

TEACHING TRANSACTIONAL LAW & ORGANIZING

By Brian Glick, Fordham University School of Law

For the past decade we have offered a clinic at Fordham that teaches and practices transactional lawyering in support of groups that struggle to protect and advance social and economic justice. Our clients are nonprofit and co-op organizations based in low-income communities and low-wage workforces. They not only provide facilities and services that meet people's desperate needs, but also challenge the structures that perpetuate those needs, structures of inequality and subordination on the basis of race, class, gender and nationality. The groups we represent attempt to:

- empower their members and other subordinated people;
- promote critical thinking and the envisioning of alternatives – physical, social and economic; and
- contest policies and practices of government, corporate and other major institutions, pressing for accountability to the needs and desires of low-income communities and workers.

For such groups our clinic provides a broad range of transactional counseling and representation. We routinely help to form legal entities, draft bylaws and operating agreements, prepare tax exemption applications, design personnel policies, and deal with contracts, leases, and real estate, regulatory and licensing matters. We have also been involved in more complex transactions. We have helped to structure multi-party co-op and community institutions and to negotiate an agreement governing relations among a national organization and its local affiliates. We have helped a client lead a multi-group effort to win a community benefits agreement.

Ours is a particular type of community economic development clinic. Unlike many CED clinics, we do not represent microenterprises or small businesses (except for worker co-ops insofar as they challenge traditional arrangements and contribute to struggle for economic justice). Nor, for the most part, do we assist nonprofits that only provide housing or other facilities and services. We do not limit ourselves to a particular neighborhood or to small, discrete projects that students can complete in a single semester.

While all of these approaches are valuable, we have chosen another path. We might call ours “transactional law and organizing” or “transactional lawyering in support of collective mobilization” or most simply “transactional community lawyering” -- to adapt three of the many labels applied in the literature to litigation and policy advocacy in support of these kinds of groups. I have opted here to use “transactional law and

organizing” as a shorthand for an approach that would be more fully described as something like “transactional lawyering in support of (and collaboration with) collective efforts by subordinated people to organize and mobilize to protect and advance their interests and to redistribute wealth and power.” Ours is a transactional example of the alternative model that Sameer Ashar has so eloquently advocated for a broad range of clinics.

My goal here is to explain this choice and to encourage others to adopt it as a way to meet the rising demand for transactional clinics while at the same time advancing our historic social justice mission. I want to tell the story of our experience and open discussion of what lessons we might draw and what other approaches we might consider. The analysis will explore ethical, political, lawyering, pedagogic and other issues that have emerged in our work. It will draw upon the literature on group representation, law and organizing, CED and clinical theory and practice to see what guidance it offers and what expansion, revision and challenges are suggested by our experience.

Part I sets out our program’s rationale and goals. Part II discusses the methods we use. Part III presents some case studies from our work. Part IV—yet to be written – will explore some of the issues that have arisen in our experience. My goal in this draft is to identify issues that might be addressed in Part IV and to solicit suggestions from conference participants. I will do my best to post my list of potential issues in advance of the conference.

I.

Why combine transactional lawyering with law and organizing in a single clinic?

We start from premise that sustained collective action by those at the bottom is central to improving their lives and building power to win broader structural change. This is the lesson of the labor movement, the Black freedom struggle, the women’s movement and other historic efforts to advance social and economic justice. Ashar persuasively asserts its continuing relevance today.

It is our experience that lawyers can make positive contributions to such group action. The main requirement is that we work collaboratively with the groups and respect their leadership and their capacity to set the direction for their organizations and struggles. Our job is to help groups to assess political-legal options, including the part that lawyers will play in sustaining the groups and advancing their strategies. To the extent that lawyers have been willing to function for such groups in this way, they have worked mainly as litigators or in drafting and advocating legislative or regulatory reform. Our experience is that many groups also need and can benefit from transactional legal assistance offered in the same collaborative spirit.

A transactional law and organizing clinic aspires to provide such assistance both directly and by developing and mobilizing other resources. It seeks to teach and inspire

law students to become lawyers who assist such groups in this manner, whether as transactional lawyers, litigators, or in some other capacity. At the same time, through the same pedagogy and practice, such a clinic teaches transactional concepts and skills intended for students' later use in a variety of contexts. Our objective is for both types of preparation – transactional, and law and organizing -- to be readily transferable. Our graduates' transactional experience should help them to work in business, government, non-profit or other settings. Similarly, law and organizing approaches learned in the clinic should prove useful to those who ultimately practice on behalf of social justice action groups as litigators, policy advocates or in other non-transactional roles.

It should be clear from this that the outcomes we seek are at once pedagogic and political. We aim to help both our clients and our students – to strengthen the groups we represent and the causes and communities they serve, and to enhance our students' capacities as lawyers and citizens. For us these two sets of outcomes are equally significant and essential. Though they may at times be in tension as we make choices in specific situations, we view them as deeply interdependent and mutually reinforcing. Just as putting our clients first would undermine our teaching, any effort to put our students' needs ahead of our clients' would reinforce the students' professional elitism and undermine their ability to work as full and equal partners with social justice activists. Our vision is to benefit our clients, teach our students and nurture a new generation of social justice lawyers through a single integrated clinical program.

From that program client groups gain the direct services provided by the clinic and by some of its graduates. We do our best to provide useful legal information, advice and representation in a manner that does not distract from organizing and hopefully helps to build it. At the same time, our clinic aspires to give students not only the general clinical experience of thinking and working like a lawyer, but also specific preparation for transactional lawyering (in any setting) and for lawyering in support of social justice organizing (through any mode of legal practice).

Very importantly, students get to know the client groups and leaders – to learn from them and be inspired by them. Our goal is not to add to students' already overwhelming sense of all that is wrong. It is to counter cynicism and despair by providing students with the direct experience of strong, stable smart grassroots organizations – often led by dynamic, accomplished progressive women of color -- that can overcome limitations and adversities in order to win real gains over time. It is to enable students to understand -- through their own experience in a clinic that works collaboratively with such organizations -- how to become lawyers who help them in the fight for social and economic justice.

II.

What clinic design meets these goals?

Groups pursuing social and economic justice very often need transactional lawyers' help on complex projects that may stretch over years. To support such groups and work effectively with them, we need to take on these types of long-term projects. This led us to a threshold decision to not limit our docket to small, tidy matters that students can readily complete, more or less on their own, within one or at most two semesters. Instead we take on major projects that may continue for many years and require my active involvement, sometimes with that of other lawyers from our faculty, a firm or a public interest law office.

While this approach is essential for providing our clients with the kind of counseling and representation they need and deserve, it also offers substantial pedagogic advantages. Complex projects provide valuable legal, practical and ethical lessons beyond what students can learn from handling simpler matters. Our students get to work closely with experienced lawyers who model diverse styles of transactional practice. The types of projects and the senior-junior team format more closely reflect the circumstances in which most of our graduates will work for the better part of their professional lives.

Within this framework, we also try to give our students some experience of having their own clients and taking the lead on matters that they can complete in a semester with our support but with very limited direct faculty involvement. To that end, we assign them a second, much simpler project. Each student team helps a small grassroots group to form a nonprofit corporation, design its bylaws and internal structure and apply for federal tax exemption. While some of our students find it difficult to juggle two projects, usually with different teammates, the experience is very helpful preparation for the complex realities of legal practice.

The start-up work opens the semester. It is preceded by a crash course of reading, discussion and simulation that prepares students for rapid deployment into the field and teaches concepts and skills that are valuable throughout the clinic and beyond. Two to three weeks later, after settling into their start-up work, our students join a major project team led by me or a co-teacher. We elicit their project preferences and do our best to accommodate them.

Our students cherish their start-up clients, and bond strongly with them, sometimes staying connected beyond clinic and law school. The core of the clinic experience, however, for the students and for us, is the major project. We have had no difficulty identifying groups in New York City that

- are actively engaged in important action for social and economic justice and
- have transactional lawyering needs
- which our clinic can help meet
- in ways that offer rich learning opportunities for our students.

Our first clients came through a local legal aid office and a faculty colleague. Soon clinic graduates and clients started coming to us with other exciting projects. Public interest law centers began asking us to join them as co-counsel. At the outset, and when

we could after that, we have involved our students in evaluating potential clients and deciding who to represent.

We started with a small Latina empowerment project which we have continued to serve as corporate counsel for more than 10 years. We soon embarked on a similar ongoing relationship with a well-established environmental justice organization that works in Harlem and nationally to end environmental racism and promote equitable and sustainable development. For some time we have represented major local and national organizations of low-wage workers in the restaurant, care giving, house cleaning and taxi industries. We are also engaged in helping low-wage workers to form worker co-ops, often in predominantly immigrant communities, and usually with the active involvement of a broader worker or community organization.

Some of these projects require more legal capacity than our clinic and public interest co-counsel can provide, given our other commitments and our students' limited skill sets and time frame. In those situations, we have solicited pro bono support from law firms. When our capacity is limited and some of the legal work required for a particular project is not sensitive politically and does not require extensive interaction with the client's members or constituents (e.g., real estate transactions), we out-source that part of the work to a firm that is willing to handle it for our clients directly, sometimes with support from our students. When we need law firm expertise and resources in situations that require more grasp of the client's politics and more interaction with the client's members and constituents, we have learned that it usually works best (for the firm, the client and us) to retain the firm as counsel to the clinic. In this structure, the firm works with us and we (and our public interest co-counsel) interface with the client and its members.

The resulting legal team can become large and a bit spread out. Our students learn methods and difficulties of co-ordination. They also sit in on meetings at firms, which can be educational along a number of axes. Though some firm lawyers provide helpful guidance to our students (especially younger lawyers who had clinical experience in law school), we maintain our own team meetings and supervisory process within the clinic.

We encourage our students to plan and facilitate their weekly meetings with us. We have recently requested bi-weekly "field notes" to encourage further student reflection. The field notes also give us more sense of what is happening for our students and early warning of problems that require our support or intervention. More of that emerges in rounds and in face-to face meetings to evaluate each student's performance and clinic experience.

Most of our major projects extend beyond a semester or even a year, and some remain on our docket over several years. In those cases, I provide continuity along with co-teachers and public interest co-counsel when they are involved. One downside is that important work may be required over the summer, when our students are not available. Even during the school year, it is an ongoing struggle to get our clients to deal more with

the students and less with me – and to restrain myself from taking so central a role that our students end up working as much for as with me.

Some continuity is also provided by students who stay on for a second semester of field work. Returning students can contribute hugely to the work. They also learn a great deal. They develop deeper, more trusting relationships with the client. Their understanding, knowledge and skills expand exponentially. They have the opportunity to learn how to lead and orient new students, and to plan and teach a session of our weekly clinic seminar.

As in most clinics, we use our early seminar sessions to prepare students for field work and our final classes to guide them in structured efforts to reflect together on their experiences. The middle weeks offer some opportunity to deepen students' understanding of social justice struggles and lawyers' roles within them.

- We review and compare a range of perspectives on law and organizing.
- We take field trips to our clients' offices, neighborhoods, project sites and events to better understand their history, program and vision and their experience and expectations of lawyers.
- We examine worker ownership and have begun meeting jointly with Jennifer Gordon's seminar on "workers, law and the changing economy" to assess worker co-ops as a vehicle for low-wage workers to improve their situations and fight for power.
- We study how politically inexperienced residents of a low-income working class neighborhood in Boston forged a multi-ethnic democratic community organization to take control of redeveloping their neighborhood. (This annual joint class with our counterpart clinic at Columbia, and recently also with NYU, features breakout discussion groups that include students from each law school.)
- We examine how New York City de-industrialized in the aftermath of World War II, when government programs drew white unionized workers to the suburbs while Black and Puerto Rican families migrated to the inner city only to be dislocated by urban renewal and gentrification.

Race and class form a crucial focus of the discussion in seminar and throughout the clinic experience. As the main bases of inequality and insubordination in the U.S., they profoundly shape our clients' struggles for social and economic justice. The groups we represent are predominantly Latina/o and African-American. As a white lawyer I do my best to encourage and legitimate explicit recognition and discussion, in seminar and supervision, of the effects of race and class. We work to include lawyers of color as co-counsel and co-teachers and to ensure that students of color and working class students are well represented in each CED clinic class. These students often initiate challenging and productive student discussion of the impacts of race and class. They bring a deep connection with the communities in which our clients are based and a keen understanding of their circumstances and needs. In our experience, they are more likely to find some way to keep working with those communities after law school.

When our students graduate we encourage them to keep working with our clients and similar groups – as lawyers and as public officials, corporate or foundation executives or civic leaders. We seek especially to develop a new generation of activist lawyers able and willing to work full-time with social justice action groups. To that end, we nurture and support our most committed students long after they graduate. We mentor and coach them in the competition for post-graduate public interest fellowships. We help them find social justice lawyering jobs and do well in those jobs.

Several of our alums have managed to forge careers as transactional social justice lawyers. Two lead the community development unit at Brooklyn Legal Services Corporation A, where I first learned to do this work. A third directs a clinic like ours, which she created at CUNY Law School after several years of transactional work at a local public interest law center. Yet another did similar work at that same center and now teaches in our CED Clinic.

Three of these alums initiated and coordinate quarterly gatherings of CED law practitioners from around the area. We have found many other ways to continue working together and to involve other clinic graduates and sympathetic lawyers at firms and public interest law centers. Our clinic is gradually coming to serve as the hub of an informal transactional legal resource network in support of grass-roots collective mobilization and struggle.

III.

Since our major clients and projects form the core of our practice and pedagogy, a closer look at some examples of our work with them can give a fuller sense of our experience and help draw lessons from it. Here we examine our clinic's work in support of two organizations of low-wage workers, one local and one national, and a complex of worker co-ops.

Domestic Workers United

This historic organization brings together some 2500 largely Afro-Caribbean and Latina maids, cleaning ladies, nannies and elderly caregivers. Excluded from New Deal federal wage and hour protections as a concession to racist Southern congressmen, domestic workers have recently joined together, in their own words, "to organize for **power, respect, fair labor standards** and to help build a **movement** to end exploitation and oppression for all." This summer DWU won a highly publicized legislative victory that makes New York the first state to enact a Domestic Workers Bill of Rights. The new law grants some basic protections long afforded to other workers, such as overtime, a few days of paid vacation, workers' compensation and legal protection against discrimination and sexual harassment. (DWU also sought, but did not win: longer vacations, sick leave

and two weeks' notice before being fired. Minimum wage laws had earlier been extended to domestic workers.)

DWU offers an array of programs. It mounts protests, media campaigns and litigation to stop wage theft and other employer abuse. It undertakes research and public education about domestic workers, and it offers classes in early child development, English as a Second Language, and computer skills. It is active in broader efforts on behalf of low-wage workers and plays a leading role in the National Domestic Workers Association and the U.S. Social Forum.

Initiated in 2000 as a project of a local progressive activist group, DWU gradually grew into an independent membership organization. Only recently has it undertaken to fully sever its formal relationship with the founding group and establish independent legal status. For guidance through that transition DWU reached out to the community development program of the Urban Justice Center. CDP's main transactional attorney at the time, Gowri Krishna, is a graduate of our clinic who worked closely with us and has recently joined us as our second CED Clinical Teaching Fellow. Gowri set DWU up as a nonprofit corporation and asked the clinic to join her in helping it design bylaws and personnel policies and apply for federal tax exemption.

Tax exemption: Tax exempt status under sec. 501c3 of the Internal Revenue Code is essential for organizations like DWU to get foundation and government grants even though they generally have no net taxable income to protect. The process of obtaining 501c3 tax exemption has become increasingly complex and technical. It is a maze which most groups find very hard to navigate on their own. This difficulty and complexity has led us to out-source most of our start-up clients' 501c3 applications to law firms working pro bono. A start-up's incorporation and bylaws turn out to be challenge enough for our students to complete within a semester. The 501c3 process is too a heavy a lift when added to the demands of their major projects.

DWU's tax exemption looked different to us. We judged it too important and too sensitive politically to hand off to a law firm and instead took it on as part our major project docket. Our students worked hard to assemble answers to the pages of detailed questions posed by IRS. They also took responsibility for drafting the most important part of the application, the required narrative of DWU's activities -- past, current and planned. The narrative is no mere list of facts or simple chronology. It requires delicate legal advocacy writing. Our students had to learn, over several drafts, how to translate the client's (and in some cases their own) bold Left formulations into language that is less threatening and more familiar to a typical IRS reader. They had difficulty curbing their enthusiasm in order to present the narrowest factually accurate account of DWU's legislative activities. IRS initially rejected DWU's application on the ground that its legislative activities exceed statutory limits. With our students scattered for the summer, Gowri and I fashioned a careful response showing that groups actual legislative expenditures have been consistently below IRS thresholds. Tax exempt status was awarded in July.

Bylaws: Bylaws are no simple matter for a diverse, expanding, politically engaged, poorly resourced membership organization. They can be especially difficult when, as in DWU, the group's core activists have limited organizational experience. Gowri and the clinic worked closely with DWU's leaders to address issues which could significantly impact the group's ability to function and grow. What decisions would be made by the members, the board of directors or the staff director? By what process? Who could be a member? How would the board and staff be selected? Who could remove them from office? On what grounds, and by what process?

The resulting proposal had to be explained to the members and ratified by them. Our students worked hard to prepare a bylaws presentation for DWU's members, complete with a script, power point slides and a multi-lingual handout. One student (an incoming law review editor) spent her entire spring break working with me to prepare for a membership meeting that week. Over many drafts, the students learned how to

- make clear, without condescension or legal jargon, what bylaws are, what issues they address and why those issues matter
- pick out the key decisions and avoid less important details
- explain to the members how the proposed arrangements would work, which are required by law and which are up to them, and how they could later adapt and revise the optional items based on their experience.

Personnel policies: Personnel policies also turn out to be complicated for a group like DWU. New York is one of many states in which employment is "at will" unless otherwise specified (usually in an employment contract, employee manual or collective bargaining agreement). Most NY nonprofits, including some of our clients, heed legal advice to protect this right so they can manage their limited resources more efficiently and let go of troublesome, ineffectual or expensive employees expeditiously, with less paperwork or risk of litigation. A major contradiction for progressive transactional lawyers is that while we identify with labor, we are in the position of representing employers. We are required, as a matter of legal ethics, to make sure that our clients are well aware of their right to hire employees at will and of the organizational advantages that flow from the exercise of that right.

DWU's situation presented a different political and ethical calculus. It was our responsibility to point out – when my students and I met with DWU's board of directors – that DWU would undermine its own principles and mission, and risk looking hypocritical and losing crucial political support, if it failed to guarantee to its own staff the basic rights it seeks for its members. This risk was not at all apparent to the law firm employment lawyer we consulted on DWU personnel issues, who repeatedly pressed us to persuade the client to protect its right to terminate employees "at will." The risk was crystal clear, however, to lawyers we met with at another local workers rights' organization, who explained how it had waived some "at will" prerogatives without dire consequences. That group shared with us and DWU the detailed provisions it developed to regulate employee discipline and termination.

DWU's board grasped the political and legal issues with impressive clarity. Weighing our risk assessment and the other group's experience, it decided to follow that group's example. We are now working with DWU's personnel committee to design a set of rules and procedures which protects both the organization and its employees.

Restaurant Opportunities Centers – United

This new, rapidly expanding national organization of restaurant workers is building on a decade of impressive work in New York City by Restaurant Opportunities Center – NY (ROC-NY). Formed to help restaurant workers displaced by the 9/11 attacks on the World Trade Center, ROC-NY went on to organize restaurant workers across the City to win major improvements in restaurant working conditions. Its detailed research reports on racial discrimination and health and safety violations in the industry laid the basis for important advances in restaurant regulation and operation. Its job training program has helped “back-of-the-house” kitchen staff to obtain significantly better positions as waiters, bartenders, etc in the “front of the house.”

ROC-United, led by the founders of ROC-NY, is now forming similar organizations across the country. It has raised funds to hire local organizers and build local groups, so far in Chicago, Detroit, New Orleans, Miami, Los Angeles and Washington, DC, in addition to New York, with plans to keep expanding. Its experienced, talented national staff helps local affiliates use the ROC model to win gains and build power. It has begun to mobilize the groups' collective capacity to exert power on a national level, starting with a campaign to raise the federal “tipped minimum wage” above the current abysmal \$2.13 per hour. It is also working to develop an affordable health insurance plan for restaurant workers across the country.

To move forward ROC-United needed transactional legal support along two axes. It had to incorporate, adopt bylaws and obtain the 501c3 tax exemption required to maintain its funding stream. It also needed an agreement among the national organization and local affiliates to clarify and codify their relationships.

Formation and tax exemption: Our clinic accepted ROC-United as a start-up project. Clinic students set it up as a NY nonprofit corporation with founding documents that meet IRS requirements for 501c3 tax exemption. They also worked with ROC-United's co-directors to draft bylaws. Following our usual routine, and not thinking through the risks, we proceeded to outsource ROC-United's tax exemption application to a law firm.

More than a year later came a long letter from IRS stating its intention to reject ROC-United's 501c3 application on the grounds that (1) restaurant workers are not “poor and distressed, or underprivileged” and therefore do not form the “charitable class” required for 501c3 status, and (2) ROC-United operates as a labor union and is therefore eligible for exemption only under a different section of the Code which – unlike 501c3 – would not make contributions tax deductible, as required by funders.

It turns out that the pro bono firm had assigned ROC-United's application to a busy, inexperienced young associate who cobbled together the narrative section of ROC-United's application by cutting and pasting from the organization's website. The associate did not run a draft by ROC-United or anticipate the issues raised by IRS. She did not request an expedited response. By the time IRS made its preliminary decision, she was no longer with the firm, a casualty of the economic crash.

On our advice, ROC-United obtained an extension from IRS and arranged with the firm's pro bono partner to have new lawyers assigned. Some of our students accompanied me and ROC-United's co-directors to meet with those lawyers. We were in for a rude awakening. They were corporate and tax attorneys with very little 501c3 experience. They accepted the IRS analysis and were willing to do no more than review any response we prepared.

Fortunately our clinic has a strong working relationship with another NYC firm which has a preeminent practice representing exempt organizations. A senior associate in that practice had been a student in Yale's transactional clinic when I visited there before coming to Fordham. We had stayed in touch and were looking for ways to work together. She obtained permission to take this matter on once ROC-United discharged the other firm.

At our initial meeting the associate and two partners in the firm's exempt organizations practice listened carefully and concluded that we could make a persuasive case for 501c3 status. Drawing on our students' extensive legal and labor market research, the associate circulated a powerful draft and revised it to incorporate our suggestions. The new narrative showed that the vast majority of restaurant workers earn well below the national poverty threshold. They endure dangerous workplace conditions with no health insurance or sick days and qualify in numerous other ways as "poor and distressed." The narrative carefully delineated ROC-United's extensive activities, showing that each is exclusively charitable or educational. A transmittal letter explained that neither ROC-United nor its affiliates serve as collective bargaining agent for members or other workers, citing an NLRB ruling that the prototype group, ROC-NY, is therefore not a "labor organization" under the NLRA.

After months of agonizing, with much of its funding at risk, ROC-United finally obtained 501c3 status last Spring. We are now preparing to work with the firm to obtain a group exemption which will spare local affiliates from having to repeat this grueling process.

Affiliation Agreement: ROC-United initiates new affiliates as projects of the national organization, to be "incubated" until they develop sufficient membership base, leadership capacity, organizational stability, etc. to function on their own. During this period, still in effect, ROC-U finances each affiliate and assigns it staff organizers. While gradually turning the affiliate over to local initiative and leadership, ROC-U retains full legal control during this "incubation" period.

The plan is for each affiliate eventually to “graduate” into a separate non-profit membership corporation, with its own bylaws, finances, staff, officers, etc. Each such “structurally independent affiliate” will be licensed by the national to use the ROC name and protected by the national’s group tax exemption. Before spinning off any local groupe ROC-U needed an agreement among it and its affiliates groups to govern their powers, rights and responsibilities in relation to one another upon graduation. For this purpose, ROC-U turned to a collaborative of our CED clinic and CUNY’s. Our clinics were mandated to help create, draft and negotiate what amounts to a constitution for this growing national organization.

Over the next two years we met repeatedly among ourselves and with national and local ROC leaders, by phone, e mail and face to face. We reviewed affiliation agreements used by national nonprofit federations and the constitutions of labor unions known for internal democracy. We consulted law school faculty and law firm specialists. We circulated drafts, presented power points, led discussions, collated feedback and negotiated compromises.

One high point came in June 2009 when I had the honor of traveling to New Orleans with three of our students to join hundreds of restaurant workers and organizers at ROC-U’s second “National Convening.” Our students presented a polished, accessible power point of our work in progress, followed by a lively discussion which generated useful guidance and new issues for us to grapple with. We were also privileged to join in the rest of the event, including

- focused practical political workshops and panels
- break out groups featuring creative proposals and skits (including one in which I was drafted to play Willie Nelson)
- a power chant repeated in at least 10 languages
- a spirited march through the Latin Quarter behind a high energy local brass band, and
- widespread spirited cooperative participation and collaboration across racial, national and gender lines.

In June 2010 the national and locals completed and executed a detailed 23 page agreement that codifies

- ROC-U’s internal operating structure, including the affiliate graduation process and a “National Organizing Committee” with which the co-directors share some of the authority delegated to them by ROC-U’s board of directors
- Coordination of media work, finances and donor relations

- A process, up to and including trusteeship, for dealing with a rogue or dysfunctional affiliate which might undermine the national and other affiliates or even put them at legal risk
- A way for the national and a super-majority of affiliates to amend the affiliation agreement without the concurrence of each and every signator.

Sunset Park Worker Co-operatives

In recent years we have represented a complex of new worker co-ops in the largely Latina/o Sunset Park section of Brooklyn, NY. These co-ops are initiated and supported by the Center for Family Life. CFL is an extraordinary neighborhood social service agency dedicated to aiding and empowering its low-income immigrant community in the best tradition of our historic settlement houses. It recently began to organize worker co-ops as a way of creating new employment opportunities for neighborhood residents. This format also serves other CFL goals, helping to build co-operation and solidarity, provide business experience, and expand the community's resources.

The worker co-op is a form of organization developed initially in the city of Mondragon in the Basque section of Spain under the leadership of the Catholic Church, and in the Indian state of Kerala at the initiative of its Marxist government. Though worker co-ops operate across the U.S., especially in college towns, the concept has only recently begun to attract the attention of groups working with low-wage workers. Two prominent models are Co-operative Home Care Associates in the South Bronx section of New York, and WAGES (Women's Action to Gain Economic Security), which sponsors and supports a network of successful housecleaning co-ops in the San Francisco Bay Area of California.

A worker co-op is something quite different from the larger and better known Employee Stock Ownership Program (ESOP) generally controlled by professional managers (think Avis Car Rental or United Air Lines). It is more than a business whose workers own all of its stock. In a worker co-op each worker owns only a single share. That share entitles each worker-owner to equal voice and vote in co-op governance. A worker-owner may sell, transfer or bequeath her share only to the co-op, at a pre-set price. The co-op can re-sell it at that price only to a new worker-owner. In this way, shares remain affordable, only a worker can become an owner, and no worker-owner can have greater voting power than any other.

CFL's worker co-ops have brought together neighborhood women (mainly) who share a particular job skill, experience or interest -- first housecleaners, then nannies and baby sitters and most recently interior house painters. The Center provides a base of operations, training in job and business skills, and substantial material and emotional support, especially in the early months. It helps design creative marketing and catchy names ("Si Se Puede," "Beyond Care," "Color Me"). The women

themselves make all the decisions, bonding through long participatory meetings which CFL staff help to facilitate.

Some of their decisions require information and assistance from supportive lawyers. Co-op members need help to structure and codify internal governance and financial arrangements. They need contracts with customers (and sometime vendors). A primary concern is to select and form the type of legal entity that is most suitable to the group's business and co-operative aspirations. This requires due regard to unfortunate externalities such as tax and immigration law consequences. Immigration issues are especially pressing, given the likelihood that some participants will lack legal authorization to be gainfully employed. Through extended consultation with sympathetic experts in immigration and employment law at the Urban Justice Center and National Employment Law Project (NELP), we have developed two models to meet the co-ops' needs.

We have helped the housecleaning and childcare providers to form marketing co-ops. These nonprofit corporations refer members to work for (and be paid by) individual customers. By not charging a fee for the referral the worker co-op avoids any obligation to inquire into its members' immigration status and is protected from risk of violating federal immigration law due to its' members' status.

We have helped the housecleaning co-op to build in a second layer of protection in these regards by structuring the initial referral to a new customer as an independent contract rather than employment. Along with NELP, UJC and others, we oppose widespread abuse of independent contractor classification as pretext for exploiting low-wage workers. Our need, in this very different context, to help establish independent contractor status is yet another contradiction in the life of a progressive transactional lawyer. It provides a challenging opportunity for teaching our students.

The new painting co-op requires a different approach. To take on jobs of any scale, it has to deploy multi-member teams. In that event, the business relationship must run between the customer and the co-op as an entity. For this situation, we recommend a limited liability company. An LLC can be carefully structured and operated so that the worker-owners function and share profits only as members (business partners) and not also as employees. Though this arrangement disqualifies the worker-owners from unemployment or workers' compensation, it also relieves the co-op of any duty to inquire into its members' immigration status and protects it from violating immigration law due to their status.

The Sunset Park worker co-ops provide our clinic students with a rewarding, memorable experience. We have developed a rhythm of attending every other meeting, giving the members space to discuss law-impacted decisions on their own as well as with us. Last year our whole class traveled to Sunset Park for a very moving seminar session. We met first with staff of the Center for Family Life. We then shared arroz con pollo (on Fordham's tab) with members of the housecleaning

co-op. The women spoke proudly of their achievement and thanked our students for helping make it happen. The room vibrated with their spirit and with the dignity and strength they derived from working together.

IV.