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Editor's Preface: *This issue of AMICI features a symposium on directions in research on law and social movements with papers by Anna-Maria Marshall, Steven A. Boutcher, Scott Barclay and Shauna Fisher, and Sandra Levitsky. I thank all participants for their contributions and Anna-Maria Marshall for organizing this mini-symposium. The Editor*

Directions in Research on Law and Social Movements

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The study of the relationship between law and social movements has largely proceeded in two independent scholarly fields: social movement studies and Law and Society research. Until recently, law had received relatively little systematic attention in the sociological studies of social movements. Legal strategies, particularly litigation, had been characterized as an institutional tactic, more often pursued by interest groups than mass movements. Studies of professional activists mostly overlooked the unusual role of lawyers in the life of a movement (Staggenborg 1988). In fact, legal actors in social movements have most often appeared in a rich line of research on efforts by the police to control protestors (Earl, McCarthy, and Soule 2003; McPhail, Schweingruber, and McCarthy 1998).

Recent studies, however, have enriched the conceptualizations of law in their models of social movement activities. For example, Polletta (2000) showed how voting rights litigation provided opportunities for consciousness-raising and mass participation among civil rights activists in the 1960's. In their analysis of the LGBT movement, Werum and Winders (2001) explicitly included the legal system in the range of political opportunities available to a movement. Pedriana (2004) examined the way that struggles with state agencies over the meaning of civil rights legislation shaped organizations in the women's rights movement of the 1970's. Finally, Lynn Jones (2005) has analyzed the way that movement lawyers navigate the competing roles of committed activists and professional legal technicians. (*Directions in Research* continues on page 5)

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Message from the Chair: Putting Sociology of Law on the Map

Autumn is a time for stock-taking. Now that the leaves have fallen and the birds have flown, our thoughts turn to the timeless conundrum beloved of philosophers and third party vice-presidential candidates alike: Who are we, and why are we (still) here? Although each of us must grapple with such existential questions in the first-person singular alone, a quirky joy of being section chair is that one gets to grapple with them in the first-person plural in print.

As my predecessor Joachim Savelsberg's 2005 annual report makes clear, the Sociology of Law section is thriving. Our financial accounts are in the black, our membership grew by almost a third in a single year (to 412), and our ASA sessions were lively, enlightening and well attended. But we are still a relatively young and small section, and although we all seem to agree that there is, indeed, some "there" here, we do not always agree about where exactly our "here" is.

Being broadminded (read: conflict-averse), I will resist the urge to offer a prescriptive vision of what the Sociology of Law ought to be. But being empirically-inclined, I will indulge the urge to offer a statistical glimpse of what the Sociology of Law section currently is.

My data for this endeavor come from the "section overlap matrix" that the ASA headquarters (in the person of Michael Murphy) distributes to section chairs roughly biannually. This matrix records both the number of members in each section and, more interestingly, the number of memberships that each section's members hold in other sections. By parsing these figures, we can see a snapshot of where the Sociology of Law stands in relation to the rest of the field.

Mixed Memberships: Perhaps the simplest question that one might explore with the section overlap data is "What else do sociologists of law do, when we're not doing sociology of law?" As Table 1 indicates, our largest overlap is with the section on Crime, Law and Deviance (CLD), to which over a third of all Sociology of Law members belong. Sociology of Culture runs a distant second, with slightly over 15% of our membership on its roster. Comparative/Historical, Sex and Gender, OOW (Organizations, Occupation and Work), and Political follow in a virtual four-way tie, at 14% apiece. And at the other end of the continuum, barely ten of our 412 members belong to the sections on Evolution, Mathematical Sociology, and Population, respectively. (Dissertators take note: There may be an untapped research agenda lurking out there on law and demography. Think, for example, about the law-in-action of China's one-child policy...).

Elective Affinities: Of course, these "raw" overlap figures are not terribly surprising, given the size of the sections involved. Culture, Gender and OOW are three of the largest ASA sections, and Mathematical and Evolution are the two of the smallest. So in addition to examining raw overlaps, one might want to calculate "affinity" scores that adjust for section size.1 The dark bars in Figure 1 present such affinities, ranked from highest (Comparative/Historical) to lowest (Education). Well, almost: I've omitted CLD, because its affinity score of 5.3 would swamp the rest of the chart.

Some of the patterns here strike me as unsurprising: Sociology of Law draws heavily on comparative/historical methods and politico-economic problematics; and the affinity between socio-legal studies and social theory extends from Durkheim and Weber through Foucault and Habermas.

But Figure 1 contains some unexpected revelations, as well: The law-and-language tradition notwithstanding, I would not have expected our fourth-strongest affinity to be with Ethnomethodology. Nor, given the focus of recent public legal debates, would I have expected our weakest affinities to include Religion, Family, Medical and |Education. And our relatively thin links to the "stratification" sections (Race and Ethnicity; Race, Gender & Class; Asian; and Latino/a) strike me as a shame for both them and us.

Figure 1 also sheds some light on the perennial conundrum of why the ASA needs two sections with "law" in their names. Although Law's and CLD's closest affinities -- by far -- are with one another, the two sections' overall profiles are quite distinct (R=.14). Comparing the solid to the striped bars in Figure 1, one can hardly miss Sociology of Law's relative emphasis on political-economy over deviance: Four of the five largest gaps between Law and CLD stem from our section's close affinity to the Comparative/Historical, Economic, Political, and OOW sections, none of which hold much appeal for our colleagues in CLD. Conversely, CLD has much closer ties than we to the sections on Alcohol and Drugs, Mental Health, and Methodology. CLD also has substantially lower affinity levels overall, a point to which I will return below.

Finally, a comparison of the white and black bars in Figure 1 demonstrates the substantial consistency in our section's affinities between 2004 and 2005 (R=.81), despite the addition of so many new members. The only noteworthy exception is the jump in our affinity to the section on Rationality and Society -- a tribute no doubt to the tireless recruitment efforts of last year's membership chair, Mathieu Deflem, whose home institution happens to be a hotbed of rational choice scholarship.

On the Map: As "relational sociology" teaches, affinities define networks, and networks define fields. Figure 2 uses multidimensional scaling to map the larger field of sociology, as defined by ASA section affinities in 2005. In this plot, the proximity of any two sections reflects their degree of mutual affinity, while the superimposed ovals represent eyeball guesstimates of larger thematic clusters. Although the orientation of the graph is statistically arbitrary, one can discern a micro-macro

gradient running from lower-right to upper-left, and perhaps a "mechanisms vs. outcomes" gradient running from lower-left to upper-right.

To paraphrase my high school calculus text, "it is intuitively obvious to the casual observer" that Law occupies the very omphalos of this sociological universe. Such a result was not pre-ordained. Nor is it purely the consequence of our section's historical links to CLD; indeed, our position on the map changes little when the affinities between Law and CLD are recoded as missing values. Rather, I would suggest, this central position reflects our section's debt to the interdisciplinary law and society tradition, which forces us to engage with psychologists as well as anthropologists, historians as well as policy researchers, linguists as well as pollsters. In recent years, our section leadership has come largely from the macro, political-economy side of the field; but as a section, we have also valued close attention to deviance, interaction order, and the power of speech. We are, in some ways, more a microcosm of the discipline than a bastion of any particular faction.

In Search of Successful Eclecticism: Our eclecticism, however, can be a mixed blessing. We are active joiners, holding an average of three other section memberships per person -- fully 50% more than our colleagues in CLD. But our affinities are among the most far-flung of all the ASA's 44 sections. There is a very real risk that our attentions could one day be drawn away by the ebb and flow of ideas outside our boundaries, and that our section could become simply a convenient vehicle for placing socio-legal work on the ASA program, with little sense of an ongoing shared endeavor.

I have always cherished the wide range of perspectives within the Sociology of Law. But successful eclecticism is hard work. We must work to ensure that our section is a true intellectual home, not a seldom-visited vacation time-share. And we must also work to ensure that our breadth reflects avid omnivorousness, not indifferent toleration.

Many of us spend much of the year chewing our own ideas, box-lunch style, at our desks. As we move from this season of retrospective stocktaking to the coming season of prospective resolutions, let us challenge ourselves to make the Sociology of Law less a box-lunch and more a potluck. Let us serve up a rich feast of ideas that draws friends together to talk -- and even argue -- long into the night!

Table 1: **2005 Membership Overlaps with Sociology of Law (section size in parentheses)**

Section:	Shared Members	Percentage Soc. Of Law
Top 10:		
1. Crime, Law, & Deviance (689)	138	33.5%
2. Sociology of Culture (1,063)	63	15.3%
3. Comp/Historical Soc (693)	58	14.1%
4. Orgs, Occupations &Work (981)	57	13.8%
5. Sex and Gender (1,072)	57	13.8%
6. Political Sociology (755)	57	13.8%
7. Theory (819)	54	13.1%
8. Economic Sociology (674)	46	11.2%
9. Collective Behavior/Soc Movements (708)	42	10.2%
10. Race, Gender, and Class (848)	38	9.2%
Bottom 5:		
40. History of Sociology (233)	12	2.9%
Animals and Society (209)	12	2.9%
41. Latino/a Sociology (337)	11	2.7%
42. Sociology of Population (444)	10	2.4%
43. Mathematical Sociology (196)	9	2.2%
44. Evolution and Sociology (157)	8	1.9%

Section of Sociology of Law. The section invites submissions for three paper sessions and one roundtable session for the upcoming ASA:

(1) Sociology of Law (open-topic paper panel): Kitty Calavita, University of California-Irvine, kccalavi@uci.edu

(2) Sociology of Law (open-topic paper panel): Mary Nell Trautner, University of Arizona, mnt@uarizona.edu

(3) Gender and the Law: Beth Quinn, Montana State University,bquinn@montana.edu

(4) Sociology of Law Roundtable: Annette Nierobisz, anierobi@carleton.edu

The Sociology of Law section is co-sponsoring a panel with the Science, Knowledge, and Technology section, organized by Susan Silbey. We are looking forward to receiving submissions for these open-theme panels, the roundtable, the panel on gender and the law, and the panel shared with Science, Knowledge, and Technology.

In addition, John Hagan is organizing an invited panel on "International Law, Human Rights, and War Crimes."

Figure 1: Section Affinities

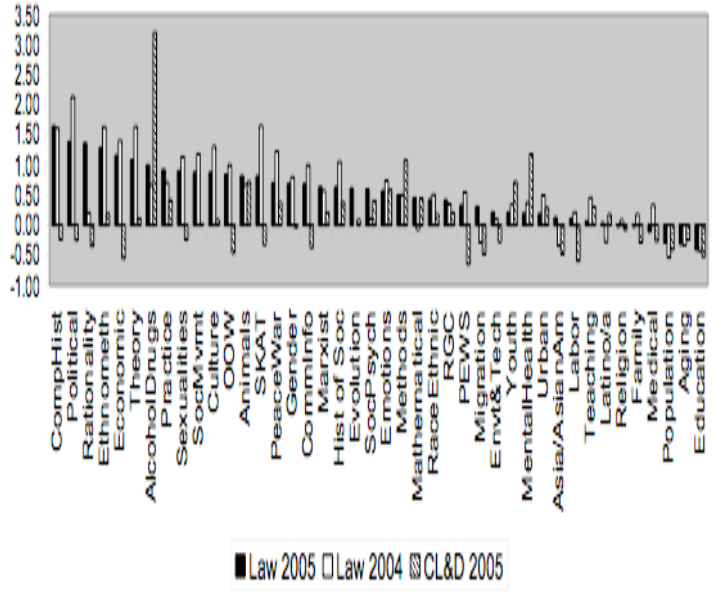
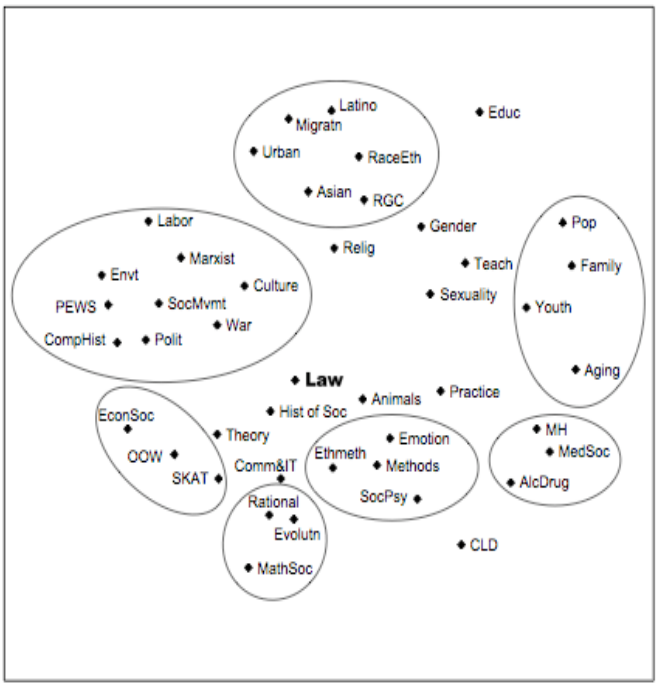


Figure 2: ASA Section Map (2005)



ASA SOCIOLOGY OF LAW PAPER SUBMISSIONS STUDENT PAPER AWARDS 2006

The Sociology of Law Section of the American Sociological Association announces its Annual Student Paper Awards. The section will award prizes for both the best graduate and undergraduate paper. Winners will receive their award at the ASA Annual Meeting in Montreal, August, 2006. Papers may address any topic in the Sociology of Law. Papers may be reports of any kind of original research, including empirical and theoretical contributions or evaluations of existing scholarship. Originality, clarity, and analyses of substantive social issues are typically seen as important advantages.

Undergraduate Student Paper Award

This recognizes outstanding work in the sociology of law by undergraduates. Papers should preferably be submitted by a faculty sponsor but may be submitted directly, provided that the name and address of a faculty sponsor is given, to whom reference may be made to confirm the status of the author and the originality of the work. Entries should follow ASA style, be double-spaced and not exceed 35 pages in length (including tables, appendices, and references). They must have been written while the author was an undergraduate. Papers may have been submitted for publication but must not have been accepted by the closing date. Papers accepted for publication after the closing date will remain under consideration by the committee.

Graduate Student Paper Award

This recognizes outstanding work in the sociology of law by postgraduates at either Masters or Doctoral level. Papers should preferably be submitted by a faculty sponsor but may be submitted directly, provided that the name and address of a faculty sponsor is given, to whom reference may be made to confirm the status of the author and the originality of the work. Entries should follow ASA style, be double-spaced and not exceed 35 pages in length (including tables, appendices, and references). They must have been written while the author was a postgraduate. Papers may have been submitted for publication but must not have been accepted by the closing date. Papers accepted for publication after the closing date will remain under consideration by the committee. Collaborative papers are eligible for consideration provided that all the authors are of the same status and individually eligible for the competition (i.e., papers cannot be co-authored by a graduate and an undergraduate or by a student and a faculty member).

The deadline for submissions is March 31, 2006.

Papers must be submitted electronically as Word or Wordperfect files to robert.dingwall@nottingham.ac.uk. Hard copy submissions will not be accepted, other than by prior agreement with the committee chair. The Award Committee consists of Robert Dingwall (Chair, Nottingham, UK),Catherine Albiston (UC, Berkeley), Steven Barkan (University of Maine), Valerie Jenness (UC, Irvine).

ASA SOCIOLOGY OF LAW DISTINGUISHED BOOK AWARD COMPETITION 2006

The Sociology of Law section of the American Sociological Association announces its biennial Distinguished Book Award—a prize for the best book in the sociology of law published in the 2003 through 2005 calendar years. Books previously nominated cannot be nominated for a second time. Winner(s) will receive the award at the annual meeting of the American Sociological Association in August 2006. Books may be self-nominated, nominated by another scholar, or by publishers. If you wish to nominate a book, please send a brief nomination letter and arrange for five copies of the book to be sent to:

Kevin Delaney, Department of Sociology, 713 Gladfelter Hall, 1115 W. Berks St., Temple University, Philadelphia, PA 19122. (email: kdelaney@temple.edu) Best Book Award Committee Chair. Committee Members are Frank Munger, Carroll Serron and Alfonso Morales.

*The deadline for nominations is February 1, 2006. *

SPOTLIGHT ON NEW PHD SCHOLARSHIP IN THE SOCIOLOGY OF LAW

What Difference Does Participation Make? New Regionalism in Community Conservation

Caroline Lee

This dissertation explores obstacles to civic engagement in local environmental politics. I compare a spectrum of formal and informal conservation decision-making processes in three coastal U.S. cities facing rapid growth: San Diego, California; Charleston, South Carolina; and Portsmouth, New Hampshire. Studying how new participatory bodies in these communities mesh with local political cultures and with theorists' expectations of empowerment reveals unexpected resistance to formal democratic participation. The less formal, ad hoc formats used in Charleston and Portsmouth succeeded in engaging politically diverse lay community members, whereas the formal democratic process used in San Diego was dominated by professionals and activists. This finding is surprising because the Charleston and Portsmouth processes were run by exclusive partnerships of national conservation advocacy groups, while the San Diego process of empowered deliberation had a citizen-working group designed to gain public approval in fair, open discussion. Even more surprisingly, the Charleston and Portsmouth partnerships successfully countered entrenched home rule and property rights traditions among Republican landowners in favor of increased federal roles in habitat conservation.

Why, then, do researchers of participation overwhelmingly favor the San Diego model? I argue that theorists have been so focused on deliberation as an alternative to adversarial models that they have failed to recognize the skills of interest group partnerships in negotiating local reception. In empowered deliberation models, interest groups are problematic due to their preference for strategic bargaining. In these cases, however, interest-group partnerships working for the common goal of conservation circumvented local growth machines committed to development at all costs. These partnerships promoted progressive environmental values by embracing regional boosterism and mimicking elite players' backstage networking tactics. Thus, the Charleston and Portsmouth cases can be understood better as consensus-generating *conservation machines* than as democratic decision-making institutions.

Instead of proposing the conservation machine model as an alternative ideal, I suggest that researchers of participation policy should be more attentive to the powerful role of place-based identities and informal communication in decision-making, and should question the potential of devolution and transparency to produce local support. My research shows that community members' choice to participate had less to do with apathy or limited resources than with perceptions of public deliberation as unsavory grandstanding. The national environmental interest groups that critics malign as out of touch with the grassroots have in fact cultivated substantive, neighborly debate of local preferences in politically conservative communities. Despite the current vogue for formal stakeholder participation in planning, these outcomes suggest that political theorists should reconsider the idealization of public deliberation and the presumed sources of civic alienation.

Caroline Lee is currently a Ph.D. Candidate in sociology at the University of California, San Diego, and a Fellow in Contemporary History, Public Policy, and American Politics at the Miller Center of Public Affairs. Her next project studies the role of professional participation experts in democratic processes.

(*Marshall* Continued from page 1)

For its part, the Law and Society tradition has generated many influential studies of what happens when social movements pursue legal strategies in their campaigns for social change. Important early books, like *The Politics of Rights* by Stuart Scheingold (2004 [1974]) and *Social Movements and the Legal System* by Joel Handler (1978), offered a critical perspective on the possibilities of litigation for producing social change. They argued that litigation was an inherently conservative strategy, dominated by elites who were reluctant to engage in disruptive tactics. As a result, movements that chose to pursue litigation would probably suffer from demobilization as the masses lost opportunities to participate. In addition, the outcomes would always be incremental and ultimately inadequate to make structural changes needed to remedy inequality. Scheingold suggested, however, that the "politics of rights" could provide a rallying cry for mobilizing activists into a movement, as long as it was accompanied by strategies other than litigation. Michael McCann's (1994) path-breaking study of the comparable worth movement, *Rights at Work*, specified the many ways that social movements rely on litigation campaigns to attract activists into a movement. Michael McCann's (1994) path-breaking study of the comparable worth movement, *Rights at Work*, specified the many ways that social movements rely on litigation campaigns to attract Michael McCann's (1994) path-breaking study of the comparable worth movement, *Rights at Work*, specified the many ways that social movements rely on litigation campaigns to attract activists into a movement. Relying on the political process model from social movements studies, he analyzed the changing role of litigation in the life of a social movement. He showed that articulating grievances in terms of rights played a role in changing the consciousness of activists, helping them to think about their working lives in new, more oppositional ways. And while litigation rarely ended in favorable outcomes, activists understood the risks of litigation and chose to pursue it for other ends, such as bringing publicity to the movement or forcing employers to engage in negotiations.

Law and Society scholars have also developed a research agenda studying cause lawyers who often work for social movements. This literature has developed rich accounts of the motivations of such lawyers, the strategies they use, and the conditions of their practice (Sarat and Scheingold 1998, 2005; Scheingold and Sarat 2004). In their upcoming volume on cause lawyering, scholars are beginning to fit these attorneys into the wider movements for which they work (Sarat and Scheingold, In Press).

In spite of these overlapping scholarly interests, researchers in one field sometimes fail to engage with the literature in the other. For example, sociologists of law and Law and Society scholars seem largely unfamiliar with the vast literature on social movement framing processes. On the other hand, social movement scholars who are sharply critical of litigation campaigns often overlook *Rights at Work* and its analysis of the more subtle purposes of litigation, as well as studies of the many different activist roles assumed by cause lawyers.

Further engagement between the two fields is important to enhance our models of social movement mobilization and outcomes. Social movements use a wide variety of legal strategies – including litigation, lobbying, and administrative advocacy – in their programs for social change. Law, and particularly rights, not only provide movements with political opportunities, but also play a role in the cultural life of a social movement. Law provides a contested terrain for social movement struggles: movements rely on rights to frame their grievances, to generate and circulate collective identity, and to recruit and mobilize activists. Of course, social movements do not operate in an ideological vacuum, and as they try to shape the cultural debate, elites and counter-movements circulate their own messages, defending the status quo or even urging regressive legal measures. Thus, there is a constitutive relationship between law and social movements: even as movements try to shape their legal environments, law shapes movement frames, goals and strategies.

Of course, law and legal strategies can also exert a conservative influence on social movements, channeling protest and more radical forms of action into conventional political institutions. When movements deploy these institutional political strategies, the interactions with the state and other powerful elites can reshape the goals and frames of the movement. Legal strategies can also be de-mobilizing, substituting experts and elites for more democratic forms of participation. Moreover, legal institutions and organizations are often responsible for suppressing dissent and protest. Finally, legal strategies usually produce unsatisfying results, with judicial opinions, statutes and constitutional amendments that restrict rights. Thus, the relationship between legal processes and successful social movement outcomes is unclear and in need of both additional theorizing about these relationships as well as analytical empirical studies that both test and explicate our theories.

Members of the Law and Society Association have begun a Collaborative Research Network on Law and Social Movements to pursue joint theoretical and empirical projects that reach across disciplinary boundaries to bring together different research traditions and methodologies to produce better accounts of the relationship between law and social movements. As part of this CRN, we put together four panels of papers at the recent LSA annual meeting in Las Vegas. This symposium contains summaries of several of these papers.

The first panel presented four papers about the role of law in the generation of grievances associated with social

movements and their injustice claims. In these papers, the authors' starting point was the generation of grievances and the mobilization of discontent. In trying to raise the consciousness of potential activists, social movements try to encourage them to see injustice where conditions had previously seemed tolerable. Law is one of the sources of meaning that people draw on when evaluating whether their experiences have been unjust. Ellen Andersen and Matthew Renfro-Sargent examined, for example, the way that marriage laws have not only shaped the rhetoric in the public debates over gay and lesbian rights, but those laws have also shaped the way that same-sex couples understand their own relationships.

Another panel presented papers analyzing the way that social movements frame the law in their efforts to mobilize activists and pursue social change. In these papers, social movements develop their frames through extended interactions among its constituents, activists, counter-movements, and the state. Rights and other types of legal claims are powerful symbolic tools in the course of these interactions. Nick Pedriana's paper examined the significance of framing debates about same-sex marriage using frames of privacy compared to frames emphasizing equality. In addition, legal developments in courts and legislatures provide social movements with political opportunities that can shape the direction of further mobilization. Steven Boutcher, whose essay appears in this symposium, has shown that even adverse judicial outcomes provide social movements with political opportunities. In his paper, he showed that the Supreme Court's decision in *Bowers v. Hardwick* dealt a blow to the LGBT movement by denying Americans the right to privacy in their sexual relationships. Yet, in the aftermath of that hostile precedent, the LGBT movement shifted its strategies, using *Bowers* as a focal point for further mobilization, sponsoring protests and fund-raising drives, creating new organizations to pursue legal strategies, and targeting different policy-makers.

A third panel examined some of the pragmatic choices that social movements face when pursuing legal campaigns. All social movement strategies are shaped, at least in part, by surrounding political opportunities, as well as by the strategies of their opponents, including counter-movements and the state. For example, Jeremy Perelman, presented a paper on how two legal resource centers in Africa have used legal strategies to seek access to health care. Sandy Levitsky, whose paper is summarized below, examined the interactions among a legal rights organization and other organizations in Chicago's LGBT movement. She found that the legal rights organization, with its professional expertise and greater access to resources, set the agenda for the rest of the movement. And while other organizations routinely sought the advice of the legal rights activists, the legal organization did not, in turn, seek input from other groups about priorities or activities.

Finally, a group of panelists examined the relationships between social movements and the state. Social movements target the state, making demands for policy changes that will improve the lives of their constituents. Yet in the course of these interactions, social movements can themselves be transformed. In her paper, Anne

Revillard showed that activists in the women's movement in France and Quebec actually became state actors. Their participation in state processes made them less confrontational in their demands and led them to make compromises. On the other hand, Scott Barclay and Shauna Fisher show that an early round of failed lawsuits on the issue of same-sex marriage provided LGBT activists with an opportunity to have a debate within the movement about the relative importance of seeking access to marriage – a debate that continues today. Their summary of their paper appears is included in this symposium.

The scholars participating in this CRN study many different social movements seeking civil rights, race, gender, sexuality, the environment, disability, the rights of First Peoples, and economic justice. In addition, our interested participants study different regions of the world, including the US, Canada, Europe, Africa, and Asia. We are committed to expanding the reach of the CRN to include even more participants from outside the United States.

Participants in the CRN have several long-range plans. First, members of the CRN hope to develop collaborative research and writing projects. For example, participants might study a single conceptual issue across different types of social movements, or might join together study different conceptual issues in the context of a single movement. Second, members hope to create opportunities for publication of CRN research, such as edited volumes and symposia in journals geared towards both sociologists and Law and Society audiences. Third, members of the CRN will be able to exchange ideas about the challenges of teaching classes on law and social movements. Finally, the CRN will provide opportunities for cross-generational and inter-disciplinary professionalization. Through the scholarly exchanges facilitated by the CRN, we can produce richer studies that can inform the debates not in both sociology and Law and Society, but also in our home disciplines. The CRN is organizing panels for the upcoming meeting of the Law and Society Association in Baltimore, July 6 to July 8. To find out more about the CRN, you can go to the website(http://www.melissa.enscachan.fr/rubrique.php3?id_rubrique=222). The site is currently under construction, but you can find out more about the research interests of CRN participants, as well as working papers and syllabi for courses on law and social movements. Members are also keeping a blog, whose web address is lawandmovements.blogspot.com. For additional information, you can contact one of the CRN's organizers:

Scott Barclay (s.barclay@albany.edu), Lynn Jones (Lynn.Jones@nau.edu), or Anna Marshall (amarshll@uiuc.edu).

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Making Lemonade: Turning Adverse Decisions into Opportunities for Mobilization

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On June 30, 1986 the Supreme Court handed down its decision in *Bowers v. Hardwick* (478 U.S. 186), a major defeat for the lesbian, gay, bisexual, and transgender (LGBT) movement. Voting 5-4, the Supreme Court upheld a Georgia statute making sodomy between consenting adults an illegal act. This case was a major blow to the movement and at the same time signaled a closing of the Supreme Court as a viable arena for lesbians and gay men seeking social change.

After the defeat in *Bowers*, the focus on sodomy repeal remained a key issue for the movement, but the strategy for appeal shifted arenas from the national courts to state courts and legislatures (Kane 2003). In 2003, the Supreme Court returned to the issue of sodomy in *Lawrence and Garner v. Texas* (539 U.S. 558) and overturned *Bowers*, decriminalizing any remaining sodomy statutes. The decision of the Supreme Court to return to the issue of sodomy was not made in a vacuum; movement organizations strategically waited for the right time to return to the Supreme Court.

The example of *Bowers* provides a good case to study the effects of a negative court decision on a social movement. *Bowers* illustrates a decisive turning point for the LGBT movement and presents an interesting question for social movement scholars: in the face of negative state action, how will the movement respond? Current social movement literature tends to focus on the opening or expansion of political opportunities (McAdam 1982) preceding movement mobilization. However, in the case of the post-*Bowers* LGBT movement, mobilization was, in part, a reaction to external threat. How do we explain this seemingly contradictory case? Fortunately, there is a burgeoning literature that examines the impact of political threats on movement mobilization (Tilly 1978; Van Dyke 2002). This literature argues that threats can mobilize movements into action, especially when opportunities for mobilization are absent or constrained.

I intend to contribute to current social movement literature in two ways: first, I expand the

conceptualization of existing literature on political threats by including negative legal decisions into the framework. I argue that losing an important legal decision can in many ways propel a movement into proactive activity. Second, I extend the idea of threat by examining how negative outcomes can lead to shifts in overall movement strategy. I trace the movement following the decision in *Bowers* and argue that the negative decision affected the trajectory of the movement in important ways.

The remainder of this essay will proceed as follows: first, I briefly review existing movement literature that focuses on the role of political context on movement activity, adding a discussion of law; next, I provide a brief summary of the LGBT movement's sodomy repeal campaign, including a short discussion of *Bowers*, then I conclude with a discussion of how the movement responded to *Bowers*.

Political Opportunities or Political Threat?

Students of social movements have long studied the conditions that facilitate social movement mobilization. Political opportunity theory (also referred to as political process theory) focuses on the interaction between movements and the worlds around them (McAdam 1982; Meyer 2004; Tilly 1978). In recognizing this central relationship between the state and social movements, studies within the political process paradigm have tended to focus on the opening or expansion of political opportunities as the main precursor to social movement mobilization (McAdam 1982; Tarrow 1998; Tilly 1978).

What is a political opportunity? Political opportunity theory has developed around a set of four dimensions that have been prevalent in many of the analyses employing the concept. McAdam (1996) lists these structural dimensions of political opportunity as containing the following: how open the institutionalized political system is to outsiders, the stability of elite alignments, the presence of elite allies to outsider challengers, and the state's capacity for repression (27). In other words, as the political environment becomes more open to challengers, activists will gauge that the time to act is ripe and respond to structural openings.

However, it is apparent that many activists respond when openings are nonexistent or during times where their efficacy may seem constrained. Is this a case where the political opportunity model does not seem to hold theoretically? My short answer is no, but in order to argue this, it is important to understand how threats play into political opportunities and define what I mean as a threat. Goldstone and Tilly (2001) define threats as "the costs that a social group will incur from protest, or that it expects to suffer if it does not take action" (183). In Tilly's (1978) *From Mobilization To Revolution*, he argues that social movements may respond more to threats than to opportunities, "a given amount of threat tends to generate more collective action than the 'same' amount of opportunity" (134-135). Threats here are treated as the flip side of opportunities in their effect on mobilization. However, most movement studies have focused on the opportunity side and have not adequately dealt with threats.

Although movement scholars have been somewhat reluctant to include legal decisions at the center of their analyses, there has been some focus on how law matters in the political context for movement mobilization. For example, McAdam (1982) argued that *Brown v. Board of Education* (347 U.S. 483) created a sense of "cognitive liberation" for the civil rights movement, which led to more political efficacy among African-Americans.

Legal victories for one side, however, are a threat to the other. The decision in *Brown* and the subsequent state pressure pushing for desegregation in Southern schools mobilized white supremacist constituencies as well as sympathetic Southern elites (Rosenberg 1991; Morris 1984). *Roe v. Wade* (410 U.S. 113) had a similar effect; the decision mobilized anti-abortion activists to block the implementation of the decision and subsequently forced abortion activists into a defensive position (Staggenborg 1991). For these movements in particular, the threatened status quo was enough to spark action. Just as *Brown* mobilized Southern elites and *Roe* pushed anti-abortion advocates into action, *Bowers* propelled the LGBT movement into a proactive position.

Sodomy Repeal and *Bowers v. Hardwick*

Prior to 1961, every state had a sodomy law on the books. By 1986, when *Bowers v. Hardwick* was decided, 25 states had decriminalized their sodomy laws, most of them through the incorporation of the Model Penal Code put forth to state governments by the American Law Institute (ALI) in the middle 1950s (Kane 2003).

The American Law Institute decided in 1955 to decriminalize consensual sodomy in its proposed Model Penal Code. The ALI argued that, "no harm to the secular interests of the community is involved in a typical practice in private between consenting adults. This area of private morals is the distinctive concern of spiritual authorities" (quoted in Eskridge 1999: 84). The ALI also proposed that homosexual solicitation, sex with minors, and public indecency remain criminalized. The initial wave of sodomy repeal occurred following the proposal of the Model Penal Code. However, some states (Arkansas and Idaho) reinstated their sodomy statutes after realizing the revised penal codes protected homosexual sodomy. Some states only decriminalized heterosexual sodomy (Eskridge 1999).

It is important to note that states rarely enforced their sodomy laws against consenting adults. The ACLU's amicus brief in *Lawrence v. Texas* notes,

"sodomy laws have almost always been applied in cases involving children, the use of force, public sex, or prostitution. From as early as the post-Revolutionary period, states have very rarely applied laws banning sodomy, fornication, or adultery to consenting adults in private" (ACLU Amicus Brief: 13). In Texas, where *Lawrence* originated, it was admitted that the state "had never prosecuted consenting adults for sodomy in private" (ACLU Amicus Brief: 13). Although these laws were rarely enforced, they remained a symbolic law used to justify discrimination against lesbians and gay men.

With these laws still on the books in many states across the nation, lesbians and gay men were continually denied basic rights in the courts. Simply identifying as homosexual marked lesbians and gay men as criminals. The ACLU and Lambda Legal Defense and Education Fund (LLDEF) sought to dismantle the sodomy statutes by organizing a national coalition to challenge the remaining statutes across the nation. In 1983, they organized the Ad Hoc Task Force to Challenge Sodomy Laws which included the Lesbian Rights Project in San Francisco, Gay and Lesbian Advocates and Defenders in Boston, Texas Human Rights Campaign, National Gay Rights Advocates in Los Angeles and many smaller affiliates (Cain 2000: 170).

In 1982, Michael Hardwick, a bartender from Atlanta, was arrested in his bedroom for engaging in oral sex with a consenting male companion. The officer was there to serve a warrant for an earlier incident involving an open container when he let himself into Hardwick's apartment and saw him and another male engaged in oral sex through a cracked bedroom door. Immediately, the officer arrested the two men for sodomy. Shortly after the arrest, the ACLU contacted Hardwick to begin a test case that could overturn Georgia's sodomy law. In 1985, the case made its way up to the Supreme Court and on June 30, 1986, the Supreme Court handed down its decision in *Bowers*. The Court voted 5-4 in favor of upholding the Georgia statute criminalizing homosexual conduct between consenting adults in the privacy of their home. Writing for the majority, Justice White notes that there is no fundamental right to engage in homosexual sodomy and that "proscriptions against that conduct have ancient roots" (478 U.S. 186: 2844).

The majority opinion authored by Justice White and joined by Chief Justice Burger and Justices O'Connor and Rehnquist avoided the main questions presented by Michael Hardwick in his initial briefs. The original question addressed to the Court was whether the Georgia statute could constitutionally criminalize the private sexual acts of consenting adults regardless of gender. However, the Court refused to address the question of whether consensual heterosexual sodomy was legal, instead narrowly focusing only on the issue of homosexual sodomy. This point was further underlined in Chief Justice Burger's concurring opinion, "I write separately to underscore my view that in constitutional terms there is no such thing as a fundamental right to commit homosexual sodomy" (478 U.S. 186: 2847).

> In his dissent, Justice Blackmun points out that the majority has missed the main question presented in the case in favor of narrowing on the issue of homosexual sodomy rather than the gender neutrality present in the Georgia statute. Blackmun remarks, "this case is no more about 'a fundamental right to engage in homosexual sodomy,' as the Court purports to declare than *Stanley v. Georgia*, 394 U.S. 557, was about a fundamental right to watch obscene movies… rather, this case is about ' the most comprehensive of rights and the right most valued by civilized men,' namely, the 'right to be let alone" (478 U.S. 186: 2848). Blackmun further notes, "The sex or status of the persons who engage in the act is irrelevant as the matter of state law" (478 U.S. 186: 2849).

The importance of *Bowers* lies less with its impact on constitutional law and more on the reverberating effects it had on the lesbian and gay rights movement. The case raised the visibility of gay rights in the Unites States; *Bowers* was perceived as a victory for opponents of gay rights and as a signal for continued discrimination against gays and lesbians (Dunlap 1994). Dunlap argues that *Bowers* was followed by an increase in hate crimes centering on sexual orientation as well as discrimination in other arenas such as employment and in the military (Dunlap 1994).

Movement Response

The initial reaction within the movement to the *Bowers* decision was one of resentment. National leaders and activists expressed outrage at what they saw as the biggest defeat to date for the movement in the courts. However, this anger was quickly channeled into renewed vigor and mobilization for the movement.

The LGBT movement responded to *Bowers* with increased mobilization in six distinct ways. First, movement leaders framed the defeat as an appalling example of increasing discrimination against lesbians and gay men that needed to be challenged. Second, the movement reacted by staging protests to show their outrage against the decisions. Third, the defeat led to an active fundraising campaign by various organizations, which sought to capitalize from the anger of lesbians and gay men throughout the nation. Fourth, a proliferation of new organizations formed that strategized on overturning the remaining sodomy laws. Fifth, the movement shifted venues to target the remaining state sodomy statutes. Sixth, movement

leaders cultivated alliances between non-litigation oriented gay rights groups and also formed broader alliances with non-gay oriented organizations.

Framing the Post-Bowers Environment. Much of the work that social movements do involves framing. Frames are "schemata of interpretation" which serve to interpret the world outside of a social movement and mobilize individuals into action. As Benford and Snow (2000) note, "frames help to render events or occurrences meaningful and thereby function to organize experience and guide action" (614). Collective action frames do not originate in a vacuum; activists strategically employ frames that they think will resonate with a larger audience. Following the Court's ruling in *Bowers*, movement leaders responded to the defeat in two ways. First, the defeat was framed narrowly as an example of continued homophobia and discrimination against lesbians and gay men. Second, the decision was framed more broadly as an attack on democracy and basic freedoms enjoyed by all Americans. The first frame was targeted towards lesbians and gay men and the second frame sought to enlist the sympathies of others who may otherwise have ignored the decision.

Grassroots Mobilization. Immediately following the decision, activists staged protests throughout the nation. The largest occurred in New York City where one protest included over 1,000 people blocking traffic in Greenwich Village, and another occurring during the July 4 celebration where 6,000 people marched against the decision chanting slogans such as "civil rights or civil war" and "Privacy: A Basic American Right" (*Advocate* 1986b). Protests were also immediately staged in other cities across the country, including Washington D.C., Boston, San Francisco and Dallas.

The outrage produced by the Supreme Court decision was so intense that it continued to reverberate after the initial protests. In Phoenix, activists initiated the "national sexual privacy challenge." This plan sought to establish media campaigns and rallies in states where sodomy laws were still on the books as well as those that decriminalized. In those states that still criminalized sodomy, the campaign urged activists to engage in requests for prosecution with their local authorities (*Washington Blade* 1986). Innovative protest campaigns such as these were initiated throughout the nation. Organizations held "kiss-ins" outside many state court buildings and legislatures to symbolically protest the sodomy ruling. Protests outside the Supreme Court building in Washington D.C. continued for months after the initial decision. These protests included speakers from many of the national organizations as well as Michael Hardwick, the plaintiff in the *Bowers*.

These scattered protests occurring in various cities around the country were all leading up to a national march on Washington in 1987. Plans for the national march began after *Bowers*. The ongoing AIDS crisis was the main focus of the march, but the *Bowers* decision proved to be a great motivator for the event. A large civil disobedience rally was planned for the Supreme Court during the week's events. The rally was so important to organizers that a full time coordinator was hired by the march committee to coordinate just this one event. Activists saw the national march as a complete success with attendance estimated at 500,000 by organizers. This was a substantial increase over the 1979 march on Washington where the estimated attendance was only 100,000. The highlight of the week's events was the Supreme Court protest where over 600 arrests were made.

Fundraising. Lesbian and gay rights organizations saw increased returns in their fundraising campaigns due to the *Bowers* decision. Lambda, The National Gay and Lesbian Task Force, and the Human Rights Campaign, a gay rights lobby organization, all saw significant increases in funding. In one fundraising campaign targeted specifically by the *Bowers* decision, NGLTF received more than $40,000 in July and August immediately following the decision. Lambda also saw its donations double. The oldest gay legal organization received close to $200,000 during July and August (*Advocate* 1986c). The post-*Bowers* flow of donations continued to increase after the initial reaction. NGLTF projected an increase of over $250,000 in its 1987 budget because of the increased funding. HRC projected a ten percent increase from 1986 to 1987 in its budget due to the loss in *Bowers* (*Washington Blade* 1987). The growth from the defeat followed into the 1988 organizational budgets as well. The Task Force received over $900,000 in funding for 1988, an increase of almost fifty percent for the organization from the previous year.

Organizational Founding. Along with the steady rise in organizational funding following the Hardwick defeat, the lesbian and gay rights movement saw a growth of organizational founding, both at the national and local grassroots levels. Another key organization for the movement was the Ad Hoc Task Force to Challenge Sodomy Laws, known as the "sodomites," which was founded in 1983. This organization was created to bring legal groups and lawyers together to help coordinate the fight for sodomy repeal throughout the nation. With the *Bowers* defeat, the Ad Hoc Task Force regrouped and changed its name to the National Lesbian and Gay Civil Rights Roundtable. This group continued as an informal coalition of various organizations headed by Lambda to coordinate litigation strategies among a variety of different issues, with sodomy laws being the prevalent issue. The National Gay and Lesbian Task Force also initiated a side project in response to *Bowers*. With the rise in

funding the Task Force created the Privacy Project with the aim of contributing to the anti-sodomy campaign.

The movement also saw an increase in organizational founding following the 1987 March on Washington. The biggest effect of the march was politicizing the large numbers of participants. These attendees left the March with a feeling of resolution and went home to form over 40 new groups, most of which focused on local and grassroots issues. Similar to the post-Stonewall era where activists became politicized and formed new organizations, the post-*Bowers* era accomplished similar effects. These groups were mostly formed at the grassroots level across the nation. One such group, the Alexandria Gay Community Association, was formed to combat Virginia's sodomy law. These local grassroots organizations provided the groundwork for the larger national organizations to assist with sodomy law repeal.

Venue Shifting. Immediately following the defeat, movement leaders recognized the impact that the decision would have on their campaign in the federal courts. The Ad Hoc Task Force to Challenge Sodomy Laws, a national network of lawyers and activists committed to repealing the sodomy laws, met less than three weeks after the *Bowers* decision. During the conference, activists set an alternative agenda for repealing the remaining sodomy laws. This agenda included lobbying state legislatures to repeal sodomy statutes, filing lawsuits in the state courts claiming the sodomy statutes are unconstitutional to state constitutions, and using the media to channel the public's attention to the need for repeal. The strategy to focus on state venues courts and legislatures was largely successful for the movement. Following *Bowers*, eleven states decriminalized their sodomy statutes, three through the legislative process and eight through the judicial process. The state campaign in Texas led to the Supreme Court in *Lawrence v. Texas*.

Cultivating New Alliances. Similar to the NAACP's campaign against Southern school segregation, the campaign for sodomy repeal initially began as a legal campaign centered on the use of litigation. Following the defeat of *Bowers*, gay legal organizations were caught in a bind. Litigation strategies, when effective, do not require a broad coalition. However, when litigation fails, as it did with *Bowers*, legal activists must seek to cultivate alliances with other groups. Following *Bowers*, alliances were formed in two ways; first, gay legal organizations opened up a dialogue with non-legal gay rights organizations and second, the movement sought alliances with non-gay organizations, such as women's, labor, and religious organizations.

The *Bowers* decision was helpful in building a coalition of broad support to the issue of sodomy repeal. Immediately following *Bowers*, Vic Basile of the Human Rights Campaign said of the decision, "it will help to do for us what we thus far have been unable to do for ourselves, which is to form a broader coalition with people – whether gay or straight, black or white – who can't help [but] see the egregiousness of this decision. I think we will find support from people who we didn't expect to find support from." (*Advocate* 1986a). An instance of this was seen immediately following the decision when the Ad Hoc Task Force to Repeal Sodomy Laws met less than a month after the decision. Traditionally only open to lawyers, the Ad Hoc Task Force, for the first time invited the executive directors of two major national gay rights organizations, Jeff Levi of the National Gay and Lesbian Task Force and Vic Basile of the Human Rights Campaign, were invited to coordinate the post-*Bowers* sodomy repeal strategy. The movement also sought to build a coalition with non-gay organizations in the post-*Bowers* environment. The framing strategies mentioned above provided the impetus for this coalition building. By arguing that the defeat was a threat to the basic rights enjoyed by all Americans, the movement was able to successfully enlist the assistance of non-gay groups. The Privacy Project, initiated by the NGLTF, was partially created to build these alliances.

Conclusion

The connection between law and social movements has been slow going (but I must plug the Collaborative Research Network (CRN) for law and social movements in the Law and Society Association – which, consists of a great group of scholars building this connection). This essay has tried to strengthen the connection between the two literatures. I have argued that legal decisions should play a larger role in movement analyses that focus on the role of political context on mobilization – legal defeats can provide a context, which activists can turn into an opportunity for mobilization. By tracing the LGBT movement after the fallout of *Bowers v. Hardwick*, I have tried to illustrate how such a defeat can lead to a proactive response and the various ways this might occur.

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TO LEAD WITH LAW: REASSESSING THE INFLUENCE OF LEGAL ADVOCACY ORGANIZATIONS IN SOCIAL MOVEMENTS[1]

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Recent research on cause lawyering has depicted attorneys in social movements as politically sophisticated actors engaged in a multidimensional struggle for social change. Emphasizing the individual attorney as the unit of analysis, sociolegal scholars have observed that lawyers are situated within a complex field of social movement actors. The heterogeneity of movement actors, they argue, is not only important to successfully using litigation in social reform efforts, but it also prevents lawyers from unduly influencing the direction of movement activity. In this essay, I expand the scope of analysis from individual attorneys to *legal advocacy organizations*—those social movement organizations that specialize in test-case litigation—to argue that contemporary cause lawyering plays a more prominent role in social movements than recent characterizations would lead us to believe.

To make this case, I draw on a case study of interorganizational relations in the Chicago gay, lesbian, bisexual, and transgender (GLBT) movement, arguing that an analysis of ties between legal advocacy organizations and nonlegal movement organizations helps to illuminate at least two key questions about the role of cause lawyering in social movements. First, in acknowledging that legal tactics alone cannot successfully bring about social change, sociolegal scholars have repeatedly highlighted the importance of using legal strategies *in conjunction with* other forms of collective action (McCann 1994; Scheingold 1974). But how do legal advocacy groups actually cultivate cooperative relationships with nonlegal movement organizations? "Cooperative" relationships might

[1] The full version of this paper will appear in the forthcoming *Cause Lawyers and Social Movements* , edited by Austin Sarat & Stuart Scheingold (Stanford: Stanford University Press, 2006).

involve specific collaborations on events or issues or cooperation might involve sharing specialized knowledge, skills, information, and other organizational resources. Theoretically, organizations that specialize in test-case litigation are poised to both contribute to and benefit from such relationships: their familiarity with law, legal venues, and the discourse of rights are potentially useful resources for a range of social movement activities, including public education, protest activity, lobbying, and consciousness raising (Marshall 2006). But, importantly, interactions with nonlegal organizations could also serve as *information conduits* for legal advocacy groups, opportunities for constituents of widely varying ideologies to communicate their concerns or grievances to those actors who seek to represent "the movement" in judicial arenas. Thus, an analysis of how legal advocacy organizations actually deploy their expertise to complement the activities of nonlegal movement organizations, and, conversely, how legal advocacy organizations rely on the expertise or tactics of other organizations, will help to illuminate the extent to which legal advocacy groups actually integrate their work with the rest of the movement.

Second, sociolegal scholars have suggested that in social movements constituted by a diverse field of organizations, lawyers rarely play a central leadership role or command the authority to steer the movement in any particular direction (Hunt 1990; McCann 1998; McCann and Silverstein 1998; Olson 1984). Embedded in this argument is a conception of social movements as *pluralistic* enterprises in which no one organization disproportionately influences the movement's agenda. But social movement researchers have long observed that the capacity of social movement organizations to pursue their goals and represent their constituents depends in large part on their capacity to mobilize resources, and that these resource capacities vary among movement organizations (McCarthy and Zald 1977).

Organizations that adopt a bureaucratic or "professionalized" organizational form—characterized by a formal division of labor, paid professional staff, a "paper" membership (mostly names on mailing lists), and reliance on foundation or grant support for funding (McCarthy and Zald 1977; McCarthy and Zald 1973)—tend to be larger, wealthier, more stable, and have considerably more influence with elites than their grassroots counterparts (Gamson 1975; Minkoff 1997; Staggenborg 1989; Zald and Ash 1966). Groups that specialize in legal advocacy frequently adopt this organizational form as a way of meeting the unique resource demands of planned litigation (Den Dulk 2001; Epp 1998). Yet, we know little about how this organizational form might affect the relative capacity of legal advocacy organizations to promote their goals and strategies within a diverse organizational field. Indeed we would expect, contrary to recent claims in the cause lawyering literature, that legal advocacy organizations would have *considerable* influence in agenda setting relative to their grassroots peers, given their advantages with respect to organizational resources.

In what follows, I argue that while legal advocacy organizations in the Chicago GLBT movement do coordinate with other organizations, interorganizational relations are not defined by reciprocal but by *unilateral* cooperation. As a result, many activists in the movement perceive legal advocacy organizations as operating independently from the rest of the movement, imposing their agendas without consultation with grassroots activists and with few opportunities for input from the rest of the GLBT community. And while there is no evidence that legal advocacy groups dominated the movement by steering others toward litigation strategies, their considerable organizational resources nevertheless had a significant impact on agenda setting for the movement.

The Case Study

Data for this study are drawn from 31 in-depth interviews with the founders and past or present leaders from 15 GLBT organizations in Chicago during the summer of 2000. Following Minkoff's (1999) typology, the sample included groups that specialized in four social movement tactics, broadly defined: (1) *advocacy* (lobbying and litigation tactics designed to influence policy and public opinion in institutional settings); (2) *protest* (outsider tactics or disruptive means such as demonstrations, sit-ins, and marches to influence policies, public officials and public opinion); (3) *service* (the provision of tangible goods or services, such as health care, counseling or individual legal representation, as well as intangible goods such as information about legal issues, hotlines for victims of gay bashing, and support or consciousness-raising); and (4) *cultural* tactics (cultural or ideological activities such as sponsoring film festivals, challenging homophobia in schools, and media monitoring and production). Together, these organizations may be said to represent the movement's "repertoire of contention" (Tilly 1978), providing a range of perspectives on movement objectives, strategies, and organizational resources.

There are two organizations in Chicago's GLBT movement that specialize in test-case litigation: Lambda Legal Defense and Education Fund, and the ACLU of Illinois's Gay and Lesbian Rights Project. Both of these organizations are formal, bureaucratic organizations with considerable resources at their disposal. At the time of this study, Lambda's Midwest Regional office had two full-time paid attorneys, a regional director responsible for coordinating fundraising, public education, and outreach efforts, a development officer, a program assistant, and two legal

and administrative assistants. The Midwest office also draws on resources from the national headquarters in New York City for public education\public relations. The ACLU of Illinois is also a formal, bureaucratic organization with a professional staff. Its Lesbian and Gay Rights Project has access to the considerable resources of the ACLU's eight-person development team and public education department as well as two full-time staff attorneys.

The Complementarity of Litigation and Other Social Movement Tactics

Sociolegal scholars have argued that successful legal mobilization strategies depend on deploying legal skills in ways that specifically complement other forms of movement activity (McCann 1994; Scheingold 1974). An analysis of interorganizational relations in the Chicago GLBT movement finds that while most legal advocacy organizations regularly deployed their legal expertise to assist nonlegal movement organizations in their efforts, law organizations rarely relied on the expertise of, or input from nonlegal GLBT organizations. All of the activists interviewed for this study shared a sophisticated understanding of social reform. Viewing social change as resulting from a combination of political, legal, and cultural reform, activists regarded all social movement strategies and tactics as *necessary but not sufficient* tools for social change (cf., McCann and Silverstein 1998). Rather than spread organizational resources and expertise thin by trying to engage in multiple venues or strategies, activists felt that organizations should develop expertise in just one aspect of social reform, deploying their specialized focus on behalf of the overall movement (Levitsky 2005). Within the Chicago GLBT movement, there was in fact a great deal of interaction among organizations specializing in different strategies, including legal reform. Interviews suggested five specific ways in which wide-ranging constituencies had been assisted by the expertise of legal advocacy groups.

First, some organizations relied on legal advocacy organizations as a source of legal expertise. Amigas Latinas, for example, organized a number of enormously popular legal workshops for its members in which attorneys from Lambda Legal Defense provided information on custody and other family law issues. Similarly, the ACLU worked with the Gay, Lesbian, Straight Educational Network of Chicago (GLSEN\Chicago) to publish and distribute an informational brochure on school nondiscrimination and harassment policies. Second, some organizations pointed to specific cases which have directly helped their constituencies. Renee Olgetree of Chicago Black Lesbians and Gays, described being "forever indebted" to Lambda for its assistance in suing on behalf of local gay and lesbian African Americans to march in Chicago's Bud Billiken parade, one of the country's largest African American parades. Evette Cardona of Amigas Latinas noted that the clients in Lambda's second-parent adoption success were two Latina lesbians. Staffmembers at AIDS Legal Council applauded Lambda's efforts in co-sponsoring a suit against Mutual of Omaha for capping HIV insurance coverage in violation of the Americans with Disabilities Act.

Third, activists across all organizations expressed a deep appreciation for the public education achieved from well-publicized lawsuits (c.f., McCann 1994). Some asserted that press coverage not only makes more people aware of GLBT issues, but it helps people suffering from discrimination to realize they are not alone, that the issues with which they are wrestling are collective, rather than individual problems. Other activists noted that lawsuit publicity helps put a human face on an otherwise abstract issue. The fourth way in which activists valued legal advocacy involved its mobilizing potential, even around litigation campaigns which have *not* been successful. For example, a number of activists noted the responses around the country to the Supreme Court's ruling in *Boy Scouts of America v. Dale*, in which the Court upheld the Boy Scouts' exclusionary anti-gay membership policy. In response to the court ruling, demonstrations occurred around the country, and many schools and city governments (Chicago included) voted to deny Boy Scouts access to funds and facilities. These in turn increased visibility for the movement and publicized the issue of GLBT discrimination.

The fifth and final way in which activists integrated the work of legal advocates with their own involved the role of legal rights in fostering a sense of pride and self-confidence in one's sexual identity. Many activists believed that the most effective way of achieving fundamental social change on issues relating to sexual orientation is to "come out." To the extent that antidiscrimination legislation and lawsuits protect people from some of the negative consequences of coming out, legal rights were perceived to be a critical prerequisite. In this regard, Lambda Legal Defense and Education Fund and the ACLU worked closely with Equality Illinois, a statewide lobbying organization, in drafting antidiscrimination legislation at the city, county, and state levels, and in subsequently *defending* newly-enacted legislation against legal challenges.

The ways in which activists describe legal advocacy organizations as being valuable then—as sources of legal expertise or organizational assistance, as vehicles for public education, and as tools for mobilization and coming out—suggest that legal advocacy plays an important role in a wide variety of social movement strategies. Yet, if there was evidence that attorneys and staffmembers from legal advocacy groups deployed their expertise in ways that assisted other

forms of movement activity, it is notable that they rarely solicited assistance or advice from protest, service or cultural organizations in their own legal efforts. Those cases in which legal advocacy groups assisted nonlegal organizations typically involved lawyers doing work *for* rather than *with* other activists. One consequence of the one-sidedness in cooperative relations was a perception among many activists that law organizations operated *independently* of the rest of the movement.

Many of the activists in the study, for example, mentioned they thought that the agendas of legal advocacy organizations were formulated in an insular, exclusionary way, without consultation with other organizations in the movement. Chris Smith, co-founder of Affinity, an organization for African American lesbians, described the "disconnect" between the agendas of legal advocates and her organization's constituents: "Not that the work isn't good, not that the people involved aren't passionate, but it feels very removed." Indeed, *all* of the respondents from five of the most notable Chicago GLBT service organizations organized around racial and ethnic identities, as well activists from more radical protest organizations such as Queer to the Left and the Chicago Anti-Bashing Network, spoke of feeling "removed" from the legal rights strategies that had been articulated by legal advocacy organizations in the movement.

Lawyers themselves acknowledged that Lambda and the ACLU had a reputation in some GLBT constituencies as being "white" or "elitist" organizations, and they attributed this reputation in part to processes of case selection and development. The former head of the ACLU's Gay and Lesbian Project noted for example that lawsuits provide few opportunities for grassroots or client participation: "The strategy calls are being made between the plaintiffs and lawyers . . . mostly the lawyers." Another attorney from the ACLU observed that there are sometimes good reasons for attorneys to avoid seeking input from other organizations in the movement: "You can't have a group like Act-Up picking your litigation strategy for you because you may be getting some places you don't want to go very quickly. And that's not to pick on Act-Up. It's just that . . . litigation really is kind of incremental. You know, it creeps along and activists generally are not comfortable with a creep-along model, and lawyers generally are not real comfortable with a 'Hey, I'm going to show up and throw pig blood at the Pope.'" Attorneys and staffmembers at legal advocacy organizations insisted that before they take on any case, they take the time to generate input from the community. When, for example, Lambda was debating whether to bring a second-parent adoption appeal to the Ohio Supreme Court, the lead attorney solicited input from lawyers all over Ohio who specialize in gay rights to get a sense of the political pros and cons in bringing the case. It is notable, however, that the outreach efforts of legal advocacy groups tended to focus first and foremost on other *attorneys* and not on local grassroots organizations. The perception among many grassroots leaders that the priorities of their constituencies were not reflected in the litigation agendas of advocacy organizations can be attributed in part to the organizational structure of legal advocacy organizations: there are few opportunities for the grassroots GLBT community to meaningfully articulate their views or influence the decisionmaking of formal, bureaucratic organizations such as Lambda or the ACLU. And the limited formal mechanisms that do exist for community outreach do little to overcome racial/ethnic or class divisions in Chicago. One important gauge of community concerns at Lambda, for example, is the number of intake calls they receive on any given issue. At the time of this study, the Lambda office received approximately 600 intake calls a year, and attorneys used these calls to identify the recurring problems in the community. Yet, interviews with other attorneys and activists in the community suggested that Lambda has poor name-recognition and visibility in communities of color in Chicago. As a consequence, the intake calls received by Lambda are unlikely to represent the concerns of the nonwhite, non-middle class GLBT community.

Thus there is evidence to support the claim that legal advocacy organizations are committed to deploying their skills and expertise in ways that complement and support the work of other social movement activities. But the nature of these cooperative relationships were in this case strikingly unidirectional; as a consequence, many activists voiced concern that legal strategies were being formulated and implemented independently of the rest of the movement. Some grassroots leaders also expressed concern that in trying to promote and publicize their constituents' interests and the actions of their organizations, they simply could not compete with the financial and professional resources available to Lambda and the ACLU. The following section considers the issue of resource disparities in light of the debate over whether lawyers and litigation strategies disproportionately influence the direction of movement activity.

Leading the Movement with Law

Responding to the contention that litigation strategies tend to dominate social movement efforts, some sociolegal scholars have argued that lawyers in heterogeneous social movements rarely occupy leadership roles in the movement or command the authority to lure others toward litigation strategies (Hunt 1990; McCann and Silverstein 1998). The analysis of interorganizational relations in the Chicago GLBT movement suggests that legal advocacy

organizations can and do occupy an influential role in the movement due largely to the organizational resources of these groups relative to the rest of the GLBT community. Indeed, many activists in this study expressed considerable resentment over the tendency of legal advocacy organizations to set the agenda for the rest of the movement without grassroots participation. This dynamic is perhaps most clearly illustrated with the issue of gay marriage.

In 1990, three gay couples applied for marriage licenses in Hawaii to challenge the state's ban on same-sex marriages. When the Hawaii Supreme Court issued a decision in 1993 in favor of the plaintiffs, Lambda initiated a nation-wide Marriage Campaign among GLBT organizations to prepare for the political backlash. It was this publicity and organizing campaign—more than the litigation itself—that engendered controversy in the Chicago GLBT community. Nearly all of the activists of color and self-identified radical leftists in this study independently brought up the subject of the gay marriage campaign sponsored by Lambda Legal Defense as an example of a *top-down strategy*, conceived of and implemented by attorneys with little attention to the needs and desires of the greater GLBT community. "I don't remember Lambda ever consulting anybody about a strategy," remarked Jeff Edwards of Queer to the Left. "I don't remember any community-wide discussion about where Lambda should be going." Another member of Queer to the Left observed that Lambda's role in the marriage campaign was much more than representing three couples in Hawaii: "[I]t wasn't just about we're going to represent these three people and we're going to make an issue of this in Hawaii. This was we are going to make a national campaign, this is going to be the lead issue and this is why people need to come out in support. I mean, they completely hijacked the movement for quite a while and I think we still face the remnants." While all of these activists generally spoke very positively of the work of legal advocacy organizations, they returned again and again to the point that these organizations have "forced" their issues onto the rest of the movement.

The perception among grassroots activists that Lambda "hijacked" the movement with its sponsorship of the Marriage Campaign grew largely out of the *structural* fact that legal advocacy organizations, like most formal, bureaucratic organizations, have considerably more resources than the grassroots organizations that make up the bulk of the movement. With budgets that dwarf those of the rest of the GLBT community and a full-time professional staff, the legal advocacy organizations in this study were able to achieve a high degree of visibility for their actions relative to other organizations in the movement. In particular, the legal advocacy organizations had both financial and human resources to devote exclusively to the media, and this had an effect on how their goals and activities were portrayed in the press. Two editors of the *Chicago Free Press*, the city's largest gay newspaper, both noted that professionalized organizations tend to be more press savvy than grassroots organizations, and their press savviness tends to lead to better—and often more frequent—stories. In contrast, most of the grassroots organizations in this study struggled with the issue of media access, finding they had neither the money nor the human resources to actively court the media for attention.

Such findings suggest that the sociolegal characterization of social movements as a field of differently-specialized, but equivalently-positioned social movements may underestimate the influence that legal advocacy organizations have on movement activity. Legal advocacy organizations were perceived by many activists as not only selecting issues to litigate without grassroots participation, but promoting those issues in ways that "crowded out" other GLBT interests. This form of movement "domination" is accomplished not by individual lawyers who command the authority to steer the movement in any particular direction, but by the kinds and quantities of resources available to legal advocacy organizations relative to their grassroots peers.

The Consequences of Leading With Law: Conclusions

What then are the consequences of leading with law? Why does it matter that legal advocacy organizations choose not to consult with or rely on the expertise and tactics of other movement organizations, so long as they are deploying their own expertise in beneficial ways? One consequence of the perception that legal advocacy organizations are "going it alone" or "hijacking the movement" is that legal strategies will become disconnected from the movement's political/cultural strategies, leaving the movement vulnerable not only to political backlash, but to legal victories that cannot be translated into social reform. This is again illustrated with the issue of same-sex marriage. Following the courtroom victories in both Hawaii and Massachusetts, the GLBT movement experienced a substantial political backlash: Hawaii citizens not only voted to amend its constitution to ban same-sex marriage, but dozens of state legislatures have passed statutes and constitutional amendments banning recognition of same-sex marriages. While GLBT litigation groups have done a remarkable job coordinating their *legal* efforts around the issue of same-sex marriage, many leaders and grassroots activists have speculated that the lack of coordination between litigation groups and the rest of the movement has cost the movement dearly. In the weeks after the November 2004 election, Matt Foreman, executive

director of the National Gay and Lesbian Task Force, a national gay rights organization, reflected on the coordination problem: "There is no putting lipstick on this pig," he told *The New York Times*. "Our legal strategy is at least 10 years ahead of our political and legislative strategy" (Liptak 2004).

It is this separation between legal and political/cultural strategies that led to the initial critique of planned litigation as a social movement tactic (Scheingold 1974). That we can find such stark evidence of this legal/political disconnect in social movements today, despite evidence that attorneys are quite cognizant of the limitations of legal strategies (see, e.g., McCann and Silverstein 1998), suggests that the division may be more a result of *interorganizational* dynamics than the misguided legal consciousness of individual attorneys and activists.

A second consequence of the lopsidedness of interorganizational relations between legal advocacy groups and other organizations in the movement relates to the capacity of legal advocates to represent the movement's diverse constituencies. Bureaucratic, "professionalized" organizations have long been vulnerable to the charge that without grassroots participation, they cannot know—or represent—the concerns of the movement's diverse constituencies. For the legal advocacy organization, whose responsibility it is to litigate cases designed to make law for an entire "community," this is an especially potent critique (see Bell 1975-76; Rubenstein 1997). With few opportunities for GLBT constituents to participate in the organizational activities or decisionmaking of litigation groups beyond checkwriting, placing intake calls, or filing lawsuits, how can attorneys in these organizations effectively collect information on the needs and interests of their "client"? And, conversely, what mechanisms are available to grassroots activists for holding cause lawyers accountable for their strategic decisions? As the professionalized legal advocacy organization becomes institutionalized across social movements, these concerns about accountability and representation warrant further scrutiny, as they have important implications for not only how, but on whose behalf litigation strategies are deployed.

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Abandonment, Emulation, and Cultural Claiming: Litigation and Social Movements in the First Wave of Same Sex Marriage Cases

Scott Barclay and Shauna F. Fisher

On May 20, 1974, the Court of Appeals of Washington in *Singer v Hara* (11 Wn. App. 247) rejected a legal claim for same sex marriage. The legal claim was initiated on April 27, 1972 on behalf of John L. Singer and Paul Barwick, who unsuccessfully attempted on September 20, 1971 to have the King County Auditor, Lloyd Hara, issue them a marriage license. At the time, Singer was "the organizer and leader of the Seattle Gay Alliance" (Rivera 1999, n. 138).

While the idea may surprise many socio-legal scholars who are used to thinking of the same sex marriage debate as a very recent phenomenon, the *Singer v Hara* case occurred during a period of active discussion of same sex marriage in Washington and the nation. However, most of the national attention concerning same sex marriage in the early 1970s was initially generated by groups opposed to the ratification of the federal Equal Rights Amendment (ERA) and its state equivalents. Opponents to the introduction of the federal ERA or a state equivalent used the possibility of forcing states to endorse same sex marriage as a way to denigrate and dismiss the need for such an amendment.

In this historical context, it is incorrect to understand the influence of this case by focusing upon its subsequent legal outcome. Instead, the litigation activities related to the 1974 case must be re-defined consistent with a dynamic view of the relationship between litigation, social movements, and the social context of the relative historical period. We argue that the litigation in 1974 acted to effectively associate same sex marriage culturally with the struggle for lesbian and gay rights. In addition, we argue that the litigation offered the geographically and organizationally disparate lesbian and gay rights' organizations a mechanism to decide whether marriage was a path they really wanted the larger social movement to pursue at that time.

Culturally Re-Claiming by Legally Claiming:

In 1971 when the first wave of same sex marriage cases were initiated, all of the public discussion occurring at this time on the issue was openly dismissive of the real possibility of such state recognition being extended to encompass lesbian and gay couples. Instead, same sex marriage was publicly pilloried by legal scholars and most social activists as a ridiculous and impossible situation raised inappropriately by opponents of the ERA to denigrate and obfuscate the true value of the proposed federal amendment and its state counterparts (see Maitland 1975).

For example, the US Senate Committee that promoted the ERA discussed and rejected the possibility that the proposed amendment permitted same sex marriage (see Maitland 1975). The *New York Times* (on March 11, 1975 at p.40) and the *Seattle Post-Intelligencer* (e.g., on October 30, 1972 at A-4 and November 5, 1972 at p.10) each had at least one article concerning the legal validity of same sex marriage in light of passage of a state or federal ERA. In fact, the filed briefs and the Court of Appeals' opinion in *Singer v Hara* (11 Wn. App. 247 at 250 and n.5) reference the extensive discussion of the possibility of same sex marriage in the campaign in Washington State in relation to passage of that state's ERA, including the following statement "in the 1972 Voters Pamphlet published by the Secretary of State: ….. Homosexual and lesbian marriage would be legalized, with further complication regarding adopting children into such a 'family'."

In the social struggle for lesbian and gay rights in the early 1970s, the filing of the legal claim in the *Singer* case, and its counterparts in Minnesota and Kentucky, can be identified as not being primarily about winning a legal victory that would bring about a

commensurate change in social behavior toward lesbian and gay individuals. Rather, the filing of these legal actions represent an attempt to directly and publicly challenge the socially accepted (and hence, socially constraining) definitions of sexuality and to effectively re-claim the territory of same sex marriage on behalf of lesbian and gay couples.

First, the filing of the claim and the associated publicity began the process of denaturalizing the current notions of sexuality, marriage, love, and commitment. One of the mechanisms for the state's exercise of power is through the institutions and symbols associated with the law and legal ideology. A significant contribution from scholarship associated with the critical legal studies movement is the explicit recognition that the law and legal ideology are neither neutral nor egalitarian, but rather support and mask an unequal power structure that actually disfavors large portions of society (e.g., Smart 1989; Kennedy 1998). Through the use of law, the state protects certain social, political, and economic configurations (Abel 1998) or, in this case, a certain sexual configuration – heterosexual couples are defined as the norm. To the extent that these configurations are accepted as natural and alternative configurations are unimaginable, legal ideology is hegemonic.

The filing of the claim in the 1974 case publicly signals that the sexual configuration associated with marriage was now contested and that the imposed sexual hegemony was no longer simply accepted as natural. Like many practices embodied in law, this is not to imply that the dominant sexual configuration associated with marriage was privately accepted by lesbian and gay individuals prior to this historical point, even if there was not always public rejection by such individuals (e.g., Eskridge 1999). Second, litigation allowed the emerging lesbian and gay rights' movement to publicly proclaim their presence on the state and national scene. Such signals were particularly important because members of the lesbian and gay communities had previously been rendered largely invisible through social and legal actions. Thus, the litigation facilitates the building of a movement (McCann 1994, 10; see also Scheingold 1974, Handler 1978, Olson 1984).

Finally, and most importantly in the historical context of the early 1970s, the litigation publicly re-claims and re-appropriates the idea of same sex marriage and returns its "ownership" to lesbian and gay individuals – those individuals who would really have to make the decision whether to endorse marriage or even whether to marry. In the act of litigating, same sex marriage is literally and socially transformed from the ridiculous to the possible (as demonstrated by the fact that the state's highest court must respond to this idea). And, it becomes an idea "claimed" (literally through the filing of a legal claim) by lesbian and gay groups rather than by those who sought to denigrate or dismiss the ERA. The 1974 case cements forever a culturally-dominant link between lesbian and gay rights and same sex marriage that easily outlives its original derogatory context.

In this context, re-claiming same sex marriage by the act of legal claiming is a fundamental step in the transformative process of denaturalizing the hegemonic norms associated with marriage. As Bower (1994, 1013) argues, "when marginalized groups creatively appropriate key concepts (including those provided by law) that have accepted ideological meaning, opportunities may be created to engage in community-based struggles that are not merely defensive or reactive." The litigation activities related to *Singer v Hara* actually re-frame the terms of the debate around this issue in terms that continue to define the present boundaries of the same sex marriage discussion.

Emulation and Abandonment:

McCann and Silverstein (1998, 283) note that "for the pay equity movement, the narrow legal opportunities were no less a constraint on options than were the internal dynamics of intergroup movement politics …. As a result, litigative strategies competed with several alternative approaches; and it was often this internal competition, rather than external judicial limitations alone, that constrained the turn to more formal legal tactics."

Accordingly, social movements often use litigation sparingly in order not to interfere with the larger movement goals. While these same tensions are also readily apparent in the modern lesbian and gay rights movement (e.g., Levitisky 2006), the 1974 case in Washington also raises an alternative way of viewing the role of litigation in relation to social movements with specific structural characteristics.

In the early 1970s (as in earlier periods), lesbian and gay rights' activists, like John Singer in Washington and Jay Baker in Minnesota, were faced with the nearly impossible task of organizing a social movement that was composed of a largely invisible set of members that even they could not readily identify or contact. And, the potential members of lesbian and gay rights' social movements were often geographically scattered in the random assignment of birthplace and sexual orientation.

Accentuating this geographic scattering and social invisibility has been the fact that the laws that attempt to govern, constrain, and punish individuals for expressing their sexuality have been located at the state and local level (Eskridge 1996; Pinello 2003, Andersen 2005). Sodomy prohibitions and same sex marriage proscriptions, for example, are based on state laws. Lewd behavior laws and liquor licensing laws applied to restrict the development of gay bars often differed from city to city. Further, as the sodomy prohibitions demonstrated, even in locations with similar laws,

enforcement of the law was often peculiar to the individual location (Eskridge 1999).

These circumstances created a unique set of circumstances for the resultant social movement until recently. The effect of geographic scattering and the fact that lesbian and gay rights' organizations were often created in direct response to the peculiar enforcement of local or state laws fostered a large number of geographically and organizationally separate lesbian and gay rights' organizations. In direct response to these circumstances, these groups developed a localized focus to respond to the peculiar law and politics of their location as they impacted upon the lives of lesbians and gays in those locales. One obvious product of this history has been that groups involved in the recent same sex marriage litigation have been very careful to maintain and project the image that this litigation strategy arises from local groups concerned only with the circumstances of their particular location (e.g., Barclay and Marshall 2005).

Given these two constraints upon the social movement and related lesbian and gay rights' organizations, we propose that activists and, on some rare occasions, ordinary individuals used litigation and its commensurate publicity (especially the publicity such events generated within the many lesbian and gay communities) as a way to communicate options for possible future directions for the larger movement. Each case initiated by a disparate lesbian and gay rights organization presented publicly to the larger movement a possible direction for the larger movement that they could subsequently endorse or reject by their own actions.

Each act of litigation initiated in the various geographically separate locations represented one lesbian and gay rights organization's publicly expressed proposal for the future direction of the larger movement. Similar organizations in other locations could either *emulate* – repeat the litigation or action in their own location with reference to their own peculiar legal circumstances – or *abandon* – reject the idea of pursuing that litigation or action in their locale for either legal, political, or ideological reasons. In this context, litigation could be used as an instructional manual to offer suggestions for possible use by other distinct and separate lesbian and gay rights' organizations. The very public nature of documents associated with litigation facilitates this ability to exchange information with limited direct contact between various lesbian and gay organizations (see, for example, Eskridge 1996; Bonauto *et al.* 1999; Robinson 2001).

From these actions, priorities are established and goals developed for a movement with little need for direct interaction or a single, centralized, national leadership. A new direction for the larger movement is demonstrated by repeated emulation of the same action in new locations by many different local organizations (see also McAdam *et al.* 2001, 332-335). Actions without support are simply not repeated in other locations and the movement instead pursues other priorities. The semblance of a national agenda on any issue is largely constructed by the aggregation of the choices of each the multitude of local organizations.

In the case of same sex marriage, organized litigation in the 1970s occurred in four separate states and achieved a variety of important aspects discussed above. This litigation generated a robust discussion of the role of marriage in relation to lesbian and gay individuals. By 1974, the possible legality of same sex marriage was an active topic in the gay press, including a series of major articles in *The Advocate*. The result of this discussion was that some form of consensus was reached within the larger movement during this period: marriage became identified as norming heterosexuality and reinforcing unequal gender roles (eg., Ettelbrick 1997; Polikoff 2000). Subsequently, the issue of same sex marriage was literally abandoned by the social movement – as evidenced by its failure to be emulated in any location throughout the late 1970s and early 1980s. Instead, lesbian and gay individuals pursued definitions of relationships in opposition to or independent of the definitions offered by local and state laws (Bower 1994; Hull 2003).

In contrast, lesbian and gay rights organizations in this same period turned litigation (and related lobbying) strategies to other issues that won the backing of the larger movement as evidenced by their repeated emulation in a variety of locations. This strategy of emulation is apparent in the successful elimination of sodomy laws in thirty-six separate states by 2003, the development of the legal rights associated with co-parent and individual adoption by lesbians and gays in a number of states (e.g., Connolly 2002), and the expansion literally city by city of anti-discrimination protections (Klawitter and Hammer 1999; Wald et *al.* 1996).

Conclusion:

It is impossible to define the role of litigation and its influence upon a social movement removed from consideration of the relevant social movement and its social, legal, and political context apparent in any era and location. We argue that lesbian and gay rights' activists in the 1970s used litigation to effectively re-claim ownership and legitimacy over the idea of same sex marriage at a time when it had been appropriated for ridicule and derision by other social movements. In addition, we argue that, given the nature of the lesbian and gay rights' movement in this period, litigation became one mechanism to develop input into the direction and goals of the larger movement.

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Results of the 2005 Sociology of Law Student Paper Competition

The 2005 committee for the undergraduate and graduate student paper prize in the Sociology of Law consisted of Annette Nierobisz (Carleton College), Jim Invervarity (Western Washington University), Louise Roth (University of Arizona), and Melissa Thompson (Portland State University). The committee received many excellent submissions this year. On the basis of our combined rankings of the papers, we awarded the undergraduate paper prize to Roxanne Moreno of Carleton College and the graduate paper prize to Gabrielle Ferrales of Northwestern University.

Ms. Moreno's paper, "Immutable Identities? Gender in the Asylum and Immigration Process," explores the implications of transgendered identity for individuals immigrating to or seeking asylum in the United States. Moreno studied this issue by interviewing lawyers, transgendered individuals, and leaders of GLBT organizations. Analysis of data from these interviews revealed the multiple ways in which the current immigration and asylum process both hinders and helps transgendered individuals. For example, Ms. Moreno shows that transgendered individuals have a better chance of obtaining the necessary legal documents should they apply for asylum rather than attempting to immigrate via a legal marriage. Moreno demonstrates a solid grasp of the relationship between legal asylum, Defense of Marriage Statutes, and sexual identity. Committee members noted that Moreno's topic was timely and provocative, that her paper was well-written and researched, and that Moreno developed a nuanced understanding of her topic.

Ms. Ferrales paper, "Domestic Violence Crime Control Policy and Practice: Implications for Arguments Concerning Penal Theory," examines the gap between legislative reform and prosecutorial practice. Ferrales specifically conducted ethnographic observations of 154 domestic violence cases that arrived to a prosecutor's office. Her findings show how this law enforcement organization resisted following strict legal guidelines in domestic violence cases because these rules are not attentive to the social characteristics of offenders, victims, and the setting in which these offenses occur. Ferrales' ethnographic work shows a discrepancy between academic discourse and legal practice, and she ties her findings to one of the broad controversies in postmodern penology. For all of these reasons, committee members noted that Ferrales' paper is unique and highly interesting.

Two additional papers tied for honorable mention. They are Emily Ryo's "Through the Back Door: Illegal Chinese Border Crossings during the Chinese Exclusion Era, 1882-1943" and Sandra Levitsky's "To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements." Ms. Ryo is a graduate student in the Department of Sociology at Stanford University and Ms. Levitsky is a graduate student in the Department of Sociology at the University of Wisconsin-Madison. We congratulate all of the authors for their excellent work and believe that these papers have the potential to make an important contribution to the field of Sociology of Law.

RECENT BOOKS IN THE SOCIOLOGY OF LAW

Debra Schleef - *Managing Elites: Professional Socialization in Law and Business School* (Rowman and Littlefield forthcoming 2005). How does one become a member of an elite profession? Managing Elites examines how elites-in-training contest, rationalize and ultimately enthusiastically embrace their dominant positions in society. Using interviews with 79 law and MBA students, the author argues that elite socialization requires both accommodation and resistance to professional ideologies. Students develop a collective cynicism about elements of their education, learning that their discipline imparts esoteric knowledge -- but also claiming that they didn't learn anything. They struggle with the idea that fellow students are all equally intelligent and therefore deserving of elite status, and the continuing emphasis on activities that sort students. Students resist the paths to success promoted by school cultures -- investment banking, consulting, or becoming partner in a large law firm. Such cynicism is indeed ultimately revealed to be temporary, as most students end up in full support of these "jobs of least resistance." Their critiques do, however, create tensions: between competition and cooperation, between the individual and the collective, and between egalitarianism and elitism. Part of elite socialization is learning to deal with these tensions, or more specifically, to hold contradictory ideals at the same time. Debra Schleef is an Associate Professor of Sociology at the University of Mary Washington in Fredericksburg, Virginia. She received her PhD from Northwestern University in 1997. Her next book looks at social class mobility among Latinos in central Virginia.

Violence and Society: A Reader, edited by Matthew Silberman (Prentice Hall 2003). The thirty-one selections in this book provide a distinctive perspective on the social construction of violence as normative conduct, deeply rooted in the cultural and legal traditions of society. The book also explores the structural origins of violence such as the role patriarchal institutions play in explaining gender violence. The book contains articles on family violence, sexual assault, serial murder, banditry, and terrorism. Contributing authors include respected scholars from a variety of disciplines: anthropology (Lundsgaarde's "Homicide as Custom and Crime"), history (Pleck's "Criminal Approaches to Family Violence, 1640-1980"), social psychology (Tavris' "Uncivil Rites -- The Cultural Rules of Anger"), sociology (Black's "Crime as Social Control," Inciardi's "The American Bandit," Levin and Fox's "Hillside Strangler," and Straus et al.'s "The Marriage License as a Hitting License"), law (MacKinnon's "The Legal Regulation of Sexual Harassment"), and women's studies (Caputi's "Sexual Politics of Murder"). Silberman contributes the "Introduction" and the book's final chapter, "The Social Origins of Violence in the American Prison."

Urban Lawyers: The New Social Structure of the Bar (University of Chicago Press, 2005) draws on extensive interviews with Chicago lawyers that were conducted in 1995 and compares the portrait of the contemporary bar those interviews revealed to its image in 1975 when the American Bar Foundation first surveyed Chicago lawyers. The analysis reveals that over the course of 20 years the very character of the Chicago bar changed dramatically. The bar not only doubled in size but was further transformed by the entry of women into its ranks–whose representation rose from 4 percent to 29 percent–and a tripling in the number of practitioners in firms with 100 or more lawyers. The sharp divide between corporate lawyers in these large firms, which now dominate the legal services sector, and those who serve individuals and small businesses has widened considerably. The two sectors of the bar were found to inhabit separate worlds, distinguished by substantial differences in socioeconomic backgrounds, education credentials, social networks, income, and prestige.

Although women, African Americans, and Hispanics now have a presence in the city's bar, the study revealed that they are significantly less likely to have incomes in the top quarter or to attain partnerships in firms of any size. Overall, income inequality increased markedly. In 1995 the city's highest paid lawyers were even more highly rewarded than they were in 1975, while those at the lower end of the income distribution in 1975 received even less in 1995 (in constant dollars). Yet despite these disparities, Chicago lawyers are not unhappy with their lot. One of the most striking findings is the generally high level of satisfaction reported by all categories of lawyers, a result that is at variance with the common wisdom. John P. Heinz is a Senior Research Fellow at the ABF and the Owen L. Coon Professor of Law, Northwestern University. Robert L. Nelson is Director of the ABF, holds the MacCrate Research Chair in the Legal Profession at the ABF, and is Professor of Sociology and Law, Northwestern University. Rebecca L. Sandefur is Assistant Professor of Sociology, Stanford University. Edward O. Laumann is the George Herbert Mead Distinguished Service Professor of Sociology, University of Chicago.

A Brief Profile of the American Bar Foundation

The American Bar Foundation (ABF) is a nonprofit, independent national research institute committed to basic empirical research on law and legal institutions. The ABF's goal is to conduct objective, empirical research that contributes to the understanding and potential improvement of law, legal institutions, and legal processes. Many sociologists of law are already aware of the ABF's research staff and their scholarship. This article provides additional information about the research specializations of ABF staff and their related publications. I have also included an interview with Robert L. Nelson, the ABF's Director, in order to gain his perspective on the ABF's history, impacts and future trajectory. This article has excerpted the majority of its basic information about the ABF's research staff, areas of interest and publications from the promotional materials of the American Bar Foundation, with the permission of ABF Director Robert L. Nelson. The Editor

Background on the ABF

The ABF is located in downtown Chicago and has a research faculty of 22 scholars with academic training and specializations in law, sociology, psychology, political science, economics, history, and anthropology. All hold either full-time appointments at the ABF or joint appointments with Chicago-area universities. The current research staff includes: John L. Comaroff (anthropology); Barbara A. Curran (law-emeritus); Stephen Daniels (political science); Shari S. Diamond (law and psychology); Bryant G. Garth (law) (Director Emeritus); Austan Goolsbee (economics); John Hagan (sociology); Terence C. Halliday (sociology); James J. Heckman (economics); Carol A. Heimer (sociology); John P. Heinz (law) Bonnie Honig, (political science); Steven D. Levitt (economics); Joanne Martin (law-liaison research); Tracey L. Meares, (law); Elizabeth Mertz (law and anthropology); Janice Nadler (law and social psychology), Robert L. Nelson, Director (law and sociology); Laura Beth Nielsen (law and sociology); William J. Novak (history); Susan P. Shapiro (sociology); Christopher L. Tomlins (history); Victoria S. Woeste (history).

ABF research projects are ongoing in different thematic areas within the sociology of law. Brief descriptions of those areas and current research projects within them are provided below. ABF researchers collaborate with many socio-legal scholars who work outside the ABF in carrying out scholarship. Many of the ongoing projects described here further demonstrate those partnerships.

The Legal Profession

Current ABF projects here address the social structure of the bar, the corporate bar, the personal injury sector, public interest lawyers, pro bono activities, legal education, lawyer careers, and internationalization. Examples include:

Urban *Lawyers: The New Social Structure of the Bar*, a recently published book, which is based on interviews with some 800 Chicago lawyers and reports on the forces that have transformed the urban bar over a twenty-year period. (John P. Heinz, Robert L. Nelson, Rebecca L. Sandefur, and Edward O. Laumann) *After the JD: A Longitudinal Study of Lawyers' Careers* is tracking, for ten years, a national sample of lawyers who passed the bar in 2000 to illuminate the factors shaping career trajectories. (Ronit Dinovitzer, Bryant Garth, Robert L. Nelson, and Joyce Sterling). *From Law School to Later Life* is studying the evolution of lawyers' careers, particularly differences in career tracks between men and women. (John Hagan, Fiona Kay, and Ronald J. Daniels). *Cause Lawyering in Context: The Constraints and Opportunities of Practicing Public Law in Public Interest Law Firms* will provide an unprecedented empirical portrait of the public interest bar. (Laura Beth Nielsen, Catherine Albiston) *Legal Services for the Poor: A Supply Side Analysis* is mapping the field of pro bono in Chicago to determine how law firms and corporate law departments influence the delivery of legal services to the poor. (Stephen Daniels, Joanne Martin). *Plaintiffs' Lawyers and the Evolution of Tort Law and Practice in Texas* is examining the impact of tort reform on lawyers' practices. (Stephen Daniels, Joanne Martin) *Law School Language: Learning to Think Like a Lawyer* is a forthcoming book (2005) that draws on transcribed tapes of Contracts classes in eight law schools to report on the process by which law students are reoriented during legal training. (Elizabeth Mertz)

The Internationalization of Legal Values and Legal Practices

ABF researchers also address the internationalization of legal values and legal practices. This process includes the very strong pressures coming from the United States, the community of developed countries, multilateral organizations, and even leading academic institutions, to "universalize" what they believe would promote improvements in justice at the national and international level. There are many reasons to applaud these sentiments, but it is also important to question how well universal approaches fit the unique conditions found in different places and also whether transplanted approaches – no matter how sensitively designed – can be successful in particular settings. Examples include:

Justice in the Balkans: Prosecuting Crimes of War in the Hague Tribunal is a recent book that documents the role that the Tribunal's prosecutors played in

building the institution's credibility and visibility. (John Hagan). *A Peace Corps for Lawyers* is an historical and empirical study of the ABA's Central European and Eurasian Law Initiative (CEELI) program and its lifecourse implications for its voluntary lawyer participants. (John Hagan, Ron Levi). *The Globalization of Insolvency Law-Making* is an empirical study of emerging global norms that have transformed bankruptcy law in developing and transitional societies in Asia. (Terence Halliday, Bruce Carruthers) *Popular Justice, Communal Violence, and Alternative Policing in the New South Africa* is mapping and analyzing the various forms of alternative law enforcement and popular justice that have emerged in South Africa since 1994. (John Comaroff, Jean Comaroff) *The Legalization of Medicine in AIDS Treatment and Research* is examining the way in which treatment regimes, in the United States, Africa, and Thailand, have come to be constructed and diffused as a kind of law. (Carol Heimer).

Dispute Resolution and Litigation and Civil Justice

Studies of the legal profession as "gatekeepers" and indeed "magnets" for certain kinds of cases speak strongly to the causes, frequency, and impacts of litigation. There are ABF studies of the personal injury bar in Texas, the mapping of pro bono legal services in Chicago, and examination of the processes that transform potential feelings of discrimination into claims and ultimately litigation. Less directly, studies of internationalization raise the question of how regimes of contract bolstered by legal remedies (including bankruptcy) may come to replace or supplement business transactions built mainly on networks of family and personal relationships. The projects specifically focused on this category today, however, tend in one way or another to focus on the jury – long an area of ABF expertise. Examples include: *The Civil Jury at Work* is using an unprecedented data set of 50 videotaped jury trials along with juror deliberations to evaluate an Arizona reform that allowed jurors to talk about the case among themselves as the trial proceeded and to assess the role of experts, such as engineers or nurses, who serve on the jury. (Shari Diamond, Neil Vidmar, and Mary Rose). *The Social Psychological Role of Subjective Harm in Punishment Judgments* is examining the effect of victim impact testimony on sentencing decisions by jurors. (Janice Nadler, Mary Rose)

Public Opinion on the Civil Justice System is investigating how public opinion on civil justice is measured, by whom and for what purposes, and how and why it changes over time. (Stephen Daniels)

Criminal Justice

The ABF continues to have a strong commitment to the field of criminal justice, although it also is an area in which the ABF wants to build in the future. Senior Research Fellow, John Hagan, past president of the American Society of Criminology, is one of the world's leading criminologists. His research on the International Criminal Tribunal for Former Yugoslavia has taken the study of crime to the transnational field of human rights enforcement. Hagan is continuing research that employs data collected on a larger national sample of adolescent youth funded by the National Institute for Mental Health. It examines the careers or life histories of those at risk for crime, seeing how various choices, opportunities, and constraints shape behavior. Recent articles analyze the gendered character of delinquency, documenting that males and females follow distinctive pathways to crime. Hagan and ABF Research Assistant Carla Shedd are publishing an article in the *American Sociological Review* on differences in the perceptions of black and white youth about the legitimacy of police and other public authorities. They find that African-American youth are less trusting of police, and that the racial gap in trust is greater in high schools that are racially mixed rather than high schools predominantly comprised of one race or another. Examples of criminal justice scholarship include: *Consequences of Lawbreaking in Young People's Lives: Delinquency and Depression in the Transition to Adult Disadvantage* is using data on a large national sample of adolescent youth to test a model that considers the causal relationship between delinquency and depression and their linkages to early problems in adulthood. (John Hagan) *The Social and Economic Impact of* Roe v. Wade is exploring the social implications of legalized abortion, including the link between liberalized abortion laws and declining crime rates. (Steven Levitt, John Donohue). *Measuring the Impact of Crack Cocaine* is developing a statistical index to measure the extent to which crack cocaine can account for adverse trends in many indicators of African American progress during the 1990s. (Steven Levitt, Roland Fryer)

Discrimination

There are several strands of research on discrimination at the ABF, in addition to a whole series of projects that in one way or another address issues of equality of opportunity. ABF research here has helped to define research agendas generally in economics and sociology – and to bring them to a larger interdisciplinary audience as well. Examples include:

Understanding the Contribution of Legislation, Social Activism, Markets, and Choice to the Economic Progress of African Americans explores the relationship between legal policies and other factors that determine the wages of African Americans, both historically and currently. (James Heckman) *The Foundation and Application of Disparate Impact Doctrine* is examining the legal theory of disparate impact and is questioning empirically whether the

concept should be applied to fields such as organ transplantation. (James Heckman) *The Genesis and Development of Employment Discrimination Lawsuits* is using data on complaints filed with the EEOC, federal discrimination cases, and interviews to reveal the actual dynamics of employment discrimination disputes. (Laura Beth Nielsen, Robert Nelson).

Legal History and the Social Role of the Law

This category puts ABF legal historians forward more explicitly and also suggests that an underlying theme for much ABF work is the "social role of law." As with respect to other topics, there is overlap. In particular, examinations of the federal role in antidiscrimination policy fit perfectly with studies of the role of law. Examples include: *The Creation of the American Liberal State* explores the role law played in the development of a restructured style of American governance that emerged in the twentieth century. (William Novak) *Suing Mr. Ford*: *Antisemitism and Hate Speech in Modern America* uses a famous libel case involving automaker Henry Ford to explore the history of American anti-Semitism and its relationship to group libel law. (Victoria Woeste) *Law, Work, and Culture in Early America* is examining the legal history of work and labor during the first two centuries of American history. (Christopher Tomlins) *The Supreme Court of the United States: The Pursuit of Justice* is a recently published book (2005), written by eighteen collaborating scholars under the auspices of the ABF, that offers a fresh, historical portrait of the U.S. Supreme Court. (Christopher Tomlins).

Recent ABF Research Findings

ABF researchers are contributing new findings in their ongoing socio-legal scholarship. The works from which these findings have emerged have not all yet been published. Therefore AMICI is listing the names of the researchers responsible for these recent findings, in case a reader is interested in contacting them. These recent findings include:

Media reports of victorious claimants securing million-dollar awards in employment discrimination litigation create a distorted picture of how often and how much plaintiffs win. (Robert Nelson and Laura Beth Nielsen)

Legal interventions, notably Title VII of the Civil Rights Act, played a major role, independent of other factors, in elevating the economic status of African Americans. (James Heckman)

People who live in locations with high sales taxes are significantly more likely to buy products over the Internet than are consumers who reside in areas with lower taxes. (Austan Goolsbee)

Lawyers who serve conservative business constituencies inhabit a separate social world from lawyers who represent religious and social conservatives. (John Heinz)

Women lawyers, either by choice or constraint, are following career paths that are different from those of their male counterparts, and are less likely to achieve high-paying partnership positions. (John Hagan)

The public relations campaign mounted in support of tort reform may affect the practice of tort law more than formal changes in tort law itself. (Stephen Daniels & Joanne Martin)

A brief interview with: Robert L. Nelson
Director of the American Bar Foundation
MacCrate Research Chair in the Legal Profession
Professor of Sociology, Northwestern University

Recent publications include:

Urban Lawyers: The New Social Structure of the Bar (with J. Heinz, R. Sandefur, & E. Laumann) (University of Chicago Press, 2005); Editor (with L.B. Nielsen);
Handbook of Research on Employment Discrimination: Rights and Realities (Springer, 2005).

In order to get a sense of the ABF's history and impact, and where the institution is moving, AMICI offers a brief interview with Robert L. Nelson, the ABF's director. His time and cooperation are very much appreciated. The Editor

If the ABF were constituted as a university department, it would be a preeminent department in socio-legal studies. What enabled this group of socio-legal scholars to come together?

Over fifty years ago, the American Bar Association decided that there should be a research institution that should do legal research. This institution would be a 501(c)(3) category institution so that it could accept grants. The research produced there was to be independent, rigorous and autonomous. The ABF started out with a small research staff that initially worked on a survey of the legal profession. The ABF grew through the 80's and 90's, to now have 22 researchers. One growth strategy that the ABF used was to make joint appointments with academic departments at local research universities. The ABF also had the financial ability to hire people where they would not have to teach, and where they would have access to research funds that would allow them to submit research grants and plan out their future research projects well in advance. The ABF always reviews projects, appointments and research work for rigor and quality. And just having the steady availability of research funds enabled people to mount research programs that were really ambitious. Having the group of scholars that ended up coming together there to do socio-legal scholarship also made the ABF a very attractive group for other people to want to join.

What impact has the ABF had on people's careers?

The ABF has been an incubator of work in law and social science. People early in their careers also might not have come into studying law, but they got involved in the ABF and then got recruited into it. That happened to me; I was hired as a research assistant here and that exposed me to a really high level of research activity. We are also a career home for people. People have spent many years of their careers here. We have also recruited people who would not necessarily have been involved in law like James Heckman, the Nobel laureate economist who began a joint appointment at ABF in the 80's and studied the impact of the law on the economic progress of African Americans at the ABF. He also collaborated with John Donahue, who is now at Yale Law School. Steve Levitt, whose book *Freakonomics* is a best seller; a lot of his work on crime and social control issues came from ABF funding. The ABF helped nurture his interest in work on crime and social control. Carol Heimer, a sociologist of organizations primarily, also had an interest in the sociology of risk. When she began her appointment at ABF, that interest turned into a theoretically informed study of the impact of law, such as her award winning work on neonatal institutions and her present work on how AIDS is treated around the world and how law is an important force in shaping that treatment in how medical protocols come about and in regulating the availability of prescription drugs. Many graduate students at Northwestern

and Chicago came through the ABF as research assistants. An early generation of students included Terry Halliday and myself in the 70s'. More recently, Rebecca Sandefur came from Chicago. Laura Beth Nielsen began as a research assistant and is now a research fellow and will shortly be joint in Sociology at Northwestern University. **How can scholars become involved in the ABF?**

We have some hopes of expansion, and we plan outreach activities beyond Chicago area universities. If a grad student or professor in the Chicago area is interested, they can perhaps attend our seminar. We also have a visiting scholar program, so faculty can apply to spend their leaves here at the ABF. We have a mechanism for evaluating those applications. There is also a graduate student fellowship. However both the visiting fellowship and graduate fellowship are presently not funded. We hope to acquire resources for them and if the budgetary situation changes, we hope to do more. The journal *Law and Social Inquiry* is another way to be involved in the ABF. People can apply to be on the editorial board; they can submit work and also they can subscribe to *Law and Social Inquiry*.

What areas for future scholarship ought to be prioritized or are being prioritized?

We have a very established reputation in the study of lawyers and the legal profession. This emphasis also focuses on how the law actually works and that you cannot observe just by looking at formal institutions. Studying legal consciousness has become an established area, and it provides a meaningful way forward to looking at law with more than an instrumental perspective – to look at how people actually think about the law and act around the law. As law has become more and more controversial, it is really critical to understand the legitimacy of legal institutions and the independence of the courts. We need more work on the popular consciousness of law like Haltom and McCann's award-winning book, *Distorting the Law: Politics, Media and the Litigation Crisis*, which assesses the relationship between politics and the power to construct compelling and powerful narratives about law. We must theorize about that. Their book shows how empirical social scientists working on law developed all these social facts that have been ignored, like in the politics of the tort reform movement. Proponents of that reform have been successful because they have been able to construct more persuasive narratives, though factually incorrect. Looking at how law penetrates and shapes people's perceptions of their social world should be a priority of law.

Has there been criticism of the ABF?

When talking to working lawyers, it is hard to always make clear what work is being done. There is a clear need for independent work on law but lawyers may not always think that the work is of practical value to them, yet this is not true in the long or short term. Occasionally, because much of our work is empirically grounded, that sometimes can be confused as making us positivists. I don't feel that this is a valid criticism – we also do reflective work that is more interpretive. We may not have as much representation in the humanities as we have in social sciences, but much of the work here is grounded in interpretive approaches.

What would you say is most important for sociologists of law to know about the ABF?

That there is an enormous value in doing rigorous work on law in which scholars from different disciplines come together and learn from each other. The ABF is very privileged to have the resources to do so on an ongoing basis. The ABF is a model to be emulated in bringing funding, faculty and grad students together with theoretical questions about law and legal processes. It is enormously interesting and fun and potentially very influential and important to have this type of collaboration in figuring out the role of law in society. The ABF is a unique institution in being able to have such an interdisciplinary group. Some law faculties have moved into more interdisciplinary work and been influenced by the humanities and there are university based working groups, but the ABF is unique because of its size. Our research staff comes from the fields of anthropology, economics, history, political science, psychology, sociology and law. There need to be more places like the ABF that show people that it is possible to do very sophisticated social science research on law that draws on theory and strong methods across a variety of different disciplinary perspectives

Distinguished Article Award Winners

This year we are recognizing two articles as co-winners-Patricia Ewick and Susan Silbey's "Narrating Social Structure: Stories of Resistance to Legal Authority," published in the American Journal of Sociology, and Nicholas Pedriana and Robin Stryker's "The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965-1971," also published in AJS. We also would like to extend Honorable Mention to Becky Pettit and Bruce Western's "Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration" published in the American Sociological Review.

The committee found each of these articles truly impressive in their contributions to the field. Ewick and Silbey's article "Narrating Social Structure" is a fascinating elaboration of the telling of stories of resistance to legal/bureaucratic authority, resistance that is extended beyond the actual episode through its repeated recounting. The committee especially appreciated that Ewick and Silbey use a legal site to tackle a general problem in social theory, namely, the nature and exercise of power, hegemony and counter-hegemony. It similarly grapples with the classic micro-macro problem in social explanation, of getting from the individual and interactional to macrosociological and structural. Not least, it is a great read!

Co-winner of the prize, Pedriana and Stryker's "The Strength of a Weak Agency" addresses the anomaly of aggressive enforcement of Title VII by the early EEOC despite the absence of resources. It refutes the standard political-institutional account of state capacity by showing that the EEOC could capitalize on legal decisions and social movement pressure to enhance their capacity. The paper takes on an important theoretical issue, and uses the site of law to advance state theory. It also introduces new concepts such as the "moving target" of agency power which ebbs and flows over time. This is a meticulously researched and crafted article, and again, a great read.

Pettit and Western's "Mass Imprisonment and Life Course" is to be commended as well, and we would like to give it runner-up recognition. It is an empirical, statistical analysis of penal inequality in the United States, in which lifetime risks of imprisonment for white and black men at different levels of education are compared. The paper advances a critically important area of research, it pushes forward life course theory, and is the result of a really impressive data-collection effort. It has both theoretical and policy implications, and it too is straightforward and compelling in its presentation. (Kitty Calavita on behalf of *The Distinguished Article Award Committee).*