slower kind of force, let's do it within the law kind of force, let's not upset the establishment—well, maybe, maybe not. But yeah, I think that's true. But there are lots of good exceptions to that.

While allowing for the possibility of a moderating influence of lawyers, this lawyer was convinced that core activist lawyers would encourage the radical activities of movements. He compared a local core activist lawyer to the well-known “radical lawyers”, Kunstler and Kinoy, to demonstrate how disruptive actions do not go away just because one is a lawyer). An important area for future research would be to observe lawyers and movement organizations as they interact to determine if movements really do change once a lawyer becomes involved.

To further explore the impact of lawyers on movements over time, activist lawyers should also be considered in the context of protest cycles. If lawyers do, in fact, function to recognize when legal strategies can be used effectively by movements, isn't it logical to assume that activist lawyers also play an important role during the “doldrums” of a protest cycle (Taylor 1989). If lawyering is compatible with activism, under the conditions described earlier (how tensions are avoided or managed), then it seems obvious that these individuals can “fall back” on their professional role when outlets for activism fade. Though it is likely that other activists may also remain tied to an activist

network over time, it is possible that they are pulled out by professional or other obligations (or role conflicts) once new opportunities for protest begin to emerge. Activist lawyers, on the other hand, may have the organizational readiness and network ties, through their legal network as well as through the activist network. In fact, the legal network may be the source of the ties that holds the activist network together. If lawyers are, in fact, “closer” to politics and to the issues, they may be the first to make others aware.

Over time as political contexts change, certain collective identities may also change. Identities are often redefined, and there may be a weakening of a collective identity’s ability to mobilize. Lawyers, with their professional identity and ties, may be able to maintain the mobilizing capacity of the “activist lawyer identity”, or they may not. This needs further investigation, especially to determine if falling back on the professional identity has the opposite effect—by pulling lawyers into more traditional roles and identities. Lawyers are one embodiment of the continuity of activist networks or subcultures; they can pass on the knowledge and skills of activist lawyering to others. And, because lawyers are trained in precedent, they may have a unique understanding of social change and the importance of continuing activist traditions and subcultures.

## **CHAPTER 6 CONCLUSION**

### **6.1 Summary of Findings**

At the start of this project, I asked several related questions about activist lawyers in social movements: (1) what roles do lawyers who define themselves as activists play in social movements? (2) How do lawyers enter into activism and maintain activist careers? (3) Are the processes through which lawyers enter into activism comparable to those of other activists? (4) How do activist lawyers reconcile multiple identities that they can experience as "professionals" and "activists"? This dissertation is a first attempt to answer these questions, using data from in-depth interviews with 34 activist lawyers.

The lawyers in this study demonstrate a range of activism and lawyering. Not all are seriously committed to activism; some are more committed to activism than to law; still others have thoroughly intertwined the two. Identifying oneself as an activist tells us very little about the actual behavior, identities, and roles played by these lawyers in social movements. By talking to these lawyers and gathering rich data on their work and their lives, a clearer picture of what it means to be an activist lawyer arose.

First of all, lawyers' entrance into activism can be compared to that of ordinary activists when we are talking about anyone but the "hired gun" type of lawyer. While there are certainly varied motivations and varied roles once active, these lawyers' lives demonstrated the significance of structural links between the potential activist lawyer and activist subcultures, both lawyer and non-lawyer. The process of mobilization activist lawyers, then, is comparable to the process of mobilizing activists. Being a lawyer may not be relevant, unless we are talking about the hired gun. Similar to other research on

activist mobilization, the data here suggest how ties to other activists, involvement in certain kinds of organizations, and prior activism (and thus connections), all were important factors in lawyer mobilization. In addition, mentors, and the kind of mentor, proved to be a significant influence on the activism by these lawyers.

Lawyers are not necessarily mobilized into movements as lawyers; many are mobilized as ordinary activists with a "skill". Lawyers, then, should be viewed as part of the activist subculture, not distinct from it. Though this study does not include "hired guns" directly, many of the lawyers in this study described them in a way that supports previous research. Primarily, the concerns that lawyers do not act in a way that benefits movements, and channel the goals and strategies into more legalistic forms, was something that these lawyers fought against, and perhaps distanced themselves from the "stereotype". Hired guns may do that because they are not part of the movement; these activist lawyers saw themselves as part of the movement--and an ordinary part at that (not smarter, and certainly not there to take over).

Because lawyers are not necessarily mobilized as lawyers, it becomes obvious that their role in movements may be quite different as well. Here, lawyers ranged in their activism from radical protestors to check-writers. There were those "core" activists who were active in organizing, demonstrating at sit-ins and public rallies, and represented clients ranging from those arrested for protest to those fighting oppression and mass inequalities. Other lawyers were less active than they were in the past; yet, they still were marginally involved and called themselves activists. Still others, who were also marginally involved, were either just getting started, working a little at activism and a

little at law--successfully avoiding too much strain between the two, or struggling to find a place where the activism and the lawyering would not cause them so much conflict.

Because lawyers' roles are so varied in movements, it then becomes interesting to understand how and why the different paths occur, and how they manage their career activist lawyering. Those lawyers that are embedded in activist networks, with mentors that are activist, and participate in political and alternative legal organizations, are those most likely to be core activist lawyers. Lawyers with "less" of these, or with different kinds of mentors, and with some countervailing ties become marginal activist lawyers. Lawyers with more countervailing ties, and thus more role and identity conflicts, are least involved in activism, and/or suffer the most strain. Surprisingly, those that are most activist do not feel the most strain. They successfully negotiated their professional identity and role so that it corresponds with their activist beliefs and actions. The marginal activists that feel strain are those that have ties that continually challenge either the activist or the professional identity. Lawyers often seek out professional settings that are more alternative and flexible as a means to their activism. The organizational constraints in more traditional legal positions work against activism both ideologically and structurally. Role conflict is evident, and lawyers have to change positions to maintain activism, or alter their personal identity to stay in the position. Many pull back from their activist role, while redefining "activist" and engaging in identity work to justify their lack of activism.

Not only do activist lawyers manage their activist and professional identities, but they also have negotiated a more permanent place for themselves in the profession and in

society. By continuing the traditions of activism, these lawyers set examples for future generations of activist lawyers. By negotiating a positive alternative identity, it will then be that much more appealing to potential activist lawyers. Through their strong ties into the activist communities and to the clinics at law schools, these lawyers provide a constant interaction between past, present, and future activist lawyers. It is possible that these networks of activist lawyers play a key role as "abeyance structures" that help keep activist traditions alive when large social movement activity fades temporarily. Informal networks, and the organizational readiness that characterizes them, mean that new political opportunities can be recognized, defined, and acted upon. And lawyers, because of their work in the legal system, may have an early awareness of issues and opportunities that can be brought back to the activist community.

## **6.2 Theoretical Implications**

Social movement researchers can view this study in a number of ways. First, the rich data on mobilization into activist lawyering help to reinforce what we already know about the process of joining. At the same time, this data challenges our understanding of this process by removing the assumption that lawyers are mobilized as lawyers, as professionals. The apparent negative impact that lawyers have on movements is called into question if we now view lawyers as ordinary activists and not leaders, or experts, or professionals, or some other horrible thing. Knowing the conditions under which lawyers and movements intersect is key to understanding the outcome for movements and for individual activists. A summary of the process of activist lawyering, which

contributes to the literature on social movement activism, identity, and professionals, follows:

- **Lawyers who are embedded in non-lawyer activist networks are more likely to follow through the process, entering into activism and maintaining it. Political mentors, ties to activist communities, and ties to other activist lawyers all provided support for the alternative identity as "activist lawyers", as well training in becoming an activist more generally.**
- **Lawyers who are mobilized in this way are likely to act as ordinary activists (role). Rather than assuming that activist lawyers are lawyers first, activists second, the data here illustrates how these lawyers act as activists first, and that being a lawyer may not be relevant in every situation.**
- **Lawyers who act as ordinary activists continue their involvement in activist networks and activities; thus, creating a potential conflict with a professional identity and role**
- **Lawyers who act as ordinary activists negotiate their professional careers and identities in such a way that "activist" and "lawyer" correspond and are not in conflict. Work settings such as public interest centers allow for network ties into activism, as well as distance one from the conflict-causing traditional professional role obligations and ties.**
- **The fewer ties to other activists and other activist lawyers, and the more ties to traditional lawyers or non-activist individuals, the less likely it will be to enter into, or maintain, activism.**

There are practical implications for movements here, in that simply "hiring a lawyer" can be risky; whereas, developing relationships with lawyers and other professionals from within a community, or through a tie, will have more advantages for the movement, as well as for that lawyer.

There are implications for social psychology as well. The identity work and role conflicts of these activist lawyers suggest conditions under which conflict can be more creative, rather than destructive. Typically, role conflict is viewed as destructive as an individual either "loses" one role because of the strain, or it causes them continual stress as they try to live with the conflict of simultaneous conflicting roles. While some lawyers did distance themselves from one of their two roles to avoid conflict, other lawyers found a way to create a more positive and rewarding professional role and achieve correspondence between their personal and professional identities (Snow and McAdam 1998; Snow and Anderson 1987). By creating for themselves work contexts that allow for activism more readily, they do not feel the stresses of sacrificing a personal identity. Not only do the activist lawyers avoid conflict, but also they demonstrate to others the compatibility of the two roles under certain conditions, and thus encourage more "participation" in activist lawyering.

By demonstrating compatibility between these two roles, this research also has implications for the sociolegal studies of the legal profession and lawyering. First, activist lawyering is not just a reaction to the sixties. It is a more permanent fixture in our society, with traditions, and norms, and ideologies that comprise a subculture within the legal profession. Activist lawyering is not at odds with the larger profession: it

simply picks and chooses what it needs from the profession, and blends that with what it needs from the activist community. Studies of the legal profession should not dismiss these lawyers as irrelevant because of their small numbers, or because of their apparent "failure" in the profession. This is not "failed socialization" or "incompetence". Activist lawyers follow complex paths into their careers, and scholars should turn to literature on social movement activism to better understand this process and the work of these lawyers.

### **6.3 Questions for Future Research**

While the data generated provide a potentially rich understanding of activist lawyers and their involvement in social movements, there are still areas where important research needs to be done. This data is from the lawyer's perspective; so, it provides a detailed description of their own views on activism, social movements, and their own sense of what they do as activist lawyers. However, this data needs to be supplemented with research from the movement perspective, and over time, to address a number of issues. Previous research has looked at lawyers in one movement organization and the work they do. However, the data here indicates how lawyers work across multiple movements and causes, and their behavior might best be understood by analyzing a local set of movements, rather than just one. By looking at the lawyers and the movements together, we can gather data to indicate how important the role of lawyers may be in the process of framing, both for micromobilization and in the construction of collective identities. The data here suggest ways in which a particular collective identity--activist

lawyer--can be negotiated, and the consequences of this identity "process" for movements, the legal profession, and for individual lawyers. For example, it would be interesting for future research to study students in clinics, to follow the development of their network ties and experiences, and determine why some return to traditional work and others do not. My hunch is that the connections into activist, and activist lawyering, communities are somehow deeper and more complex for those that stay with it.

In addition to issues of framing, the interaction between lawyers and movements can be better understood by observation of lawyers in movements over time. Lawyers and movements can be studied in the context of political opportunity structures, protest cycles, ongoing movements, and activist communities and networks. While the lawyers here discussed many of these issues, all of it is from their own perspective and interpretation. Having a wide range of ages and experiences in the sample helped me determine the best consensus picture of activist lawyering, but further research should be conducted. A study in another city or another region or country would be interesting to determine if the processes and issues outlined here are, in fact, generalizable.

A survey might provide more generalizable data and get at the distribution of activist lawyers, their networks, their salient identities and behaviors. However, a survey would not be possible without first knowing what kinds of questions to ask or what would be the relevant dimensions and response categories. For example, a survey instrument must include a multitude of roles and behaviors for lawyers (and perhaps for other professionals) rather than assuming they fit into certain roles. Here I have outlined a variety of roles and combinations or roles, as well as provided a first glimpse into the

potential conflicts between professional and personal identities of activist lawyers. I have also illustrate the important factors in the potential "paths" into activist lawyering, the stages and dimensions of which might not be known without an ethnographic study first uncovering them.

While previous research may have suggested that lawyers were involved in social movements, or that their professional role was somewhat compatible with activism; and other research made assumptions about the negative impact that "professionals" and their interests would have on movements, this is one of the first empirical studies to really ask what lawyers do, how they do it, and what the consequences are for them personally and professionally. The impact on movements needs further investigation, and this study offers a way to unpack the term "professional", and to unpack the term activist lawyer, to better examine the varied consequences for movements.

## APPENDIX A: INTERVIEW SCHEDULE

### A. Demographics

- Age
- Family
- Jobs
- Locations and years of education
- Past and current organizational membership

### B. Socialization

1. Were any of your family members involved in politics? In what way?
2. How would you describe your own entrance into politics and/or activism?
3. How did you come to be a lawyer?
4. Do you feel that your law school (or other schooling) influenced your politics and career choices? If so, in what way?
5. Do you feel that certain schools produce political or activist lawyers? Probe: or public interest lawyers?
6. Did you have a mentor in law school or otherwise? Were they involved in activism or politics? In what way?
7. When you were in law school, did you have any idea what kind of law you wanted to do?
8. Do you consider yourself a specialist? How did you come to specialize in that area?

### C. Political Views and Attitudes

9. How would you characterize your political views? Probe: radical, left, liberal, right?
10. How has this changed over time? Why?
11. How would you characterize an activist (political leanings)?
12. Do you consider yourself an activist?
13. Are you an activist who does law, or a lawyer who does activism? Probe: describe activism.
14. Would you say there is a shared philosophy among those in public interest law or activist law? Are these the same thing?
15. Do other kinds of lawyers (e.g. corporate) have a different shared philosophy?
16. How might these shared philosophies manifest themselves in behavior? In beliefs about law or lawyering? Probe: any similarities in philosophy across all kinds of law?

**D. Activism**

17. A lot of people say the 60s was an era unique in terms of its heightened activism. Do you feel that things have changed since then (especially in terms of activism by lawyers)? If so, what brought about those changes?
18. Is it easier or harder to be an activist lawyer or public interest lawyer?
19. One study showed that only about 3% of Harvard Law graduates go into public interest law. Why do you think the percentage is so small?
20. Have you been sympathetic to certain movements throughout your lifetime? In what capacity were you involved? Probe: demonstrate, write letters, civil disobedience, testified/represented individuals or organizations?
21. Over the course of your career, what kinds of work have you done? Are certain causes of issues important to you that endured since the beginning of your career?

**E. Role of Lawyers in Politics**

22. Do lawyers have a special role in politics or social movements? Probe: should they?
23. What do you think should be the primary role of the law or judicial process in society?
24. Do you think that a lawyer ought to attempt, in everyday activities and litigation, to shape law to respond to social needs? Probe: pick cases that have the broadest social significance?
25. What characteristics do you think make a lawyer effective?
26. Do activist lawyers share these characteristics, or do they have other characteristics that make them effective?
27. Do you feel that public interest lawyers have a special status within the legal profession? Probe: if lower or deviant status, do you care?
28. Has activism impacted your career as a lawyer? Personally?
29. What do you think is the link between lawyers and social movements such as the civil rights movement?
30. How do you think lawyers become involved in movements?
31. Do you think lawyers change a movement in any way once involved? Probe: do you think using lawyers removes the force of movements?
32. Is legal action less potent? Are legal strategies limited in any way?
33. Should lawyers be involved with social movements? Probe: to what degree? Is there anything an activist lawyer should not or cannot do?
34. Have you ever refused to work on a particular legal case due to moral or political reasons?

**F. Involvement with Organization (Job or Volunteer)**

35. Can you describe your involvement with \_\_\_\_\_?
36. How did you come to be involved/start organization? Probe: Thinking back, why did you decide to join/form this organization instead of joining another one?
37. Was it founded as a litigating organization?
38. What are the goals of the organization? Probe: mission statement?

39. What are the criteria used by the organization for choosing what issues/cases/causes to represent or participate in? Probe: In what way do potential cases/clients come to your attention?
40. Do you consult with other activist individuals/organizations? Under what conditions might you do so? Which ones?
41. Do you consult with other lawyers (activist and/or non-activist)? Under what conditions?
42. How important do you think this organization is in affecting the politics of \_\_\_\_\_ issue? Probe: local, state, national impact?
43. What does being a member of \_\_\_\_\_ mean?
44. How much contact do you have with others involved in that organization?
45. Are there any organizations that you feel are linked more closely to movements than others? Probe: How are these organizations different/similar to yours?
46. Do you think that lawyers on the right/left belong to the same organizations and know the same network of lawyers? Probe: Do all movement lawyers associate?
47. Tell me about your current work. What proportion of that work is "movement" work or activism?
48. What do you enjoy about your work? Do you have any personal work goals for the future?
49. Are there any issues/cases that are "hot" right now?
50. What strengths do you think you bring to the legal profession?
51. Is there anything else you would like to add about the organization or about activist lawyers?
52. Finally, are there others you would recommend that I talk to?

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