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Community Law Practice

Luz E. Herrera

Abstract: Community-embedded law practices are small businesses that are crucial in addressing the legal needs that arise in neighborhoods. Lawyers in these practices attend to recurring legal needs, contribute to building a diverse profession, and spur community development of modest-income communities through legal education and services. Solo practitioners and small firm lawyers represent the largest segment of the lawyer population in the United States, yet their contributions to addressing the legal needs of modest-income clients are rarely recognized or studied. This essay sheds light on the characteristics, motivations, and challenges these law practices face in providing access to justice to modest-means communities.

For nearly forty years, attorney Salvador Alva-Ochoa has provided legal services to the Latino working-class residents of Huntington Park, California. He represents business owners, victims and perpetrators of domestic violence, women and men undergoing divorce and eviction, and community members who face criminal charges. Alva-Ochoa joined the California bar in 1980 after graduating from the UCLA School of Law. He first worked for California Rural Legal Assistance and then briefly with a local solo practitioner before setting up his law practice in a predominantly Latino community where the typical household income is about half that of California as a whole.

Shantelle Argyle graduated from the University of Utah S. J. Quinney College of Law in 2013 committed to help “people of modest means and without a lot of options for legal representation.” Her family’s struggles with civil justice problems during her childhood fueled her passion to assist “those in the middle, who are working hard but can be easily crippled by a legal setback.”¹ Argyle and a colleague, Daniel Spencer, launched Open Legal Services (OLS) in downtown Salt Lake City. The

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nonprofit law firm provided legal services in criminal and family law on a sliding fee scale based on a client's income.² Argyle and Spencer believe that everyone, including those of modest means, should have access to lawyers.

Solo practitioners and small law firm lawyers represent the largest segment – almost half – of the lawyer population in the United States.³ There are small law firm practitioners who earn six-figure salaries, collecting million-dollar settlements on class action lawsuits or retainers from stable relationships with corporations, wealthy families, and individuals who can pay top dollar for legal services.⁴ On the other end of the spectrum, there are solo and small law firm practitioners who struggle to make ends meet. Some supplement the income generated by their law practices with contract work for other law firms or by taking a second job outside of the legal profession. In the middle are lawyers like Alva-Ochoa and Argyle, whose community-embedded law practices provide legal services to individuals, locally owned family businesses, nonprofits, and other community organizations. Such community-embedded lawyers provide most of the legal services available to individuals in local communities, but their contributions are not sufficiently known or studied.⁵

Community-embedded law practices have three key characteristics. First and foremost, these law practices are small businesses that entrust their communities with their own livelihoods. Second, they are implanted socially as well as economically in their communities, through shared experiences and identities such as race, ethnicity, class, or immigration history. Finally, these law practices serve as first responders to systemic injustices and routine personal legal problems. Their presence contributes to community de-

velopment by helping community members understand their legal rights and responsibilities. Community-embedded lawyers are critical to advance law and justice. Their presence increases community empowerment through information, legal assistance, and counsel about legal matters that impact personal and collective well-being.

Community-embedded lawyers, regardless of whether they structure their practices as for-profit ventures or nonprofit entities, primarily depend on income from fees or donations from community members. Though they may provide free legal services to a subset of clients, their livelihood depends on their ability to develop a sustainable business model through pricing structures that reflect community members' ability to pay. The modest-means clients they serve may require payment plans or may be able to afford only limited assistance.

These lawyers must juggle community needs with their own need for viability. These attorneys may enjoy greater social capital than their community peers as a result of their law degree. But because they often return to the communities they are from, they share many of the financial realities of their client base. Lawyers who come from the communities they serve may struggle to build their businesses, buy their homes, and pay off their debt because they have little capital to start. The start-up phase can be difficult and, like other small businesses, not all survive it.⁶

Some small law practices take on cases that do not require clients to pay attorneys' fees. Attorneys offer contingency plans: if the client wins the case, the attorney's fees are paid by the losing party. Since it can take months for the attorney to collect these fees, it is often challenging to develop a sustainable contingency-fee practice.⁷ For this reason, community-

embedded lawyers have to diversify their work portfolio to include cases that generate enough income to subsidize the contingency work. If community-based lawyers do not start out with sufficient capital – or a wealthy spouse or parent – they may struggle to build and maintain their law firms.

Community-embedded lawyers keep costs down because the communities they serve require it. Lawyers must limit the scope of their representation, charge flat fees, and work out payment plans for their clients. Some of this work requires that lawyers write letters or pleadings without being identified as the drafters. This practice, called “ghostwriting,” is particularly common in preparing clients for representing themselves in court.⁸ Limited-scope representation requires a partnership in which the client takes the lead in her own case and the lawyer remains in the background. While full representation is still regarded as the gold standard in the legal profession, community-embedded lawyers may best help a client by serving as a coach for the legal matter. In this role, community-embedded lawyers routinely equip clients to be advocates for resolution of their own legal problems.

Ultimately, community-embedded law firms are businesses. Some fail, while others change form over the course of a lawyer’s career. Argyle and Alva-Ochoa remain connected to the communities they serve; however, some attorneys move away entirely, shifting to new communities they believe will yield greater profit. Lawyers leave their communities or close their practices for a variety of reasons: more stable employment, the opportunity to merge with a larger firm, or non-economic personal reasons. Alva-Ochoa and his family moved from Huntington Park to a more affluent community after six years because he sought better

educational opportunities for his daughters. He maintains his community law practice, but visits less frequently since he plans to retire soon.⁹ After five years, the legal services program at OLS closed because one of the founders of the organization and its board of directors had different goals.¹⁰ Still, Argyle continues to consult with other attorneys who want to start sustainable sliding scale models.¹¹ Meanwhile, Argyle recently started her own practice and continues to charge on a sliding scale.¹²

The community-embedded law practices discussed here are businesses, yet each reflects a lawyer’s personal commitment to a vision of service through law. Lawyers who start community-embedded law firms share socioeconomic characteristics with the client base they serve, such as history, geography, or identity based on race, class, language, or immigration history. For attorneys in community-embedded law practices, building a practice that serves their peers is critical to their sense of identity and purpose. These lawyers build a niche practice, defined by a combination of service, price range, type of product, and client demographics.

Alva-Ochoa attended law school because he wanted to be a voice for people like himself and his family. He was the third of eleven children and the last born in Mexico to parents who immigrated to the United States when he was an infant. His father was a butcher who worked in the meat-packing plants in Southeast Los Angeles County and his mother worked as a seamstress in the Los Angeles garment district. He considered his family lucky compared to others because his father was able to secure medical and dental insurance through his union. Alva-Ochoa set up his law office a mile and a half from his father’s workplace. He bought his office space from a white lawyer who

retired after much of the white working-class community moved away.¹³

Today, Huntington Park is 97 percent Latino and approximately 48.3 percent immigrant. Nearly 30 percent of the population lives in poverty.¹⁴ Alva-Ochoa understood his immigrant Latino client base because he shared their experience. And many of his clients, themselves first- and second-generation Latino Americans, sought an attorney who shared their experience. He estimates that he has served over six thousand clients in approximately forty years of practice.¹⁵

Practices like his are critical to realizing the promise of access to law for minority and immigrant communities.¹⁶ In 2017, 23.1 percent of the U.S. population was nonwhite.¹⁷ By 2060, estimates for the nonwhite portion of the U.S. population range up to 64 percent.¹⁸ At the same time, the American legal profession remains overwhelmingly white: in 2015, 88 percent of U.S. lawyers were white. Shared experience and background can make for greater understanding and greater accessibility.

Several years after starting his practice, Alva-Ochoa ran for municipal-court judge after local judges passed a rule prohibiting court clerks from speaking Spanish. He was one of a number of Latino lawyers who challenged white incumbent judges who attempted to hinder access to the courts by implementing such rules.¹⁹ Alva-Ochoa ran for judicial office twice but lost. Despite his losses, Alva-Ochoa is proud of his work in those elections because he and his team were successful in registering 2,400 new voters, engaging college students in politics, and getting campaign volunteers interested in becoming lawyers. Alva-Ochoa was later appointed as the city attorney of a local city but continued to run his law practice by contracting with other lawyers to serve his clients. As he explained,

“It [has] never been about the money, it is the desire to be helpful.”²⁰

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For Argyle, starting the OLS was all about the money: that is, the money that potential clients did not have. She describes her upbringing as “dancing along the poverty line,” changing schools often because her family was evicted or could no longer afford the rent.²¹ Her parents were construction workers whose incomes fluctuated. During downturns in the industry, the family qualified for free services. Argyle knew the construction industry had improved when she no longer qualified for the free lunch program and she began to take for her lunch ham sandwiches prepared at home. Argyle remembers “being pulled over by police because the blinker on my car did not work and my parents did not have the money to get it fixed.” Her family was often behind on bills so they alternated payments for the utilities each month to ensure that they paid just enough to keep the water and lights on, and the house warm. So her mother could qualify for needed medical services, her parents divorced. Argyle became the first person in her family to attend law school. There she met Daniel Spencer, who grew up in a more stable middle-class family but who had ADHD and did not graduate from high school. The two shared an interest in helping those who were otherwise dismissed by traditional approaches to providing services.

Together, Argyle and Spencer built a law practice that prioritized their shared commonalities. They both sought economic stability but wanted to help individuals who traditional law firms rejected. Between 2012 and 2016, approximately 19 percent of Salt Lake City’s population fell below the federal poverty threshold.²² Clients of OLS were individuals who made between 125 percent and

400 percent of the federal poverty thresholds. Under their sliding fee scale, a family of four that earned \$47,500 per year paid OLS \$70 per hour for legal services rendered. If that family earned \$72,000 per year, the rate would shift to \$115 per hour. At that time in Salt Lake City, the average hourly rate for lawyers ranged from \$175 to \$230.²³ During its five years in operation, the firm served 1,700 clients of modest means. OLS estimated that its niche market included 53 percent of Utah residents.²⁴

Argyle and Spencer graduated in 2013, when the legal market for new lawyers did not provide many jobs for public-interest practice.²⁵ Argyle wanted to become a public defender. Spencer dreamed of working with the local district attorney's office. When they graduated, they realized that they had to create their own employment. They chose the nonprofit model because they knew they had to raise money to subsidize their work and the tax exemption that a nonprofit organization offers for donors was critical to their survival. Incorporating as a nonprofit also gave them access to the Public Service Loan Forgiveness Program, which eliminates the balance of certain federal student loans after 120 monthly payments for those working full time for a charitable organization.²⁶ The nonprofit model is attractive for new attorneys with high educational debt who want to serve low-income communities and can attract donors to subsidize their work. However, the nonprofit model does not give attorneys the freedom to decide how to structure and run their law practices.

Community-embedded lawyers understand their communities in a personal way. Their practices often serve niche markets, like those established by Alva-Ochoa and Argyle, that are critical to diversifying the bar and extending access to

justice to the poor, the near-poor, and so many others who operate on the fringes of society. The clients that community-embedded lawyers represent are often drawn to their identities, not just to their professional expertise.

Like other small businesses, nonprofit organizations and microenterprises such as solo law firms contribute to community development by creating jobs and helping local people understand their legal rights and responsibilities. Lawyers at such firms also serve as role models and leaders in their communities. Community-embedded lawyers commonly volunteer at local organizations and events to provide the community with “know your rights” or legal-education workshops. These activities help market their law firm, and they also allow the lawyers to diagnose local legal needs from the types of questions community members ask.

Some community-embedded lawyers use technology to make the law more transparent and accessible. Technologically sophisticated community-embedded lawyers improve the process of filing claims or asserting rights by giving clients the opportunity to engage with them through an online interview. This permits the consumer to take the lead in diagnosing the problem and perhaps even identifying possible solutions. The more technologically savvy lawyers provide resources on their websites that facilitate client self-help, document automation, and otherwise empower people with legal problems to exercise autonomy and responsibility in addressing their own legal needs. A few even produce videos or write blogs that help educate the community about their rights, opportunities, and responsibilities.

Community-embedded lawyers also provide clients with the support and tools to navigate solutions to their legal problems. Some of the most common legal

needs in communities require lawyers, or other paraprofessionals, simply to serve as mediators in dispute resolution. Family and neighbor disputes, inheritance issues, child custody, divorce, and business dissolution are common legal problems that lawyers can help with simply by acting as experts and mediators. These dispute-resolution methods often end up being less expensive because parties reach an agreement they deem equally beneficial and therefore engage in less conflict long term.

Community needs range from the personal to the collective. Addressing individual legal needs may not command front-page news coverage, but for underserved populations, having a lawyer who understands the community is crucial. Individual legal needs are often symptoms of larger institutional problems that communities must address. Lawyers in underserved communities are often the first ones to identify injustices in laws or legal processes. They recognize patterns that require systemic change.

When community-embedded lawyers are not the change-makers themselves, their local knowledge is crucial to policy changes or legal challenges to community problems or injustices. Lawyers who understand local legal needs are helpful in identifying plaintiffs for impact litigation cases and policies that benefit entire communities of clients. Such lawyers are instrumental in helping community leaders identify legal resources and political strategies to effect change. As advocates and connectors, community-embedded lawyers help raise people's consciousness that their legal problems may not be just a consequence of bad luck but may have a root cause or solution in the legal system.

Efforts to increase access to law and justice must include the voices of community-embedded lawyers who represent modest-income individuals. These lawyers are crucial in addressing the legal needs that arise in neighborhoods; they contribute to building a diverse profession; and they inform systemic change that addresses the legal needs in other communities.

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ENDNOTES

¹ Shantelle Argyle, LinkedIn profile, <https://www.linkedin.com/in/shantelle-argyle-5031166/> (accessed June 7, 2018).

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³ They account for about two-thirds of all lawyers in private practice, which constitutes 75 percent of all lawyers (.66*.75=.495). American Bar Association, "Lawyer Demographics Year 2016," <https://45e2ly1gtqp9jmqme2fiw751-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2016/11/Incubators-The-Next-Wave-in-the-Access-to-Justice-Movement.pdf>.

⁴ The Bureau of Labor Statistics reported that in May 2017, the median annual salary for lawyers was \$119,250. The highest 10 percent of lawyers earned more than \$208,000, while the lowest 10 percent earned less than \$57,430. The data only capture lawyers working in business establishments, not in their own law firms. See Bureau of Labor Statistics, "Occupational Outlook Handbook," <https://www.bls.gov/ooh/Legal/Lawyers.htm#tab-5>.

⁵ John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (New York: Russell Sage Foundation, 1982), 319–320. See also John P. Heinz, Robert L. Nelson,

Rebecca L. Sandefur, and Edward O. Laumann, *Urban Lawyers: The New Social Structure of the Bar* (Chicago: University of Chicago Press, 2005), 6–7.

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- ⁸ Anna Massagolia, “The Ethics of Ghostwriting for Pro Se Clients,” Lawyerist.com, December 1, 2016, <https://lawyerist.com/ethics-ghostwriting-pro-se-litigants/>.
- ⁹ Author telephone conversation with Salvador Alva-Ochoa, June 12, 2018.
- ¹⁰ Email from Shantelle Argyle to Sliding Scale Listserv, March 12, 2018.
- ¹¹ Author telephone conversation with Shantelle Argyle, June 12, 2018.
- ¹² See also “Shantelle L. Argyle, Attorney at Law,” <https://www.shantelleargyle.com/>.
- ¹³ The 1980 U.S. Census reported that Huntington Park was majority Latino, of which 54 percent were immigrants. See Rick Holguin and George Ramos, “Cultures Follow Separate Paths in Huntington Park,” *The Los Angeles Times*, April 7, 1990, http://articles.latimes.com/1990-04-07/news/mn-591_1_huntington-park-high.
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- ¹⁵ Author telephone conversation with Salvador Alva-Ochoa, June 12, 2018.
- ¹⁶ American Bar Association Commission on the Future of the Legal Profession, *Report on the Future of the Legal Profession in the United States* (Chicago: American Bar Association, 2016), 31–33, https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.
- ¹⁷ U.S. Census Bureau, “QuickFacts: United States,” <https://www.census.gov/quickfacts/fact/table/US/PST045216> (accessed July 30, 2017).
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- ²⁶ U.S. Department of Education, Federal Student Aid, “Public Service Loan Forgiveness,” <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#full-time-employment> (accessed May 24, 2018).