Circles: Buffalo Women's Journal of Law and Social Policy

Volume 5 Article 5

1-1-1997

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SHANNON FAULKNER AND THE CITADEL: THE EFFECTS OF USING LITIGATION AS AN INSTRUMENT OF SOCIAL REFORM

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In the battle against institutionalized gender discrimination, one of the most effective weapons used during the last twenty years has been the test case, whereby the cause of women as a class is advanced through legal actions instituted by individual plaintiffs. This strategy of using lengthy, expensive, high-profile cases to fight discrimination raises serious social, political, and ethical questions. Some of the most important issues that must be addressed are: (1) whether test cases are an effective way to achieve the personal goals of the plaintiffs, (2) whether attorneys' social and ideological goals must be disclosed to their clients in order to avoid conflicts of interest and to ensure informed consent, and (3) what kinds of special support are needed by advocates and litigants when they become embroiled in controversial test case litigation. This article will examine these questions within the context of Shannon Faulkner's recent challenge to the male-only admission policies of The Citadel, a 153-year-old military college in South Carolina.[2]

Faulkner's case against The Citadel serves as a useful analytical tool because it typifies test case litigation. Like most test case plaintiffs, Faulkner chose to "carry the torch" for others.[3] She endured a three-year legal battle against well-established and long accepted institutional practices and policies and, by doing so, helped to establish the right of women to demand that state-funded schools offer women educational opportunities comparable to those offered to men.[4] As Faulkner stated, ". . . every girl that walks through that [Citadel] gate will have to say, `thank you Shannon.'"[5]

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[2] *See* Faulkner v. Jones, 858 F. Supp. 552 (1994), *aff'd*, 51 F.3d 440 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 331 (1995).

[3] *See* Bernice Sandler, *On Faulkner's Leaving the Citadel*, ABOUT WOMEN ON CAMPUS, Fall 1995, at 4.

[4] *See id.*

[5] Andrea Gross, *Shannon's Quest*, LADIES HOME JOURNAL, Feb. 1995, at 96, 100.

Today, The Citadel is indeed a different place, largely as a result of the efforts of Faulkner and her attorneys. There are currently four women cadets successfully enrolled, and they have been spared the abuse suffered by Faulkner just one year earlier.[6] The female cadets successfully survived "Hell Week," a grueling initiation period, and one even received financial support from The Citadel Club.[7] Unlike Faulkner, who was greeted by death threats and T-shirts saying "1,952 Bulldogs and One Bitch," the female cadets have reportedly been treated with relative sensitivity.[8] Shannon Faulkner's challenge to The Citadel clearly made a difference for the women who would follow. But what about Shannon? Did she get what she really wanted? What did she give up? Did she fully understand and evaluate the non-legal consequences of her case, including the psychological and emotional burdens? Did she get the kind of support she needed? Faulkner's experiences and statements demonstrate a tension inherent in test case litigation: tension between the broader goals of social justice and equality and the needs and goals of the individual plaintiffs.

Shannon Faulkner's case also suggests a potential tension between the goals and motivations of the attorneys involved in test cases and the goals and motivations of their clients. When plaintiffs and their attorneys decide to do battle in the courts on an important constitutional claim, is it important to note that their interests in that battle may not be identical? Do lawyers and other advocates take on test cases because they are motivated, at least in part, by their own political activism or personal beliefs? If so, do the advocates' personal, ideological "stakes" in these cases create a potential conflict with the personal interests of their clients? On the other hand, if lawyers are not motivated by ideological goals, would they be willing to accept such burdensome, often unpopular cases? The author was fortunate to have the opportunity to discuss these matters at length with Robert R. Black, one of the attorneys for Shannon Faulkner. Black's reflections on his experiences within the grueling arena of test case litigation suggest that advocates, like their clients, need special support when they fight for the unpopular in these high profile cases.

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[6] *See* Catherine S. Manegold, *Citadel Adopts Positive View of Its Female Cadets*, N.Y. TIMES, Aug. 24, 1996, at 7.

[7] *See Four Women Invade the Citadel Amid Changing Culture for Cadets*, WOMEN IN HIGHER EDUCATION, Oct. 1996, at 4.

[8] *See id.*

TEST CASE CHALLENGES TO GENDER DISCRIMINATION

One of the most powerful legal doctrines used in test case challenges of institutionalized discrimination has been the Equal Protection guarantee found in our Federal Constitution. The Equal Protection Clause of the Fourteenth Amendment states: ". . . [N]or shall any state . . . deny to any people in its jurisdiction the equal protection of laws."[9] Since 1971, the United States Supreme Court's interpretation of the Equal Protection Clause has required a heightened judicial scrutiny of state action that results in gender-based differential treatment.[10]

The kinds of state action which invoke the Equal Protection guarantee include the actions of state, county and local governments and their instrumentalities, including public schools and universities. The federal government is also required to comply with Equal Protection principles under the Due Process Clause of the Fifth Amendment, which has been interpreted by the United States Supreme Court to include the Equal Protection analysis developed by the courts when interpreting the Fourteenth Amendment.[11]

While the Supreme Court does not scrutinize classifications based on sex as strictly as those classifications based on race, national origin, religion or alien status, the Court does apply an "intermediate standard" of review to such classifications. This heightened judicial scrutiny requires that state action which results in disparate treatment of men and women must be "substantially related" to "important" governmental objectives, and must be "carefully tailored" to achieve those objectives.[12] This standard of judicial review has resulted in the revision of many discriminatory state and federal policies and legislative schemes.

These constitutional protections against gender-based discrimination are defined by test cases brought by individual plaintiffs who have suffered discrimination. Shannon Faulkner used these Equal Protection Clause guarantees to successfully challenge The Citadel.

A CASE STUDY: FAULKNER VS. THE CITADEL

When her case against The Citadel began, Shannon Faulkner was a happy, well-adjusted, busy high school senior in Powdersville,

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9 U.S. CONST. amend. XIV.

10 *See* Reed v. Reed, 404 U.S. 71 (1971).

11 *See* Bolling v. Sharpe, 347 U.W. 497 (1954).

12 *See* Miss. Univ. for Women v. Hogan, 458 U.S. 718 (1982).

South Carolina. She enjoyed playing in the school marching band, and spent her free time at the local mall with friends.[13] She made the decision to challenge The Citadel's male-only admission policy during her senior year in high school, after a spirited debate about the school's policies in one of her classes for honors students.[14] Shannon was accepted in The Citadel on the basis of her 3.7 grade average in high school and her active participation in extra-curricular activities.[15] Shannon's admission to the college, however, was withdrawn when the college realized that she was not a male. Shannon decided to file a lawsuit, alleging that The Citadel's admission policy constituted gender-based discrimination.[16]

The Citadel proved to be a formidable opponent. Founded in 1842 (the school "boasts that its cadets fired the first shots" for the Confederacy in the Civil War), the school is recognized for its extensive and loyal alumni network, including one South Carolina senator and one former governor.[17] It raised a "million-dollar war chest to fight back" against Shannon's challenge.[18] The school received local and regional support for its position, largely as a result of this network of supporters, but also due to the state's well-recognized political conservatism.[19] As a political scientist at the University of South Carolina states, "Because it's a small state with common interests, South Carolinians have always come together to unify against a common enemy, . . . now that enemy is change."[20] A recent *New York Times* article summarizes the intersection of race and gender in the challenge to white male supremacy at The Citadel: "The Citadel was founded by an act of the South Carolina legislature . . . to train `citizen soldiers' to prevent possible uprisings by free blacks and slaves . . . racial integration, like the inclusion of women, lagged behind integration efforts elsewhere . . . ."[21]

Despite South Carolina's institutionalized resistance to change, Shannon Faulkner was ultimately victorious in the courts, when a

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13 *See* Catherine S. Manegold, *The Citadel's Lone Wolf: Shannon Faulkner*, N.Y. TIMES MAGAZINE, Sept. 11, 1994, at 57.

14 *See* Gross, *supra* note 5, at 96.

15 *See About Face*, TIME, March 1, 1993, at 16.

16 *See* Gross, *supra* note 5, at 98.

17 *See* David Van Biema, *The Citadel Still Holds*, TIME, Aug. 22, 1994, at 61.

18 *See* Manegold, *supra* note 12, at 59.

19 *See South Carolina; Polite Resistance*, ECONOMIST, Jan. 22, 1994, at 27.

20 *Id.*

21 Manegold, *supra* note 6, at 7.

federal judge ordered the college to admit Faulkner to The Citadel's Corp of Cadets. The United States Fourth Circuit Court of Appeals upheld the decision. A concurring appellate judge opined, "Though our nation has, through its history, discounted the contributions and wasted the abilities of the female half of its population, it cannot continue to do so."[22]

The same Court of Appeals also heard a similar challenge to the male-only admission policies of Virginia Military Institute (V.M.I.), a military college in Virginia.[23] In the V.M.I. case, however, the Court did not force the school to admit women. Virginia was allowed to develop a similar military program for women at nearby Mary Baldwin College which would pursue the same "goals" as those pursued at V.M.I.[24] The Court of Appeals followed the same reasoning in Faulkner's case, ordering that she be granted admission to the Corps of Cadets at The Citadel because the state of South Carolina had not implemented a comparable military education program for women. The Citadel responded with a proposal for an alternative program to be developed at nearby Converse College,[25] but Faulkner was admitted pending the development and judicial approval of such a program.[26]

Faulkner reported for the first day of Cadet training on August 14, 1995. She became ill on that first day, and was taken to the infirmary.[27] Faulkner, citing "exhaustion from the intense pressure and stress of the three year court battle,"[28] decided a few days later to withdraw from the Corps of Cadets. After two and one-half years of legal battling, Faulkner left The Citadel amid the cheers of her fellow cadets. The cheers, of course, were for her departure. Soon "scores of Charleston bumper stickers gloated: `The Whale Has Beached.'"[29]

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22 Faulkner v. Jones, 51 F.3d. 440, 441 (4th Cir. 1995).

23 *See* United States v. Commonwealth of Virginia (V.M.I. II) 44 F. 3d 1229 (4th Cir. 1995), rev'd, 116 S. Ct. 2264 (1996).

24 *See id.*

25 *Faulkner's Struggle Paves Way for Others*," ABOUT WOMEN ON CAMPUS, Fall, 1995, 4.

26 The subsequent decision, rendered on June 26, 1996 by the United States Supreme Court in the V.M.I. case, established that such separate women's programs did not cure otherwise constitutionally impermissible male-only admission policies. *See* United States v. Virginia, 116 S. Ct. 2264, (Aug 7, 1996). Following that decision, The Citadel decided to admit women in late June, 1996. *See* Manegold, *supra* note 6, at 7.

27 *See First Day for Female Cadet Ends in Citadel's Infirmary*, N.Y. TIMES, Aug. 15, 1995.

28 Manegold, *supra* note 6, at 7.

Shannon Faulkner suffered great personal hardship as a result of her decision to file a lawsuit against The Citadel. She was teased, taunted and even received death threats.[30] "Die Shannon" showed up on a billboard in Charleston.[31] The words "whore," "bitch," and "lesbo" were repeatedly painted in bright red letters on her house.[32] There were bottle rockets set off in her yard while she watched television with her parents, and rotten eggs were thrown.[33] She was even attacked over the internet in the "anonymity of hyperspace," where over one hundred and eighty messages were sent in a single computer conversation called "Shave Shannon!"[34] On the campus of The Citadel, she was characterized as "a bitch" on popular t-shirts,[35] and the school newspaper ran a column challenging Citadel cadets to be the first to "saddle-up" the "Divine Bovine."[36] Major Rick Mill served as the faculty advisor to The Citadel's school newspaper and as the official public relations spokesperson for the college,[37] blurring the distinction between abusive student rhetoric and the college's official position.

Clearly, in the understated observation of Faulkner's mother, Sandy Faulkner, "A lot of people don't want Shannon to go to The Citadel."[38] Why was Faulkner willing to endure such abuse in order to attend a college which has been characterized as "a proud dinosaur of the Old South"[39] and as a "good-old-boy nursery?"[40] What did she hope to gain? In Faulkner's words, "If you make it into the Citadel and if you can maintain yourself as an individual, that, to me, is really something I respect."[41]

What did she give up? Faulkner states, "I'm not a normal college student, and I never will be no matter how much I want that . . . These are supposed to be the best years of my life, but for the last year and a half it's like I'm some 30-year-old or something.[42]

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29 *Id.*

30 *See* Gross, *supra* note 5, at 96.

31 Telephone Interview with Robert S. Black (Sept 18, 1995).

32 *See* Gross, *supra* note 5, at 96.

33 *See* Manegold, *supra* note 13, at 58.

34 *See id.*

35 *See* Bernstein, *supra* note 7, at 16.

36 *See* Pat Wingert, *Oh, To Be A Knob!* NEWSWEEK, Aug. 22, 1994, at 22.

37 Telephone Interview, supra note 31.

38 Gross, *supra* note 5, at 96.

39 Van Bierna, *supra* note 17, at 61.

40 Lekan Oguntoyinbo, *Faulkner-Citadel Lawyer has Earful for Audience at UA*, PLAIN DEALER, Oct. 6, 1995, at 1B.

41 Manegold, *supra* note 13, at 58.

> "When I first started this...I was like, Well is there any way I can stay out of it?' Even when I filed the lawsuit I wasn't dead set on The Citadel. Only I couldn't exactly back out...At first, it was kind of hard to say O.K., I'm going to The Citadel.' But then I got to the point where I was, like, `Well, O.K., this is what I've been working for. This is what I want to do.' Sometimes, though, I can honestly say I wish I wasn't who I am."[43]

Shannon told a reporter for *People* magazine that ". . . she had no idea' what she was getting into."[44] Faulkner's statements reflect a considerable amount of emotional and psychological distress and a failure to accurately anticipate or understand the burdens that she would bear when she made the decision to proceed with her lawsuit.

Robert Black, Faulkner's 54-year-old attorney, was also unprepared for the impact on his personal and professional life resulting from his involvement in Faulkner's case. Black lives with his wife and three children in Charleston, where both he and his wife are engaged in the practice of law. In addition to being a lawyer, Black holds a Ph.D. in English and, in fact, taught literature courses at The Citadel.[45] While Black had expected resistance, he admits that he was shocked by the intensity of the conflict generated by the case.[46] He states that he had no idea that The Citadel would view it as "Holy War," [47] and that he was surprised and disappointed by Charleston's willingness to, figuratively speaking, "beat up on a teenage girl."[48] During part of the ordeal, Faulkner even moved in with Black's family because of safety concerns.[49] Despite such precautions, Faulkner was still harassed when she went out in public--even in church.[50]

THE PROCESS OF TEST CASE LITIGATION: ETHICAL CONSIDERATIONS

Clearly, cases like *Faulkner vs. The Citadel* differ from most civil or criminal cases involving established legal principles or legal and

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42 *Id.* at 58.

43 *Id.* at 59.

44 *Shannon Faulkner*, PEOPLE, Dec. 26, 1994, at 58.

45 *See* Robert Black, *Comments*, WOMEN'S STUDIES BOUNDARY LECTURE SERIES, University of Akron, Ohio, Oct. 5, 1995.

46 Telephone Interview, *supra* note 31.

47 *Id.*

48 Telephone Interview, *supra* note 31.

49 *See* Black, *supra* note 45.

50 Telephone Interview, *supra* note 31.

factual issues without far-reaching consequences. While typical cases might prove costly and time-consuming for the litigants, there is no public interest generated by the disposition of those cases and the participating attorneys will rarely have an ideological "stake" in the outcome. In contrast, Equal Protection Clause cases, which challenge powerful, institutionalized discrimination, provoke strong opinions and emotional responses. Not surprisingly, advocates involved in these cases often hold their own strong opinions on the social, political and legal issues involved.

Faulkner's attorneys, including Bob Black, have been criticized as soliciting Faulkner and others as clients against male-only schools because of their own political agendas.[51] Black and others stand accused by The Citadel of soliciting clients to be used as political "pawns" in an American Civil Liberties Union (A.C.L.U.) sponsored, feminist campaign to undermine male-only, state-supported schools such as V.M.I. and The Citadel.[52]

It is true that some of the advocates involved in challenges to male-only institutions reappear in various battles at different times. John Banzhaf, a law professor at George Washington University, originally filed a complaint with the U.S. Justice Department about The Citadel's policy of excluding women from its Cadet corps. The Department could not act, however, because a South Carolina woman had not complained. Banzhaf also filed a complaint against V.M.I., on behalf of a woman in Virginia, allowing the Justice Department to intervene and leading to litigation against V.M.I.[53] Similarly, Bob Black was involved in challenges to The Citadel's male-only admission policy prior to his representation of Faulkner.[54] He openly acknowledges his long-term involvement in cases such as Faulkner's and the precedential importance of Faulkner's case. He is, however, dismayed by the suggestion that his actions were inconsistent with Faulkner's best interests or her own clearly articulated personal goals. He denies that any group, including the A.C.L.U., ever controlled Shannon Faulkner. Furthermore, he points to Faulkner's free access to the press throughout the pendency of her case.[55] Court records reflect

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51 *See id.*

52 *See* Gross, *supra* note 5, at 99.

53 *See Citadel Still Not Off the Hook,* AKRON BEACON JOURNAL, Aug. 20, 1995, at A3.

54 *See* Black, *supra* note 45.

55 Telephone Interview, *supra* note 31.

that the A.C.L.U. was no longer involved in the case when Faulkner reported to The Citadel in August, 1995, strengthening Black's assertion that Faulkner was always in complete control of her case.[56]

Black explained he became involved because other lawyers in South Carolina, including women lawyers, seemed unwilling to support Faulkner--far less represent her. A newly formed association of women attorneys in South Carolina refused to even enter the debate on Faulkner's behalf, summarily dismissing Black's suggestion that the organization should address the issue.[57] Similarly, Black believes that another prominent women's organization in South Carolina distanced itself from the controversy due to political pressure from officials in state government.[58]

Black agreed to become involved in Faulkner's case because he believed in the justice of the cause, comparing her case with earlier struggles against racial discrimination.[59] Black asserts that he had nothing to gain by challenging the most powerful institution in his hometown and, arguably, in the state of South Carolina. His involvement in the lawsuit required countless hours of unpaid work.[60] The case took up most of his time, and other clients seem reluctant to hire him. Black stated recently, "I'm either a lousy lawyer or it's because of The Citadel."[61] As a result, he had virtually no income to date in 1995,[62] and very little income in the two preceding years.[63] Black's professional reputation has been attacked on local radio shows and he has angered many in the community of Charleston.[64] One reporter, covering a presentation given by Black at a university, states: "His client base has vanished, and, to supplement the money his lawyer wife brings in, he has even had to sell land that has been in his family for nearly 80 years. And now, as the reprisals continue from those who don't want to see The Citadel become a coeducational college, Bob Black is considering leaving Charleston, S.C."[65]

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56 *See* Faulkner v. Jones, 51 F.3d. 440 (4th Cir. 1995).

57 Telephone Interview, *supra* note 31.

58 *See id.*

59 *See Faulkner's Lawyer Discusses Values*, THE BUCHTELITE, October 17, 1995, at 1.

60 *See id.*

61 *Lawyer for Faulkner Discusses Case at UA*, AKRON BEACON JOURNAL, 6 Oct. 1995, B2

62 *See* Oguntoyinbo, *supra* note 40, at 1B.

63 *See* Black, *supra* note 45.

64 *See id.*

Were Black and other advocates for Faulkner motivated to make such personal and professional sacrifices partly because of their own ideological goals? Do plaintiffs such as Shannon Faulkner become tools of social reform? Do attorneys for test case plaintiffs fully disclose their personal goals or beliefs, if they exist? Should they?

It is undisputed that Shannon Faulkner had goals of her own. Faulkner was always very clear and outspoken about her wishes to graduate from The Citadel and about what she hoped to achieve from attending that institution. Before Faulkner mailed her college application, she made the following list of what she hoped to achieve by attending The Citadel: "Employers liked Citadel graduates because they were viewed as team players; she admired her older brother, Todd who was in the Navy and had benefited from the experience; and, naively, she thought she'd be part of a close-knit group."[66] Faulkner also stated, as part of a nationally televised interview on The Oprah Winfrey Show: "I [wanted to] actually experience that 24-hour lifestyle of the military. Plus the prestige of the school and the alumni networking."[67] Her lawyers, therefore, clearly were acting in accordance with Faulkner's articulated goals when they instituted the lawsuit on her behalf. The relevant policy question which remains is whether the codes of ethics governing attorneys should be enlarged to include a broader concept of "informed consent," requiring lawyers to disclose their own private political beliefs, activities and ideological stakes in the litigation contemplated by their clients.

Professional ethics require that attorneys represent only the best interests of their clients. Attorneys are expected to listen carefully to their clients and to fully inform their clients so that they can pursue a course of legal action which is carefully aimed at the achievement of their client's expressed goals. Lawyers must avoid "conflicts of interest" which might lead them to put their own best interests, or the best interests of someone other than their clients, before the client's interests.[68] While the usual conflicts of interest discussed within attorney's ethical rules involve pecuniary interests or other tangible adverse interests, such rules should also encompass the conflicts that

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[65] Oguntoyinbo, *supra* note 40, at 1B.

[66] Gross, *supra* note 5, at 98. *See also* Manegold, *supra* note 12, at 58.

[67] Oprah Winfrey Show, Television interview transcript, Burrelle's Information Services, Livingston, New Jersey , September 7, 1995, at 3.

[68] *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7 (1994).

might be caused by intangible "interests," such as an attorney's ideological or social goals.

Potential conflicts of interest resulting from the political or ideological agendas of attorneys can be easily overcome by completely disclosing those interests to their clients. Such disclosure would allow a truly informed consent by clients and would prevent those clients from feeling betrayed by their attorneys. Such a sense of betrayal is reflected in some of Faulkner's statements, such as these comments made during the Oprah Winfrey Show after Faulkner's withdrawal from The Citadel:

> Winfrey: "The 2 1/2 years of preparation and--and lawsuits and fighting to get in there--do you think that you were used in any way by attorneys or people who had other interests, other than your own?"
> Faulkner: "I am becoming aware of a lot of things that I was disillusioned about. . . I-I'm starting to realize that they - a lot of people didn't care specifically about what was best for me. . . ."
> Winfrey: "And how does that feel to you?"
> Faulkner: "It hurts me now."[69]

Full disclosure by attorneys and informed consent by clients is necessary to avoid conflicts of interest, or even an appearance of a conflict. A more comprehensive ethical framework governing the relations between attorneys and their clients should be developed that would move beyond a mechanical application of traditional conflict of interest doctrine to include both tangible and intangible interests of attorneys and their clients.

Finally, perhaps the most difficult ethical question raised by test case litigation is whether attorneys have a duty to look beyond their role as litigators and provide counsel regarding the non-legal consequences of test cases like Faulkner vs. The Citadel. Has Faulkner, because of the stress of years of litigation, media scrutiny, and public hostility, truly "gained weight and character and a kind of heaviness of the soul?"[70] Was she prepared for the non-legal consequences of her case--the emotional and psychological burdens which she would bear--when she instituted her lawsuit? Is it beyond the duty of a lawyer, and beyond the scope of a lawyer's professional

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69 Oprah Winfrey Show, *supra* note 67.

70 Manegold, *supra* note 13, at 57.

training, to evaluate the psychological, social, or other factors which motivate or affect a client?

In criminal prosecutions, "victim's advocates," professionals trained in counseling or social work methodologies, are sometimes assigned to victims and their families to provide emotional and psychological support during the emotionally trying ordeal of the offender's prosecution. These victim's advocates work with the legally trained staff to provide expertise in the non-legal aspects of criminal proceedings, greatly alleviating the stress on the victims and their families during hearings, before and after testimony, and throughout the pendency of the cases. Lawyers and judges are also beginning to welcome the involvement of mental health professionals in some types of civil cases as well. "Treatment Issues for Divorcing Women," by Martha Haffey and Phyllis Malkin Cohen, suggests that it is society's mistake to continue to allow "the legal profession [to be] the primary shepherd of participants through the...process."[71] Haffey and Cohen suggest that mental health professionals should participate in training workshops with divorce attorneys so that both therapists and attorneys can gain the practical information they will need to successfully guide their clients.[72] Such a collaboration between therapists or social workers and attorneys is "ego supportive" for the client, because it focuses on all of the needs of the client, not just their legal needs, giving the client "a sense of authority over her life . . . ."[73]

The use of victim's advocates could be provided to clients in high-profile, highly controversial, civil cases like Faulkner's. Attorneys are trained in the law, not in psychology or social work, and they should not be expected to effectively protect their clients from the emotional and psychological burdens of test case litigation. Their attention should be focused on the enormous burden of winning these challenging cases, not on the non-legal consequences of the case for their clients. Our court system should acknowledge, however, that the non-legal ramifications of these cases are potentially devastating to clients. Victim's advocates have been extremely successful in providing needed support to the victims of violent crimes. Victims of institutionalized discrimination deserve and need the same kind of support.

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71 Martha Haffey and Phyllis Malkin Cohen, *Treatment Issues for Divorcing Women*, FAMILIES IN SOCIETY, March 1992, at 142.

72 *See id.* at 146.

73 *Id.*

CONCLUSION

There were things that even the law could not fix for Shannon Faulkner. She won the legal right to attend The Citadel, but the hostility and isolation she faced there proved unbearable. The law could not make her classmates treat her fairly or with compassion. Her lawyers had explained the realities of litigation, but no one prepared her for the intensity of the public's reaction or the reactions of her fellow cadets.

Faulkner saw her case as a sacrifice she was making for all women, stating, "I've tried to open the door . . . My knock isn't that big a sound. But it is like the knock in `The Wizard of Oz.' It set up this echo through the hall until it was heard by everyone."[74] Unfortunately, the women for whom Faulkner opened the door did not do much to support her during her ordeal. When she left The Citadel, she was alone. She now faces, alone, the formidable task of getting her life back on track and starting over at a different college. Faulkner is confronted with the disturbing realities of her post-trial life at the same time feminists celebrate the importance of her legal victory for women as a class. The disappointment of Shannon Faulkner "the college student" stands in stark contrast to her exhilarating victory as Shannon Faulkner "the test case."

Faulkner's case raises compelling questions about the effectiveness and ethics of test case litigation as an instrument of social reform. The benefits of successful test cases are obvious--they establish legal precedents that improve the legal position of whole classes of individuals by bringing discriminatory conduct to the attention of our courts. Faulkner's case illustrates, however, that the benefits to individual plaintiffs can sometimes be overshadowed by the costs they bear, and that the most significant of these costs may be emotional and psychological. Our legal system must provide, or at least accommodate, special services to address these non-legal needs in order to ensure that clients can endure the hardships required to enforce their constitutional rights.

Our legal system also must acknowledge the ethical issues inherent in these cases of social and political importance, especially in the context of attorney-client relations. It is unfair and unwise to put advocates with a social conscience in the ethical bind created by the limitations of existing conflict of interest doctrine. If the legal

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[74] Manegold, *supra* note 13, at 59.

profession will not bear the burdens inherent in establishing important constitutional rights, what will become of those rights? Socially responsible lawyers should be encouraged to take on tough, unpopular cases, and their social conscience should be applauded, not seen as a potential liability to their clients. Of course the attorneys involved in high-profile test cases care about the precedential value of their cases. Of course they are often committed to the social reform which will be achieved if their client wins the case. Clearly, this does not mean that they are not also committed to their clients. Such commitment may, in fact, result in the Herculean, self-sacrificial efforts demonstrated by attorneys like Bob Black. Black accepted a highly unpopular case at enormous personal costs, and by doing so, helped Shannon Faulkner achieve an inspiring victory.

Test case participants, like Shannon Faulkner and her attorneys, truly carry the torch for others. These individuals provide a valuable service to our society by bringing discrimination to the attention of our legal system. We, as a society, have a duty to see that these individuals have all the information they need to make good decisions and all the support they need to effectively challenge formidable opponents. Only then can important test cases, like Shannon Faulkner versus The Citadel, be used effectively--and ethically--as an instrument of social reform.