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Representing the Poor and Homeless: A Community-Based Approach

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REPRESENTING THE POOR AND HOMELESS: A COMMUNITY-BASED APPROACH

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Several years ago, at a conference on representing the homeless, advocates were discussing developing suitable housing for single homeless people. Several people argued against single room occupancy (SRO) units without bathrooms and cooking facilities. The question was posed as one of human dignity; our clients should not be subjected to the lowest possible form of housing. I was fully persuaded by the argument, but for one problem. In New Haven, Connecticut, in seeking to redevelop Connecticut's largest SRO, we had interviewed 150 of the 218 occupants. Our clients, a large majority, told us that they did not want bathrooms or, to a lesser extent, cooking facilities in their rooms. When I mentioned this, an advocate from Wisconsin stated that his program had had the same experience.

It is possible that our results were flawed or that we did not go far enough. Shared bathroom and cooking facilities may be the only available sites for social interaction in a building. Further questioning may have resulted in a preference for individual bathrooms and alternative meeting rooms. Or, it may be that our clients felt the added responsibility of cleaning a private bathroom or kitchen was not worth the added benefits. Not being a resident of the SRO in question, I am not competent to answer the question. Any answer I give is based on my own life and my own preferences. Because most of us have always lived in residences with bathrooms and kitchens, we assume that everyone wants the same, and yet not everyone does.

The second story is from a different perspective. We represented the tenants of a severely blighted housing project containing 1,063 units. The site was pretty depressing, with a vista of cracked and broken concrete between buildings, with no grass or trees. We had filed suit concerning the conditions at the project. At a tenants' meeting, we asked the tenants to list their demands. When the tenants asked what kinds of demands they could make, I suggested that they make a wish list, with anything they could think of to improve the project. Then, as an afterthought, I added, "for example, how about some grass? You could ask that they rip up some of this concrete and

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have a nice grassy area." The result was immediate and dramatic. People literally left their seats, slapped their heads and made comments to the effect of "Oh, no, anything but that. Anything but more grass."

It was quite clear that the tenants and I viewed grass from a very different perspective. They had experienced grass as an abandoned lot, filled with weeds, broken glass, tires and other junk. They viewed the concrete as an improvement, for which they had fought. Based on my suburban childhood, when I thought of grass, I saw an attractive, well-tended place to play, much more suitable than the existing concrete.

I do not suggest that the inquiry ends at accepting the tenants' definition of "grass." We all knew that there were places where grassy areas were maintained and might be preferable to concrete. The tenants, however, did not believe that the local housing authority would maintain the grass at this particular project. This is not an uncommon view in low-income neighborhoods, where green space is often seen as attracting crime, drugs, and dumping. In order to change this perception, we would need to provide a more positive experience. We might suggest ways to ensure adequate maintenance. The decision, however, is for the clients. Our duty as lawyers is to give the clients a full menu of choices, so that they can make an educated decision. An assumption that grass will be mowed is useful only if we are willing to do the mowing or are somehow confident that someone else will.

That brings me to my third example. A local community development corporation had funds to complete three neighborhood projects. The members of the CDC were particularly concerned with the physical state of their neighborhood school. The local board of education had announced an ambitious building project, which did not include this particular school. As a result, the CDC decided to use its own funds for school improvement. That is when things started to get confusing.

The Yale School of Architecture has a "First Year Building Project." The project is a wonderful example of clinical education, which teaches through experiential learning while providing a substantial community benefit. Prior to the fall term, the faculty identifies a project, with the caveat that the project must be fully funded, with a design and construction within the capabilities of architecture students. Over the past twenty five years, projects have included a two family house for a local non-profit, a bandstand for the New Haven Green, and a host of others. The architecture students, working in teams, spend the fall semester in a design competition. Students spend the spring semester and the summer constructing the winning design. The client pays for materials and expertise beyond that of the students (plumbers, electricians, etc.), but receives over $100,000 in free services. The school project seemed perfect for the School of Architecture's First Year Building Project.

In order to make a presentation to the Superintendent of Schools, faculty and students began preliminary drawings for a 2000 square foot addition to the

school. At a meeting with the Superintendent attended by school officials, CDC officers, architecture and law school faculty, and students, everyone "agreed" that the space would be used for a Head Start classroom, a second classroom, a parent resource room, and an office for the CDC. However, as time went by, the school principal and the Superintendent expressed doubts as to the value of this added space. CDC members began questioning whether the result was worth the expense. Discontent seemed to be boiling below the surface. Finally, the real problem surfaced.

The Building Project had carefully set forth its own capability and requirements. For pedagogic reasons, the architecture faculty did not believe the Building Project could design and develop a structure substantially larger than 2,000 square feet. The CDC, focusing on the savings offered by the Building Project, saw the First Year Building Project as its only option. Thus, the CDC saw itself as having a choice of the 2,000 square foot building or nothing. No one had told the CDC that it could build something else if it was willing to forego the savings.

When presented with that option, the CDC went back to the starting point to consider all of its options, beginning with asking the principal and teachers what they wanted. The response was immediate and definitive: the teachers wanted a room big enough to hold all the children at one time, to serve as a gymnasium/cafeteria/assembly. That required a minimum of 4,000 square feet. The CDC decided to spend the additional funds. Ironically, the School of Architecture was still able to participate in a different manner and bring about substantial savings. In the end, the issue had noting to do with the cost and everything to do with a client who was not shown the entire menu. Although the client grumbled at the cost of a hamburger, the client was delighted to pay for a lobster once that choice was made available.

One more story. In August 1999, I was appointed the Acting Executive Director of the Housing Authority of the City of New Haven. The Housing Authority owns several high rise buildings, which are generally referred to as "elderly housing," although, in reality, the tenants are a mix of elderly and disabled people. Most of the units are efficiency apartments with bathrooms. When I go to tenant meetings at these buildings, the most vocal tenants are elderly and their most common complaint is a lack of security, for which they blame the younger residents. Elderly residents complain that younger residents have more guests, are rowdier, make more noise, and stay up later at night. The guests, the complaint goes, are disruptive, are likely to stay for long periods of time (months, sometimes), sell drugs, and steal from other tenants. Since HUD now permits housing authorities to designate "elderly only" buildings, we could respond to the elderly constituency by complying with their request by designating certain buildings.

There is, however, another side of this story. I recently testified at a hearing of the local Commission on Disabilities, which wanted to know the

effect of "elderly only" buildings on the disabled. One effect would be a reduction in the number of efficiency apartments available for disabled people, many of whom are single men who would likely be homeless but for the existence of those units.

If our goal was to house the homeless, we would not designate any buildings as elderly. In fact, this would be a wise marketing decision, since we have a long waiting list for single people under the age of 50, but virtually no waiting list for the elderly. The question is "who is our clientele?" If we want to meet the needs of the elderly poor, we would use our modernization funds to convert efficiencies to one bedroom apartments, which would meet a market preference. At a cost of $30,000 - $40,000 per unit, this would cost millions of dollars. If we market to homeless single people, we would not have to convert the efficiencies, although management would be more difficult and more costly. While it is easy to conclude we should do both, we are talking about allocating scarce resources, both in the form of the existing units and in the form of our available capital. Nor are the elderly and the disabled the only groups competing for these resources. If we improve units for the elderly we will be foreclosed from spending the same funds to improve (or even maintain) family units.

I offer these stories to raise three points: (1) While it is easy to define a client group broadly, e.g. "the homeless," broad definitions are usually meaningless once we ask "who is the client" and "what does the client want?" Since the group known as "the homeless" consists of individuals and subgroups with competing interests, we need a more sophisticated analysis of who it is we are representing; (2) The unintended consequences of any social policy usually exceeds the intended consequences. If you squeeze the balloon in one place, it will expand somewhere else. If we were physicists, we might recognize more quickly that the laws of motion apply to social policy as well as the physical world and that for each action there is a corresponding and equal reaction. Most housing markets are relatively static. Subsidizing one group is often at the expense of another; (3) People with particularized problems have particularized needs. As Bob Hayes said many years ago, for some homeless people, the answer is "homes, homes, homes."[1] As Robert Ellickson noted in response to Hayes, other people require special services including, mental health, day care, medical, substance abuse, and other services.[2]

When we talk about solving the problems of the homeless, we include collateral problems. Supportive housing often recognizes the need for flexibility and movement in living arrangements, from a totally structured SRO

1. For discussion of the supply side argument, see S. Wizner, *Homelessness: Advocacy and Social Policy*. 45 MIAMI L. REV. 387, 398-404 (1990-91).

2. R. Ellickson, *The Homelessness Muddle*, 99 PUBLIC INTEREST 45 (Spring 1990).

and communal kitchen environment to more independent living. Even within supportive housing, however, mental illness, mental retardation, AIDS, physical frailty, substance abuse and accessability all present different problems for individuals. Each of these problems is indicative of a different subgroup of the homeless population. Each subgroup has a stake in pushing its own agenda, often at the expense of other subgroups. We are talking, after all, not only about the expenditure of limited resources, but about a pot that is inadequate by any standards.

Years ago, I was mystified by the intensity of two legal services attorneys debating whether homelessness was an "entitlements problem" or a "housing problem." I asked a friend about the debate and he looked at me like I was from another planet. The real debate, he explained, was about which department would control funds for providing legal services to the homeless. Since the entitlements and housing units provided different services, often to different populations, this was not an academic question. Whoever won the argument and controlled the funds would get to answer two critical questions: (1) who are the homeless and (2) what are their legal needs.

All of this is complicated (or made easier) by the locations and ways in which we meet our clients. Sometimes we stumble into decisions which have serious ramifications for our clients. When the Yale Law School clinic started an HIV project, we negotiated with a local HIV medical clinic to offer free legal services at their offices. We thought this would be an ideal setting in which to make our services available. It did not take long, however, before a colleague who worked on HIV issues on both a local and national level asked why we had chosen to represent a white, middle-classed clientele instead of a minority, low-income clientele. The short answer to the question is that we did not know we were making that choice. In arranging to see clients at a well-known hospital location, we incorrectly assumed that we would see a cross-section of the client population. Our colleague's description was all too accurate, as the medical clinic's patients were largely people whose treatment was covered by medical insurance. Other organizations in our community served uninsured or underinsured populations. As in many communities, in New Haven this broke down along race and income lines.

While our choice had particularly dramatic consequences, almost any intake site or delivery system has the potential to predetermine case selection. When we did outreach at New Haven's first homeless shelter, we saw single men. When Connecticut instituted a "welfare motel" system for homeless families during the late 1980s, we did outreach at the motels, where we saw single-parent families, almost exclusively headed by women. Telephone intake requires access to a telephone (and, these days, the ability to negotiate an automated system); central office locations require transportation and often exclude the elderly and the disabled; neighborhood offices may, for all practical purposes, be limited to clients from a particular neighborhood,

especially in those communities where neighborhood boundaries are strong and public transportation into neighborhoods is weak. How we make these decisions may predetermine who our clients are, and who our clients are may predetermine the issues we address.

What does all of this mean? Basically, the notion of serving a class as broad as "the homeless" involves defining the class. At some level this is not a very fruitful task. It may be more useful to think in terms of the community we choose to represent. With the homeless, the problem is complicated in that homeless people do not constitute a community in the traditional sense or, for that matter, even an interest group with a common theme.

To work toward an effective definition of community, we need to start with a few assumptions about our own community, i.e. the legal community. First, there are no real generalists. I assume that there is no lawyer who can competently represent clients in cases or projects including the Low Income Housing Tax Credit, mixed-income housing financing, supportive housing, public housing, social security disability, SSI, veterans rights, relocation benefits, mental health issues, evictions, welfare, worker's compensation, unemployment compensation, medical benefits, civil commitment, dependent and neglected children, criminal law, torts, probate law, and the various other areas in which homeless people need representation. No one does everything.

That said, it is useful (and perhaps critical) to develop a framework within which we expect to provide services. One place to start is to ask whether we see homelessness as a supply side or demand side problem. Do we perceive the solution to homelessness (or at least our own goals) as providing more housing or providing services directly to homeless people. I start with this distinction because I believe there is a fundamental difference between developing housing and providing individualized legal services. Housing development is usually on behalf of an institution or corporation and includes an aspect of community support (or, more frequently, community opposition), as well as market issues. Is your community more like Detroit (a city government supportive of housing development, with available subsidies and cheap space), New Haven (over 33% of current housing is currently subsidized, with little available space for development and a strong consensus for increasing home ownership), or suburban and exurban communities (available green space, but strong community opposition to any affordable housing)?

This initial assessment will inform the type of service we provide by limiting the type or amount of housing that can be developed. In making this assessment, it is critical that we inform ourselves as to community partners. Are there groups in the community seeking to build supportive housing, transitional housing, efficiencies, affordable housing, group homes, congregate housing or any other possible combinations to meet the needs of the homeless population? What kind of assistance do these groups need? Are there people

who want to form groups but need assistance with incorporation or tax exemption? Unless we understand the needs of our communities, we cannot begin to make community-based decisions in developing housing.

The analysis is no less exacting for those providing individualized services, sometimes referred to as the "service model." As Gerald Lopez noted in *Rebellious Lawyering*, too many lawyers equate what they do best with what is best for the community.[3] When dealing with scarce resources, this approach, at best, risks a misallocation of resources. There is a risk, however, of doing real harm. When the only available tool is a hammer, we think that everything can be solved by hitting. While hitting a nail may give the desired result, hitting a computer is not likely to be as effective. The same is true with complex community relationships. An attorney with expertise in defending evictions may offer an individualized service that keeps an individual or a family in a housing unit for a longer period of time, thus preventing imminent homelessness. That "success" may be on behalf of someone committing a serious nuisance, drug dealing or violence. The successful intervention on behalf of the individual can damage the larger community. We can justify the representation on a theory of defending individual rights, but not on a community-based approach.

We often note all of the things that are not rocket science or brain surgery. There is a collerary. Some things are rocket science and others are brain surgery. The workings of a community are complicated. We are only starting to understand the many factors that can tip a neighborhood in regards to race, crime and home ownership. We cite the "broken window syndrome" for the proposition that broken windows, uncut grass or other signs of blight can spread, causing neighborhood deterioration. However, we have little knowledge as to how many broken windows we need to fix before localized improvements begin to spread outward.

Evicting a problem tenant is an attempt to fix a window. The eviction defense is often like breaking another window. When we justify the eviction defense based on an individual rights commitment, we should understand that our representation affects a larger community. In some cases we will be hitting the community with a hammer. Like the computer, the community will not always react well.

Let me tell one more story about priorities in representing community interests. As Executive Director of a public housing authority, I received a notice of a zoning board hearing concerning an application for a variance to sell beer in a convenience store adjacent to 175 public housing units. I planned to testify in opposition to the application, as the owner of the adjacent property. I made sure that tenants and other governmental officials knew about the application and my plans. In preparation, I reviewed studies that showed a

3. GERALD LOPEZ, REBELLIOUS LAWYERING; ONE CHICANO'S EXPERIENCE 3 (1992).

strong correlation between the existence of alcohol outlets and violent assaults, particularly the association between youthful violence and the geographic availability of alcohol.

At the hearing, however, my approach changed. The chairman of the zoning board, noting that variances were based on hardship and impediment to land use, inquired as to the applicant's hardship. The applicant's attorney answered in terms of the inconvenience to neighborhood consumers, who would have to travel further (although not that far) in order to buy beer. He presented a petition with over 100 signatures.

This seemed like a golden opportunity to attack the sufficiency of the application and I did so, arguing that, given the lack of a prima facie showing of hardship, the zoning board had no authority to grant the application. As I was making the legal argument, however, I found myself saying, "by the way, I should note that I am a member of the Connecticut Bar." In short, I realized that what I was doing was lawyering, which was different than stating my view as a public official. The local alderwoman, a police officer and a tenant leader, also testified against the variance.

Afterwards, I thought about the fact that the tenant leader was not represented in what was an important legal proceeding. Ironically, two days earlier I had received a request for information from the local legal services program, noting that they represent many public housing tenants, as well as the city-wide public housing tenant organization. While this may be true, I have seen no evidence in support of this claim. Although the Housing Authority is the largest landlord in my community, we would rarely know that legal services exists if it were not for eviction defenses which, in the overall scheme of things, has little institutional effect, other than to delay (but not prevent) a few evictions. This is not a question of bad priorities, it is a question of no priorities. This is not community-based representation and is, in my view, a terrible waste of a valuable community resource.

The failure to set real community-based priorities has a dramatic effect on the homeless population. The Housing Authority has completed its Comprehensive Plan, as required by HUD. Our housing stock includes several hundred efficiency units, which cannot be effectively marketed to the elderly. As I write this, we have more vacant efficiencies than we have elderly people on our waiting list. As we wrestle with issues of allocation of units, not to mention demolition or disposition, we are lobbied by advocates for the elderly, disabled, and those needing supportive housing, not to mention legislators and other governmental officials. Because of the lack of any community-based outreach, the homeless go unrepresented, except to the extent that they are included in a particular supportive housing proposal. As we concluded eight months of planning, with the final report ready for submission to HUD, after months of meeting with unrepresented tenants, we did not receive any inquiries

or demands from any lawyer, other than requests for information from legal services.

Elsewhere, Raymond Brecia, Robin Golden, and I discussed the importance of identifying a "community voice" through developing relationships with community leaders and legitimate neighborhood based institutions.[4] Community institutions are critical in helping to inform us of community needs, including the legal needs of individuals within the community. Of course, it is one thing to define a "legitimate community-based organization" and another to find one, particularly when there are competing organizations claiming legitimacy. Still, homeless resource centers, shelters, and the streets are excellent places to meet with homeless people and identify their needs. Non-profit service providers and unincorporated groups are often desperate for representation.

In addition to meeting specific legal needs of the groups, however, members of the groups will identify individual needs (whether you want them to or not). That is the nature of working with groups whose individual members cannot afford private attorneys. Structuring individual representation within group goals also fosters a fuller discussion of how individual problems support or conflict with those goals. Conflicts between individual problems and group goals may lead to a reassessment of group interests or, at least, a clearer enunciation. That is not to say that the group should influence the lawyer's actions concerning an individual client once the lawyer has agreed to represent that client. Such influence would raise ethical problems.[5] Nothing prevents an attorney, however, from refusing to accept an individual case because it conflicts with group goals.

Ultimately, a community-based process requires identifying the community and setting priorities. If those priorities are set in a law office by lawyers, informed predominantly by those who manage to get to the law office, the priorities are unlikely to be representative of the community at large. Real priority setting must involve a client base and must occur on the clients' turf.

4. R. Brecia, R. Golden & R. Solomon, *Who's In Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 856-860 (1998).

5. *See, e.g.*, Connecticut Rule of Professional Conduct, Rule 1.13, Organization as a Client, which permits representing an organization and its constituents, subject to Rule 1.7, Conflict of Interest. *See also* Rule 5.4, Professional Independence of a Lawyer, particularly Rule 5.4(c). The Connecticut Rules are virtually identical to the Model Rules.