ORIGINAL ARTICLE

Art, not a science: How legal impact organizations identify community need

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Abstract
The cause lawyering and social movement organization literature explains that movement groups may not prioritize needs that are important to marginalized subgroups within their constituencies. This echoes common and salient critiques within the LGBTQ legal industry. Using a case study of legal organizations within the LGBTQ movement, this article attempts to identify the mechanisms used to determine community need. Contrary to expectations, legal organizations take deliberate and often systematic steps to understand community need and recognize it as central to priority setting. Information flow about needs between large impact groups and smaller state/local groups moves in both directions. However, there are features of these mechanisms that may explain the perceived gap between organizational agendas and community need. The identification of sites and tools for determining need found in this project might provide organizations with guideposts to help them improve practices and close that gap. Finally, the findings here add to our understanding of how lawyers seek to promote organizational accountability.

1 | INTRODUCTION

Scholars have demonstrated that lawyers seek to organize their priorities according to the needs and demands of clients (Heinz et al., 2005; Heinz & Laumann, 1982). But what happens in cause lawyering organizations, or more specifically in legal impact groups (hereafter legal organizations), where agendas may "transcend client service" (Scheingold & Sarat, 2004, p. 3) and where scholars find "tension between service to particular individuals and efforts to achieve structural change" (Menkel-Meadow, 1998, p. 32)? How are the needs of groups associated with a cause, including advantaged and disadvantaged subgroups, determined (Strolovitch, 2007)?

Stressing the significance of this question, many have observed cause lawyering agendas that are not always in sync with community needs and demands (Bell Jr., 1976; Cummings & Eagly, 2001; Leachman, 2014). Sometimes the very act of lawyering and litigation can "hijack" a movement's priorities (Levitsky, 2006). Scholars of social movement organizations have also demonstrated that some organizations unintentionally set agendas that favor advantaged over disadvantaged subgroups (Strolovitch, 2007). In particular, the lesbian, gay, bisexual, transgender, and queer (LGBTQ) movement has long struggled with the issues of movement co-option and agenda setting, especially around lawyering (Carpenter, 2014; Leachman, 2014; Levitsky, 2006; NeJaime, 2003; Rubenstein, 1997). For example, marriage equality is often perceived as an issue that was prioritized over needs thought to have greater benefit for marginalized subgroups, like housing and healthcare (Acey et al., 2006; Ettelbrick, 1999; Polikoff, 1993; Vaid, 1995).

Some legal scholars have suggested prescriptions to solve the perceived gap between need and agendas. These include changes to how class action suits are determined (Rubenstein, 1997), creating pluralistic models of decision-making among groups (NeJaime, 2003), and sharing call center data (Carpenter, 2014). However, even with these prescriptions and the collective literature on the agenda/need disconnect, there is still a gap in our understanding of the tangible spaces and mechanisms that lawyers use to actually determine what the needs are in their target community.

The aim of this project is start bridging that gap by answering the following questions: How do legal organizations identify community need? Can we locate specific procedures and sites where recognition takes place? Can we also determine how that information is interpreted and turned into action? As a case study, I focus on legal organizations in the LGBTQ movement where the critique of a disconnect between agendas and need has been visible and salient. For data, I rely on dozens of interviews with staff at three legal organizations as well as analysis of annual reviews and newsletters.

The findings show that legal organizations take deliberate and often systematic steps to understand community need, which they recognize as a vital part of their priority-setting processes. There are three primary sites or processes through which community need is identified: call centers, surveys, and outreach/collaborative work. The findings also show that, altruistic goals aside, communicating need to donors, media, and legislators also incentivizes finding ways to measure need. Of those, the clearest connection is between measuring need and generating resources, an important goal for any social movement organization. Additionally, while the perception of a unidirectional flow of information may still exist between legal organizations and their smaller grassroots collaborators (Levitsky, 2006), this study's findings suggest that information can flow both ways. Surveys and call center data are tools not only for identifying need but also for educating, informing, and perhaps even expanding the scope of conflict. In a manner reminiscent of the practices recommended by scholars (Levitsky, 2006; NeJaime, 2003), organizations are collaborating and working with state/local communities with the intention of learning about their priorities and their perceptions of need.

However, this article does not address how *well* organizations are adhering to community need, and thus does not reject the longstanding perceived disconnect between agendas and need (Carpenter, 2014; Leachman, 2014; Levitsky, 2006). Instead, the findings here do contribute to the literature by demonstrating how organizations interpret need, and how they structure community engagement. This adds nuance to how we look at cause lawyering, accountability, and the co-option of movement agendas. This article's findings also present an opportunity to address the ideological struggle within movements and offers potential targets for reform.

After situating the project in the literature and explaining its methods, this article is broken down into two sections of analysis. The first section of analysis is the major focus of the article. It covers the three primary sites or tools that are used to assess community need: call centers, outreach work, and surveys. The second section discusses how those measures from different

sites might result in actions by organizations to address need, and the difficulty in assessing when that happens. Finally, the paper concludes with a brief discussion of implications and future avenues of research.

2 | THE DISCONNECT BETWEEN NEED AND AGENDAS

There are two categories of scholarship that are particularly helpful in generating expectations and context for this project: works that evaluate the relationship between cause lawyering and *movement* agendas, and works that focus specifically on the inner workings of *organizational* agendas within cause lawyering groups. The former is a much more developed body of scholarship that contributes to the latter by demonstrating a disconnect between cause lawyering organizations (specifically larger impact groups) and both grassroots and activist elements of the causes that they serve.

For instance, we know from this literature that cause lawyers may contribute to deradicalizing demands and grievances in a movement by reducing them to abstract legal concepts (Bumiller, 1988; McCann & Silverstein, 1998; Tushnet, 2005). This may be because lawyers are focused on achievable goals in the courts, which in turn need to be translated in ways that are much less transformative than the goals of grassroots and/or radical activists (Cummings & Eagly, 2001; White, 1988). In doing so, cause lawyers and legal organizations may be unintentionally supplanting movement goals, shifting ownership of grievances from the grassroots to elite professionals (Bell Jr., 1976; Menkel-Meadow, 1998; Tushnet, 2005). Some frame this phenomenon as an accountability problem (Bell Jr., 1976; Cummings, 2017), arguing that cause lawyers are pulled between the competing interests of the client and the cause. Ultimately, some cause lawyers are observed to be "only weakly responsive to—and sometimes even in conflict with—the interests" of their clients because they choose a political agenda, or their perception of the cause, over client/constituency priorities (Cummings, 2018, p. 368).

This fits with what we have observed of identity-based organizations writ large, which, over time, tend to prioritize issues important to the middle-class over issues important to working-class people (Berry, 1999; Skocpol, 2004). This occurs as organizations (both legal and non-legal) professionalize and subsequently moderate their goals (McAdam, 1982; Piven & Cloward, 1979). Strolovitch (2007) found in a study of over 200 interest group organizations that fewer resources were committed to issues that affected smaller disadvantaged intersectional subgroups within movements compared to larger advantaged subgroups. This may be a common problem; in one survey of legal organizations, most reported that they did not make significant efforts to consider stakeholders, such as members, clients, or community groups (Rhode, 2008, p. 2051).

This is also an often-heard criticism within the LGBTQ movement regarding legal and non-legal groups (Arkles et al., 2010; Carpenter, 2014; Rubenstein, 1997; Vaid, 1995; Willse & Spade, 2005). Levitsky (2006, p. 156) found activists in Chicago who felt that legal organizations "hijacked" the movement's agenda, with activist and grassroots organizations having to compete for attention and resources against highly visible litigation. One of the commonly cited examples of this hijacking was the prioritization of marriage equality (Acey et al., 2006; Spade, 2015; Vaid, 1995), which has been critiqued as being part of an assimilationist agenda (Ettelbrick, 1999; Polikoff, 1993) that greatly benefits older, white, affluent men. As Farrow (2004) has argued, marriage may have drawn attention away from issues important to communities of color, such as housing, health care, HIV/AIDS, and police violence. In Chicago, activists of color and self-identified radical leftists saw same-sex marriage litigation "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" (Levitsky, 2006, p. 156). Gwendolyn Leachman similarly argues that same-sex marriage litigation is a "key example" of the way

litigation and its extralegal benefits can "refocus the priorities of protest-based activists away from their original goals and toward formal legal objectives" (Leachman, 2014, p. 1672). Even Jon Davidson, legal director at Lambda Legal, acknowledged this frustration: "It doesn't help you so much if you can get married and then get fired because of that" (Crary, 2013).

What is absent in this literature is an account of just *how* organizations are deciding what issues to select and to what degree those selections are based on an assessment of community need. There are indeed theories as to what influences *when* organizations might litigate, such as the presence of opportunity structures (Andersen, 2006; McAdam, 1982), the political and cultural environments (Barclay & Chomsky, 2014), or the presence of resources and donors (Komesar & Weisbrod, 1978; McCarthy & Zald, 1977; Wilson, 1974). But these still leave a gap in our understanding of agenda setting. How do legal organizations decide that an issue needs their time and attention in the first place? Is it simply an organic process of watching what is happening in the courts and sometimes being a part of the community that they are serving? Or are there structural mechanisms within an organization's normal operation that inform them? Further, if these mechanisms exist, are they intentional and influential, or are they inadvertent and scarcely used?

3 | SCOPE AND METHOD

These questions are addressed in this article using a case study approach that focuses on legal impact organizations within the LGBTQ social movement. Legal organizations within the LGBTQ movement are fairly representative of legal organizations within other social movements. For instance, the larger impact organizations were modeled both in structure and strategy after other legal organizations like the NAACP Legal Defense & Education Fund (LDF) and Legal Momentum. Further, the kind of critique regarding movement agenda setting that is of concern in this project has been regularly leveled at the LGBTQ legal industry. This makes this group ideal for examining how community need is recognized and interpreted.

The project focuses on impact or reform legal organizations, as opposed to direct legal service providers. This decision was made for two reasons. First, the dilemma of selecting between individual service and structural change (Menkel-Meadow, 1998, p. 32; Scheingold & Sarat, 2004, p. 3) is not as present (though not necessarily absent) among service providers, because service providers often operate under mission and institutional constraints that encourage them to take on as many clients under or near the poverty line as possible. Second, because the capacity, resources, and constraints of service providers are different from those of larger impact organizations, their selection processes should probably be analyzed separately.

The organizations that receive the most attention in this article are GLBTQ Advocates and Defenders (GLAD—Boston, MA), Lambda Legal Defense & Education Fund (Lambda—headquarters in New York City, with offices throughout the country), and the National Center for Lesbian Rights (NCLR—headquarters in San Francisco, with an office in Washington, DC). These organizations provided the most access, and they are the more visible legal impact organizations within the LGBTQ movement based on the kinds of cases they handle, media attention, and regional scope. I have also included select quotes from lawyers of the former Equality Advocates Pennsylvania (EAP—Philadelphia, PA).[1] While I would characterize the organization's case-selection style as direct services, the scope of their work (statewide) and their commitment to extensive non-litigious work (public policy and public education) resemble the behavior of impact groups. However, because their system of case selection is distinctly different from that of the other three groups, I have left them out of that part of the analysis. There are also select quotes from former executive directors at the Transgender Law Center. While the Center began as a legal impact and services organization, today it is better categorized as a policy advocacy group.

The data for this project includes 37 semi-structured interviews with current and former lawyers of cause lawyering organizations. Lawyers and staff were selected using a snowball selection process (Tansey, 2007). Requests were first sent to executive and legal directors. At the end of the interviews, permission was obtained to use their names in further solicitations to other lawyers and staff. I selected interviewees for different reasons: longevity within their organizations (more institutional memory), their tactical focus (litigation, policy, or education), and availability. Interviews averaged a little over an hour long and were mostly conducted by phone. Questions focused on tactical and agenda choices. Some questions were planned, while others—mostly follow-ups—were generated through discussion. For instance, I asked each interviewee, "How does your organization try to understand the needs of the community you serve?" But follow-up questions were tailored to the answers the interviewees provided. Over time, I asked about certain methods—like call centers—once it became apparent that they were important. Transcripts were then created through a paid service and coded through Atlas.ti for keywords (e.g., "call center," "constraints," etc.) so they could be subjected to further analysis.

The other sources are organizational documents. While hundreds were collected and read, roughly a dozen were ultimately utilized for this project. These include newsletters and annual reports but also emails and memos. These documents provide a source to corroborate interview responses and a source for the creation of interview questions. I collected most documents from archives in New York City (the LGBT Community Center National History Archive), New Haven (Yale University Library, Manuscripts and Archives), and San Francisco (the GLBT Historical Society). Documents were also obtained from the National Center for Lesbian Rights' headquarters in San Francisco, while other materials (newer newsletters and annual reports) were publicly available online. Using basic file organizing software, these documents were read and assigned keywords based on subject and importance. I sought any reference to call centers, outreach, collaborations, workshops, surveys, and community needs in general.

4 | TOOLS AND SITES FOR ASSESSING NEED

4.1 | Call center data: A useful but imperfect measure

Among all the answers from lawyers and other staff to the question of how they determine community need, the use of call centers was the most frequently cited, and it was often the first answer (Buseck, 2016; Cathcart, 2016; Sakimura, 2016). Data provided by these centers are shared with staff throughout these organizations and with board members. Further, the quantitative data are helpful for making appeals to donors for resources and for appealing to allies. However, staff and leadership are aware of the problems associated with *solely* relying on intakes (Buseck, 2016; Cathcart, 2016) to assess community need. Those problems may indicate that call centers are an unreliable way of gauging community need.

Call centers manage all communication—including phone calls, letters, and emails—coming into the organization. These communications come from a range of sources, including private attorneys looking for technical advice on a case, individuals looking for legal advice, or injured parties seeking representation. Most callers are looking for legal advice, information, and representation. Each organization in this study has a call center (with names like "HelpLine" or "Help Desk") staffed by trained volunteers, law clerks, attorneys, or all-of-the-above. Organizations receive hundreds of calls each year.

Traditionally, centers like these, which are referred to as "intakes," are used to screen calls for potential cases. Staff will first determine what the alleged harm is and often the income level of the caller. Then lawyers will determine whether the harm falls within their subject area expertise, whether they have the resources to take the case, and whether the call meets an income threshold to qualify for legal aid. If the complaint cannot be taken, callers will often be referred

to a cooperating attorney outside the organization. While this is how direct legal service providers work, it is not how the impact groups utilize these centers. Instead, as Ming Wong (the supervising Help Line attorney at NCLR) explained, call centers serve three functions: (1) to provide information like educational and legal resources, (2) to connect callers to cooperating attorneys, and (3) to provide organizations with a sense of the universe of injuries being experienced by the communities they serve (Wong, 2016). Similarly, Lambda describes its Help Desk as informational, although it was previously considered an intake (Johnson, 2016).

How communications are collected and reported gives us a window into how these organizations may transform data—whether explicitly or not—into a sense of the distribution of need in their communities. These processes also reveal how that data may be skewed, something that lawyers are keenly aware of and express caution about.

Calls are tracked using computer software, but this tracking is not perfect. Every interview response regarding intakes included the same warning: not every call is recorded, and when a call is recorded, the issues or demographic information might not be entered. This could simply be due to software malfunction or due to staffers/volunteers forgetting to record certain information. This is at least one clear reason why centers might serve as poor proxies for community-wide need.

There is also the challenge of *how* to record calls, and specifically how to place calls into issue categories. Some staffers are trained to select all the issues relevant to a call (Wong, 2016). For example, let us assume that an 18-year-old transgender student contacts a legal organization. That student is attending college where dorms are divided by gender, and the student wishes to live in the dormitory of the gender they identify with. However, the school refuses to allow them to do so and instead insists that the student live in the dorm that matches the marker on the student's birth certificate. In this case, the student's gender and the gender marker on their birth certificate do not match. The staff member on call could select the categories of youth, school, housing discrimination, and transgender rights. Indeed, all might be selected for one call. Other organizations like Lambda Legal are trained not to select every relevant issue, but only the relevant legal issue at stake (Johnson, 2016; Marshall, 2016). All of this requires subjective and interpretive choices that could influence how organizations learn about their communities.

Thus, these differing methods of categorization are a potential issue of concern when reporting out aggregate figures because they may influence how community need is ultimately constructed and perceived both inside and outside the organization. Since at least the late 1980s and early 1990s, organizations have been using this data to illustrate what the priorities of their community are. A 1990 Lambda newsletter described phone calls from the community, and the author used these to illustrate community-wide harms (Lambda Legal, 1990). According to its 1994 annual report, GLAD had revamped its call center procedures, feeling that the center was "more than a way to screen cases; it was a public education tool" (GLAD, 1994). Today, call data are used in the aggregate to identify trends, including what is happening in different regions (Cathcart, 2016). Call center coordinators (always lawyers) are charged with sharing this data with the rest of the staff and their respective board of directors. At NCLR, the board is briefed twice a year about what the call figures are showing. During weekly meetings, rank and file staff hear about these trends, often offering ideas and comments in response (Wong 2016). Consequently, this information has reach within and outside the organization.

But caution is required when reading these figures. Levitsky (2006, p. 154) observed in her study of legal work in Chicago that "Lambda has a 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." Likewise, observations in this project suggest that while lawyers believe that this data can be used to "at least come to the conclusion that there are a lot of people with [a] problem"

(Carpenter, 2014), there is near universal awareness that there are pitfalls to using intake data *only*.

Former Executive Director of Lambda Legal Kevin Cathcart (2016) believes that focusing too much on calls could limit the broad range of issues that an organization focuses on. What Cathcart means is that subgroups within the LGBTQ community are calling Lambda, ones that are familiar with the organization. Other subgroups, perhaps those with fewer financial resources or fewer means of communicating with Lambda, may have needs that are not reflected by callers who are familiar with Lambda.

Instead, Cathcart believes that Lambda needs to continue working on a broad range of issues so that people come to the organization with different concerns. He warned that if "if we get a reputation of only doing one thing, then that can become a self-fulfilling prophecy. . . . It's sort of a feedback loop thing, it can be very dangerous" (Cathcart, 2016). The danger Cathcart refers to is not hearing the full gamut of community needs from groups in the community that are not familiar with Lambda or who otherwise decide not to reach out. Leonore Carpenter, former legal director at Equality Advocates PA, who has argued for combining and sharing direct service intake data with impact organizations, agreed with Cathcart:

> There is sort of a problem you have to build into this method of issue prioritization. . . . If you decide you are going to have an employment law project, and then you start to tell everyone you have an employment law project . . . you have then created a situation in which people are going to call you with employment law problems. And then you are going to look at your statistics and feel very satisfied with yourself, that you have so many people calling you about these employment law problems—see, you were right all along! So there is sort of that in-build problem of self-fulfilling prophecies (Carpenter, 2014).

Other interviewees mirrored these sentiments (Buseck, 2016; Davis, 2016; Spade, 2016). Buseck of GLAD states that at the "two ends of life, elder and youth, there is a lot of things that keep [young and elder people] from being able to just tell us what is going on" (Buseck, 2016). Here, there is a dual complication related to call centers. One is that those who *have* recognized a harm may be afraid to speak up and call. For example, a person in an elderly care facility may be reluctant to complain about the people currently in charge of their care for fear of reprisal.

The other problem is that some may recognize a harm and have assigned responsibility for that harm, but do not realize that they have a potential legal claim. In particular, younger people, due to lack of knowledge and experience, may not realize that they have a potential legal claim and may not be familiar with the resources available to help them. In addition, as in the first example, young injured parties might be reluctant to draw attention to themselves if their claims are against schools or parents because of a fear of reprisal.

Organizations are cognizant of these limits to using call data. Masen Davis, former executive director at TLC, answered the question of how TLC assesses community-needs this way:

> I don't know that anybody's perfect at this, but there are a few ways that [assessing need] happened at TLC. One was the intake data—looking at where the trends were, and who was contacting us, and what they were contacting us for. We had to be a little careful about that, though. . . . Sometimes it would be disproportionately white, or you'd get a disproportionately [sic] number of trans people from one region or another because something was going on (Davis, 2016).

These concerns are not new. In a 1994 GLAD Annual Report under a section titled "For the Future," the author describes an intention to serve "communities we don't serve now

(communities of color, outside Mass., youth, Spanish speakers, deaf, etc.)" (GLAD, 1994). This could mean that the author felt that the call center was not accessible to those groups, that these groups were not aware of GLAD's services, or both. Later, GLAD and other organizations addressed some of these issues by hiring Spanish speakers at their call center and by utilizing technology for the deaf. The significance of this observation is that staffers were conscious of the problem that call centers were not hearing from many people in their community and sought to correct that issue. This adds a degree of nuance to the critique that strategies formulated by lawyers are made in isolation from community members.

Taken together, one might fairly conclude that call center data are a useful but imperfect tool for understanding community need. While it is useful for generating resources for projects and communicating at least a broad picture of need to allies and policy makers, this data does not guarantee an accurate depiction of how different subgroups in the community are struggling. Yet, despite the acute awareness of its drawbacks, this information remains a key part of how organizations understand community need.

4.2 | Outreach and collaboration: Listening to and informing communities

These limitations of call centers may be why interviewees claim that call figures are weighed against what is heard "on the street" (Cathcart, 2016). Suzanne Goldberg, a staff attorney for Lambda Legal in the 1990s, noted that while call data was always important, it "did not drive the decision-making. It was about participating in the community, going to conferences, where you can get a feel for what issues were pressing" (Goldberg, 2016). This approach to gauging community need takes two forms: what staff hear in their community outreach and education work, and what staff hear about in collaborative work with state and local groups.

Both forms address recommendations from scholars examining social movement organizations whose agendas do not reflect needs of marginalized subgroups. Strolovitch (2007, p. 228) argues that relationships with state and local organizations "increases organizations' activity on disadvantaged-subgroup issues in part by serving as a democratic" check "on national organizations, making them more responsive and accountable to their constituents." Like Strolovitch (2007), Levitsky (2006, p. 148) contends that by interacting with nonlegal organizations, national legal organizations might generate "opportunities for GLBT constituents of widely varying ideologies to communicate their concerns or grievances to those actors who seek representation." Likewise, the organizations in this study recognize that by reaching out to local organizations that provide services (e.g., housing, medical, legal), they are exposed to issues of differently situated subgroups. This allows organizations the opportunity (as distinct from actually taking action) to address parts of the community they do not hear from.

By outreach I mean efforts to provide information and services to people who might not otherwise have access to or knowledge about an organization's work. The more common tools of outreach include engaging with local and state community organizations through workshops, rallies, and public events. The organizations examined in this study stage or participate in hundreds of conferences, workshops, and trainings across the country. These might include discussions of how to navigate police interaction for LGBTQ youth of color, name change how-to workshops, or workshops on how to deal with health insurance and Medicaid obstacles.

There are multiple goals of outreach. First, it is used to make the public and target communities more familiar with organizations by building name-recognition. Second, it educates community members about their rights, not only encouraging them to recognize harms but instilling in them the ability to recognize that there may be a legal claim and remedy for that harm. Third, outreach work involves collecting information on perceived need. This contrasts with the unidirectional flow of information that we have come to expect from legal organizations (Levitsky, 2006).

The organizations examined in this study have long been aware of this perceived disconnect between their agendas and community need and have used outreach to help solve that issue. GLAD executive director Janson Wu confirmed that this work helps guide organizational priorities, calling the information gathered "particularly critical" (Wu, 2017). For example, in 1984, Lambda Legal brought activists and citizens together for a community discussion in New York City. A Lambda newsletter wrote the following of the event:

> The group agreed that Lambda is not well known in the Asian, Hispanic, and Afro-American lesbian and gay communities. Those with legal needs who are aware of Lambda are often more likely to approach [other organizations] either because they feel these organizations will be more accessible and receptive to their needs, or because they fear coming out in a publicized case (Harris, 1984).

Similarly, in 1988, NCLR created a position for a staff attorney to focus on lesbians of color. This person was charged with, in addition to litigation, "outreach to minority communities; presenting workshops to minority community organizations; and litigation involving lesbians of color" (NCLR Staff, 1989). Undoubtedly, in targeting this constituency, NCLR sought to learn more about this community. Likewise, Julie Gonen (2017), policy director at NCLR, described NCLR's Rural Pride Campaign as both a space to provide access and education and a "listening tour" to collect information.

Organizations hope that outreach can result in a feedback effect: as an organization begins to target certain subgroups to hear about what they need and to provide services, more people grow to know that the organization exists and that it is willing to listen. In turn, this could result in more people making contact with the organization, thus increasing the perception of need on the empirical side (call data). This was NCLR's goal when it targeted lower-income workers, specifically workers of color, in 1992 (NCLR Staff, 1993).

Information flow may also work both ways in collaborative projects. According to Kors of NCLR, most of NCLR's policy work was done in coordination with the state groups (Kors, 2016). Gonen, also of NCLR, backed that up, noting that policy work "is almost entirely or maybe even entirely . . . in coalition with other organizations." Sometimes that work is with other LGBT groups and sometimes it is with groups focused on other issues areas like reproductive health rights or judicial nominations. Gonen continued: "You don't do policy work on your own. No organization does. Organizations vary as far as the kind of impact and influence that they have. And some can sometimes go alone more than others, but generally it's done in coalitions." According to Gonen, the day-to-day work of the organization involves a "lot of conference calls, a lot of listservs. . . . [I] would not be surprised if easily 50% if not more of my time in any given week is spent in meetings."

Organizations also employ full-time "community educators" or "community engagement" staffers who serve as conduits to gauge need.[2] For example, in 2013, GLAD added the position of "Community Engagement Coordinator," which still exists today.[3] According to Wu, the job of this person is "to be out there in the community and to be engaging with the LGBT community and all the many communities that make up the LGBT community. . . . I'd say that is one important way that we get that feedback from the community" (Wu, 2017).

Similarly, at Lambda, community educator Francisco Dueñas explained that when he started, the duty of the community educators "was to report back on the needs and the issues that the community was facing back to the organization." The sharing of this information came in the form of bi-weekly meetings. According to Dueñas, there was a problem in that they "didn't have a very good formalized procedure or process" to further communicate what they were seeing (Dueñas, 2017). It was more "organic and really just in dialogue with each other" (Dueñas, 2017).

These examples illustrate a long-running investment in outreach work within these legal organizations for the purpose of gauging community need, although it remains unclear to what

extent these efforts are reaching the most marginalized of subgroups. Some of these efforts are much newer (having begun within the last 10 years) than others. However, these efforts, as an anonymous interviewee described them, may not be enough to shape the agenda for those most in need.[4]

Despite these examples, there is a well-known critique that legal organizations are not reaching all parts of the community. For example, Dean Spade is the founder of the Sylvia Rivera Law Project (SRLP), which provides legal services to low-income gender non-conforming and transgender individuals in New York City. When the Project was just beginning, Spade located hundreds of organizations in the New York area that serviced low-income people and started visiting them:

> Soup kitchens, needle exchanges. I went to those organizations, wrote to them, called them about where they see trans people. What were they seeing? Were people getting help? . . . As soon as I open the door, they were calling me. They have trans people because trans people are poor. If I had just sat in my office and opened the door and not reached out to those organizations, I wouldn't have gotten those cases (Spade, 2016).

The point is that community members either did not know that legal services existed for them or were unwilling to seek out such services. Spade and SLRP tapped into a community that other legal organizations in the area might not have been hearing from, or, at the very least, were not providing services to.

The primary takeaway here is that lawyers in these organizations explicitly see outreach and collaboration efforts as about more than providing information and guidance. These efforts are used consciously to identify community needs across different groups in their constituencies, including subgroups that they acknowledge they do not always reach. This runs contrary to a general expectation that litigation will determine agendas and that organizations are more interested in providing guidance than taking suggestions. That said, while organizations are aware of the agenda disconnect and have long sought to use outreach and collaboration as a means to bridge that divide, there is still a strong opinion within the broader LGBTQ community that while organizations might be "listening," they are not taking representative actions (Spade, 2015; Staley, 2013; Vaid, 2012).

4.3 | Community surveys

Since organizations are cognizant that what they hear through outreach work, collaborations, and call center data might not give them a complete picture of needs, they will occasionally conduct "surveys to get more detail about what people are needing" (Davis, 2016). This provides organizations another empirical tool through which to communicate internally with staff and externally with donors and allies.

During the early years of the Transgender Law Center (TLC), originally a project of NCLR, legal director Shannon Minter would ask TLC founder Chris Daley, "What kind of calls do you get on a regular basis? What are the issues people are facing?" (Daley, 2016). When they felt that was not enough, NCLR and TLC designed and issued a survey of transgender people to augment the data from calls. Daley states that "we really did try to use that to guide what we were doing. At the same time, though, a lot of our work was opportunity and not always coming from pleasant circumstances" (Daley, 2016).[5]

Titled "Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Communities," the survey and subsequent report was conducted to "identify and quantify gender identity-related legal problems" (Minter & Daley, 2003, p. 3).[6] The report notes that:

NCLR and TLC see the report as a tool in further understanding the existing legal need and potential priorities of the transgender civil rights movement. Community organizations are most effective when they are responding to *actual*, instead of *perceived*, community need [emphasis mine]. This report is one step in identifying those needs and priorities. However, further research and discussion are strongly encouraged to test the findings of this report and to insure [sic] that any excluded voices are heard and incorporated (Minter & Daley, 2003, p. 5).

It continues: "The intent of this report is to foster a better understanding of the legal needs experienced by transgender people specifically because of legal or societal barriers to the expression of their gender identity" (Minter & Daley, 2003, p. 6). Drawing a line directly to the agenda of the organization, participants were asked to identify their top three areas of concern. The report states that "the goal in doing so was to begin to gather data on community priorities in order to make better *resource allocation decisions*" (Minter & Daley, 2003, p. 25, emphasis mine). This is another example of how, as with grants, identifying need facilitates organizational maintenance (McCarthy & Zald, 1977). Daley also states that figuring out community need really involves a combination of things:

[It involves] both really going to the community and trying to figure out what folks' needs are. And that's another place where the clinics and the help lines and email, doing advice and council, just really came in handy because we always had a sense of at least people who were reaching out to us. What were their set of needs? That, plus the more formal information gathering through the surveys and the opportunities really drove the work that we did (Daley, 2016).

Masen Davis, who followed Chris Daley as executive director at TLC, also utilized surveys. In 2009, TLC issued the "State of Trans California" survey, which had 650 respondents from around the state. The survey asked questions about education, housing, health care, and employment (TLC, 2009). Davis stated that "we definitely used that to inform our planning and our work. Then the National Center for Transgender Equality did a national survey right around the same time and we also have used some of those to see . . . what priorities were" (Davis, 2016).

In 2012, Lambda Legal conduced a national survey on government misconduct (police, courts, prisons, and school security) titled "Protected and Served?" One of the goals of the project was to "assess the current issues and legal needs of LGBT people and people living with HIV regarding police accountability and government misconduct—in order to help shape Lambda Legal's future agenda for litigation, education and policy work and support other research, advocacy, litigation, and policy efforts" (Lambda Legal, 2013, p. 5). Based on that information, Lambda "narrowed the list of possible government misconduct issues to those based on the needs expressed and connection to Lambda Legal's mission and scope of work" (Lambda Legal, 2013, p. 5).

Separate from determining need to inform priorities, surveys also served an educational function. The audience for these survey results consisted of the public, professionals, and lawmakers. For example, a 2010 Lambda Survey of discrimination against LGBT people and people with HIV entitled "When Health Care Isn't Caring" was used in workshops such as one conducted jointly by the Institute of Medicine and National Resource Council in 2012 (Alper et al., 2013). The workshop was aimed at supporting LGBTQ patients in the collection of data in electronic health records. Lambda's presentation focused on the findings of that survey. Though it was not brought up in interviews, it stands to reason that these surveys would be used alongside call center data when communicating with donors.

Organizations are quite explicit, both in interviews and within the text of final survey reports, that these surveys are used to determine the range of community need and to set organizational priorities. They have other uses as well, including educating the public and informing bureaucrats and lawmakers, which in turn may expand the scope of conflict by alerting more allies to potential harms. Like call center data, survey results can also be used to make decisions about resources and to encourage funding from donors. This suggests an institutionalized incentive for organizations to be reaching out and identifying harms in their community. Collectively, the observations of call centers, surveys, and outreach work cut against the grain of what we expect from some social movement organizations—that is, that they prioritize issues favored by advantaged sub-groups (Strolovitch, 2007).

5 | FROM MEASURES TO ACTION

But what happens after organizations have gathered data on need? How do organizations interpret that information and turn it into action? Further, in that interpretation, what gives rise to different levels of action (litigation, education, policy work, etc.)? These are very difficult questions even with insight from decision-makers because the answers are not formulaic, and the answers may also differ from organization to organization, and even lawyer to lawyer. In this section, I take stock of what evidence I could gather that sheds light on these important but challenging questions.

The most readily available data comes from call centers. Just how many of these calls turn into cases? Gary Buseck (2016), legal director at GLAD, explained: "It gives us a sense of what is going on the ground. A decent percent of impact cases came through the hotline. Our docket, for half of our history, has been built by the community and what opponents did to them." According to internal Lambda Legal memos, in 2013, seven of Lambda's 7531 calls became legal cases out of a docket of over 100 cases (Johnson, 2014). That number increased to 14 in 2014 and 15 in 2015 (Johnson, 2015; Johnson & Lam, 2016). Interviews and material from NCLR and GLAD also indicate that most calls do not turn into litigation, but that some cases eventually do.

Still, this does not answer whether a certain number of calls would result in action. Interviews suggest that there is no bright line figure. If anything, what staff are paying attention to is significant changes in calls or results from surveys. Imagine an organization that is already working on many cases involving Issue A. Issue A dominating the data from centers or surveys would not necessarily translate into the organization working on more cases related to Issue A. However, observing a significant rise from one month to the next in Issue B, when they are doing very little casework on Issue B, would raise the interest of staff.

Significant changes in signals from call centers, surveys, and outreach would not necessarily result in legal cases either. Observations demonstrate that organizations respond in other ways, including writing letters, matching clients with providers, direct intervention with a bureaucrat, or connecting a client with a cooperating attorney. Signals from these sites may also inform non-litigation projects such as public services or legislative projects. For example, EAP started a youth-based project that was "based on the number of people who call us with school bullying problems and with harassment or discriminatory treatment in schools" (Carpenter, 2016).

So, what determines whether the response is litigation, education, policy, or something else? The decision to select an issue or a specific complaint for a case, public education campaign, or policy work ultimately relies on a confluence of factors, including funding and resources, staff expertise, and perceptions of opportunities in different venues. It is also a question that requires much more careful consideration than can be provided in the remaining space here. Other scholars have focused on these kinds of questions (Andersen, 2006; Barclay & Chomsky, 2014).

What I have observed is that the sense of community need, derived from the sites described above, is perceived by lawyers to be a significant element in this confluence of factors.

Data on need might also result in other kinds of actions. For example, organizations use call center and survey data when communicating with bureaucrats and legislators on policy issues to influence the policy agenda. Johnson (2016) of Lambda recalled that while the Employment Non-Discrimination Act (ENDA) was being deliberated in Congress, legislative staff would call to get examples and data concerning how discrimination was affecting LGBTQ people.

Elected officials are not the only ones who will use this information to take action. Johnson of Lambda noted that data are shared with other movement organizations. The Gill Foundation, which is a major LGBTQ cause funder, was worried that many allies and LGBTQ people felt that the "battle" for equal rights had been won after *Obergefell*. So when the Gill Foundation wanted to publish material arguing that the struggle for full equality was far from over, they contacted Lambda for data and examples to make that point (Johnson, 2016).

Legal organizations will also use descriptions of community need to acquire more resources—either in the form of grants (which provide money) or fellowships (which provide lawyers)—in order to do the work represented in that data. For grant-giving organizations and foundations that want to see benchmarks and prefer quantitative measurements to determine the success of an investment and where they should invest their resources, call data are not only an accepted norm but a preferred one. Thus, there is an organizational maintenance incentive (McCarthy & Zald, 1977) to reach out to community members and develop measures for need.

According to Stacey Sobel, former Executive Director of EAP and former legal director of Service Members Legal Defense Network (SLDN), "because we had a database, we could track what were the most common calls for assistance. We could say the number one calls for assistance is family related issues" (Sobel, 2016). Call data was used to educate funders about the continuing needs of the community, especially among transgender people, as there were concerns that many major funders following *Obergefell v. Hodes* (2015) would feel less need to give to LGBTQ organizations. Ming Wong of NCLR also stated that call data are used to write grants to show what issues are being brought up and from where in the country (Wong, 2016).

Again, there is not a clear answer here as to just what mechanisms or variables turn the perception of need gauged from the sites/tools into action. What is clear is that these sites/tools are an important part of a larger calculus that includes many other variables (Andersen, 2006; Barclay & Chomsky, 2014; Cummings & NeJaime, 2010; Vanhala, 2018). But beyond direct action, the information garnered from these sites is also useful in educating other actors capable of action, and this information sometimes helps legal organizations to bring in resources.

6 | DISCUSSION

This discussion of listening versus actions speaks directly to the literature on the gap between agendas and community need (Carpenter, 2014; NeJaime, 2003; Rubenstein, 1997; Strolovitch, 2007) as well as the literature on accountability (Bell Jr., 1976; Cummings, 2018). These studies and critiques of movement organizations often find a lack of attention and resources devoted to issues that would aid the most disadvantaged subgroups within a given movement (Carpenter, 2014; Spade, 2015; Vaid, 2012). Observations in this project reveal that organizations are taking some of the steps recommended in the literature toward improving communication between themselves and their target communities. This suggests a degree of accountability within the cause lawyering field and legal organization behavior.

For example, Rubenstein (1997) and NeJaime (2003) have both called for more democratic and pluralistic models of decision making. In particular, NeJaime (2003, p. 561) calls for "polyvocal gay-based advocacy" where different groups ranging from moderate to radical exist together, "exchanging and sharing rhetorical, financial, and political strength." Such a model,

the argument goes, would enhance representation by having many groups working on different issues, rather than one or two larger organizations with unified strategies and priorities. Strolovitch (2007, p. 228) similarly argued that working with state and local groups makes larger, national organizations more responsive and accountable to the entire constituency, including disadvantaged subgroups. Like Strolovitch, Levitsky (2006, p. 148) posits that "interactions with nonlegal organizations could also serve as information conduits for legal advocacy groups."

In this project, legal organizations in the LGBTQ movement are indeed working closely alongside state and local organizations, both in collaborative projects and in outreach efforts that are not just about disseminating information but also about intentionally gathering feedback on needs. On the other hand, we also know that there are spaces like the LGBT Roundtable where impact organizations may take on a more unified, top-down model (Levitsky, 2006; NeJaime, 2003) that is less concerned with listening than with directing strategies (Arkles et al., 2010).

Strolovitch (2007, p. 216) also points to a gap within the industry of advocacy organizations writ large where no one is positioned to coordinate activity and information-sharing about their activities. This results in two types of misinformation. The first is a "a lack of knowledge" about the activities and priorities of other organizations. To that point, organizations in this study coordinate regularly, both informally (through weekly phone calls) and formally (by attending conferences). The second is that organizations cannot accurately determine the scope of any identified problem. Strolovitch (2007, p. 218) writes that "with data about the priorities of their allies and about the impact of policy issues on their constituencies," organizations can "ensure that their own policy agendas attend to the interests of disadvantaged subgroups." The legal organizations in this study have easily sharable quantifiable data from call centers and surveys, although it seems (at least at the time of these interviews) that this information was not being shared.

Indeed, sharing call center data is exactly what Carpenter (2014) has advocated. Carpenter (2014, p. 130) believes that any kind of pluralistic advocacy cannot be reached without putting in a "disciplined structure within impact groups." Given the vast difference in resources and media-engagement between impact groups and smaller advocacy organizations (Leachman, 2014), Carpenter (2014, p. 131) proposes that, rather than "hijacking" a movement's agenda (Levitsky, 2006), the best analogy is a "mic-check" where "a lead protester makes a speech that is amplified using only the power of human voices." Under this theory, impact groups working closely with state and local organizations would not be enough to solve the agenda gap. There must be structural changes *within* impact groups that are tied directly to their agenda setting. Carpenter proposes that this structural change should include sharing intake data between direct legal service providers and impact groups. In turn, impact groups would formally tie their agendas to what they see in this data. Because legal providers have ethical, legal, and funding commitments to service disadvantaged groups, and because they have direct contact with disadvantaged clients, their data is more likely to reflect the subgroups that impact groups might not be hearing from. Based on this study's observations, we might ask whether sharing intake data from local providers would solve the problems with impact call center data. Might both forms of data suffer from the same problems of inconsistent logging, discrepancies in coding, and different audiences? Again, these are questions worth pursuing, both for researchers and for organizations.

If legal organizations are adopting some of the strategies and behaviors that these scholars have laid out (as the findings in this study suggest), yet there remains a perceived discrepancy between organizational agendas and community need, then perhaps, as Strolovitch's (2007, pp. 223–224) vision of affirmative advocacy proposes, an answer for bridging that divide may lie elsewhere: in better descriptive representation in leadership, in organizational mandates to address issues that are not getting attention elsewhere, in willingness to evolve among leaders,

or in more proactive agendas (i.e., organizations should always have items on their agenda with the aim of codifying new rights or new benefits). Additionally, survey work could be shared across organizations and could even be conducted with cooperation from legal providers. Outreach events such as workshops and community forums could be used to collate "listening reports" that discuss what organizers heard from community members. In other words, this study's insights into how organizations determine need could be used to target areas for improvement.

7 | CONCLUSION

Determining community need is challenging. Rubenstein (1997, p. 1631) explains that "civil rights campaigns are not waged by easily identifiable 'communities' pursuing settled, concrete goals." Likewise, NeJaime (2003, p. 519) writes that "it is impossible for lawyers to identify client goals with certainty and to interact with the client group as a stable, clearly delineated collective." Perhaps this is why Kevin Cathcart summarized Lambda's process of setting priorities as "based in part about what people are calling us about. It's also based in part on what we hear from people on the streets. . . . It's an art, not a science" (Cathcart, 2016).

Despite these difficulties, the legal organizations examined in this study take active steps to understand community need and recognize community need as a visible part of their priority-setting processes, thus generating a degree of accountability in their agenda process. Contrary to what we might expect (Bell Jr., 1976; Leachman, 2014; Levitsky, 2006; Strolovitch, 2007), information flow works both ways between legal organizations and collaborating state and local organizations. Impact groups both deliver information through education and outreach efforts and intentionally gather information using outreach, surveys, and call centers. If organizations were not concerned about community need or were simply providing lip service to its importance, we would not expect to observe staff actively trying to determine community need and relaying that information to the rest of the organization.

There are also embedded incentives for organizations to identify need and hold themselves accountable to their constituencies. One incentive is organizational maintenance (McCarthy & Zald, 1977), or the funding of movement activities. Foundations and donors both seek hard data and examples of where their donations are going (or where they have gone). Call center data and surveys provide that kind of information. Another incentive is to use this data to expand the scope of conflict by using it to activate or encourage new allies through education and lobbying.

However, there is a significant difference between *listening* to the community and *acting* on behalf of the community's needs, particularly the needs of its most marginalized subgroups. In this sense, this project does not reject what we have learned from previous studies about agenda setting (Carpenter, 2014; Strolovitch, 2007), nor what lawyers and activists have critiqued about organizational priorities (Arkles et al., 2010; Staley, 2013; Vaid, 1995). Rather, the findings here refine and expand our understanding of how agenda setting may work within legal impact groups. Determining *how well* organizations are meeting the demands of different subgroups requires more research. The identification of sites and tools in this study sets up that future research and provides movement organizations with insight into where improvements could be made.

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ENDNOTES

[1] In 2009, Equality Advocates Pennsylvania became Equality Pennsylvania, an organization focused on policy advocacy. The legal advocacy arm was moved to the Mazzoni Center for LGBT Health and Wellbeing.

[2] Much of the proceeding information is available from publicly available NCLR, Lambda, and GLAD Annual Reviews.

[3] GLAD's original education director was given the title "Education/Outreach Director" from 1991 to 1992. In 2005, they added a specific "Outreach Director" to their Public Affairs and Education staff.

[4] When I write "most in need," I am using an intersectional approach to defining need. That is, certain LGBTQ people are vulnerable on multiple levels due to age, gender-identity, income-level, race, and ability. This phrasing should not be interpreted as saying that one persons' harm exceeds another's harm, just that some populations may be more vulnerable (at risk) to injuries because of a confluence of identities and other factors.

[5] Daley is referring to the 2002 murder of 17-year-old Gwen Araujo of Newark, California. Araujo was murdered by four men after they discovered she was transgender. Two of the men were convicted of second-degree murder but not of hate crimes. For more information, see Marshall, Carolyn. "Two Guilty of Murder in Death of a Transgender Teenager." *The New York Times*, September 13, 2005.

[6] The report, which can be found at http://www.nclrights.org/wp-content/uploads/2013/07/transrealities0803.pdf, states that it was a survey of 150 self-identified transgender people in San Francisco. Survey participants were "either seeking transgender related social services or a part of a transgender community group" (Minter & Daley, 2003, p. 44).

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