

# WHO'S IN CHARGE, ANYWAY? A PROPOSAL FOR COMMUNITY-BASED LEGAL SERVICES\*

*Raymond H. Brescia\*\**

*Robin Golden\*\*\**

*Robert A. Solomon\*\*\*\**

## Introduction

For over one hundred years, some of our country's most dedicated lawyers have struggled to provide legal services to poor people. The road has not been an easy one. Richard Nixon vetoed a legal services bill over the issue of presidential appointments, then signed the Legal Services Corporation Act just before resigning.<sup>1</sup> Nixon's Vice-President, Spiro Agnew, was a vocal opponent of federally-funded legal services.<sup>2</sup> Ronald Reagan submitted eight consecutive budgets seeking to eliminate all federal funding for the Legal Services Corporation ("LSC").<sup>3</sup> Simultaneously, he appointed a hostile LSC board of directors. Bill Clinton's election, however, brought new hope to advocates. Hillary Clinton is a former president of the LSC Board.<sup>4</sup> The early Clinton budgets included an increase in LSC funding, but they were countered dramatically by the severe cuts and restrictions imposed by the 1994 Republican-controlled Congress.<sup>5</sup>

---

\* This article was written in conjunction with the Symposium at Fordham Law School on November 5-6, 1997 on *Lawyering for Poor Communities in the Twenty-First Century*.

\*\* Director, Mental Health Project, The Urban Justice Center, and Adjunct Professor, New York Law School.

\*\*\* Law Clerk, Chambers of Justice Richard Palmer, Conn. State Supreme Court.

\*\*\*\* Clinical Professor of Law, Yale Law School.

1. See Joseph A. Dailing, *Their Finest Hour: Lawyers, Legal Aid and Public Service In Illinois*, 16 N. ILL. U. L. REV. 7, 10-11; PHILLIP J. HANNON, FROM POLITICS TO REALITY: AN HISTORIC PERSPECTIVE OF THE LEGAL SERVICES CORPORATION 639, 644-45 (1976); Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism* 32 U.C.L.A. L. REV. 474, 527 (1985).

2. See Fred Barbash, *White House Wants to Cut Off Federal Legal Aid for the Poor*, WASH. POST, Mar. 6, 1981, at 3; *Abel*, *supra* note 1, at 483.

3. See, e.g., *Barbash*, *supra* note 2.

4. See Henry Weinstein, *Great Society's Legal Aid For Poor Targeted By Budget Ax*, L.A. TIMES, Dec. 29, 1995, at A1, A3.

5. See Steven Stycos, *Revoking Legal Services: Republicans Want to Keep Lawyers from the Poor*, THE PROGRESSIVE 1 (April 1996); Kenneth Jost, *Legal Initiatives*

While these “external” forces were determining the fate of LSC, “internal” forces were debating the means of providing services. Most historians consider the early 1960s the start of the modern era in providing legal services to the poor. At no time during the modern era has there been a consensus among legal services providers on a single delivery system. In practice, however, a system based on individualized services in discrete areas has dominated.

In this article, we reexamine this service mode, its benefits and deficiencies. We argue that the service model is not the best use of a limited legal resource. Legal services programs can improve the quality of their service by establishing community-based programs which emphasize closer links with community groups and community institutions. By moving in this direction, legal services programs will be better situated to mobilize community resources and reflect community priorities. A community-based program will avoid the top-down, lawyer-dominated priorities that we believe now exist.

## I. The History of Legal Services to the Indigent

### A. History Pre-Dating the Legal Services Corporation

The history of legal services to the indigent in the United States begins with the creation of the German Legal Aid Society in New York City in the 1880s, which rendered legal assistance to poor German immigrants.<sup>6</sup> This organization ultimately became the Legal Aid Society of New York, which exists today. The Legal Aid Society broadened its clientele through a connection with the Settlement House movement in New York City’s immigrant ghettos.<sup>7</sup> Even though this link was formed, the leaders of the Settlement House Movement chose to work with the private bar on a volunteer basis to handle their larger, law reform matters.<sup>8</sup> As the Settlement Houses became discredited as too political and progressive, Legal Aid distanced itself from these attacks and found support from private funders.<sup>9</sup> Legal Aid attorneys focused solely on individual cases, often pressing their clients to settle their

---

*Stall: Shareholder Law Passes, but Tort and Crime Bills Fail*, 82 A.B.A. J. 20. The LSC appropriation was reduced by one-third, to \$278 million.

6. See MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* 11 (1993).

7. See *id.* at 22.

8. See *id.* at 14. According to Davis, Legal Aid attorneys were considered less skillful than members of the private bar. *Id.* at 15.

9. See *id.* at 15.

claims.<sup>10</sup> Funders and the private bar preferred this individual service approach to a more political one.<sup>11</sup>

As other legal aid programs developed throughout the first half of the twentieth century, the scope of services expanded. Limiting services to the “worthy poor,” however, remained the basic approach.<sup>12</sup> Most services were provided by local volunteer lawyers on a case-by-case basis. The goal was to provide the poor with access to the legal system.<sup>13</sup>

New Haven, Connecticut’s legal services programs provide a typical example of this approach. Before the Ford Foundation sponsored its highly-documented legal services model program in New Haven in 1963,<sup>14</sup> the city had a Municipal Legal Aid Bureau dating back to 1927.<sup>15</sup> Grace Bossie, who was not a lawyer, directed the Legal Aid Bureau (“LAB”) until 1963, after which she became the Executive Director of the New Haven County Bar Association.<sup>16</sup> Throughout Grace Bossie’s tenure, she would identify worthy cases and seek local lawyers to handle the cases on a volunteer basis. Yale law students were integral to this process. Francis X. Dineen, one of the two attorneys funded through the 1963 Ford Foundation grant (the other was Jean Camper Cahn), was a student director of the Yale Law School Legal Services Program which worked with the LAB. Dineen reports that the cases involved primarily small claims matters handled by students being supervised by local attorneys or by Grace Bossie.<sup>17</sup> There was no concept of community outreach, community control in prior setting, or law reform.<sup>18</sup> This basic model of individualized casework for the worthy poor was

---

10. *See id.* at 13.

11. *See id.* at 15.

12. For an analysis of the division between the “worthy” and “undeserving” poor in American history, *see* MICHAEL B. KATZ, *SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (1996).

13. *See* Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401, 1405 (1995); DAVIS, *supra* note 6, at 10-21.

14. *See* EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM* 22 (1974).

15. *See* Charter of the City of New Haven § 2-17 (establishing a municipal legal aid bureau from March 1, 1987 “to furnish legal aid and advice in proper civil cases to any person who is financially unable to employ counsel”).

16. Interviews with Grace Bossie and Francis X. Dineen (on file with the authors).

17. *See id.*

18. *See id.*

replicated many times across the country. It is generally referred to as “legal aid.”<sup>19</sup>

## B. The Creation of the Legal Services Corporation

Legal services was supposed to be a radical departure from a legal aid approach. As Matthew Diller notes, the idea that lawyers had a role in eliminating poverty was new in the early 1960s.<sup>20</sup> The old legal aid model was criticized as a “band-aid approach to the poor’s deep problems” as opposed to a more structural, reform-based approach.<sup>21</sup> The Legal Services Corporation (“LSC”) was constructed on this newfound anti-poverty foundation.<sup>22</sup>

Alan Houseman, identifies five critical elements that differentiated legal services programs from “legal aid” programs:

First, legal services programs were responsible to all poor people as a client community.<sup>23</sup> This was a dramatic departure from the prior model of serving only those clients who appeared at the lawyer’s door with a defined problem. Moreover, responsibility for a community implied identifying and understanding that community.

Second, clients had the right to control decisions about the solutions to their problems and, by participating on a local legal services program’s board of directors, to participate in identifying problems to address. In Houseman’s words: “[L]egal services was an advocate whose use was to be determined by poor people rather than an agency established to give services to poor people.”<sup>24</sup>

Third, legal services was committed to “redress[ing] historic inadequacies in the enforcement of legal rights of poor people caused by lack of access to the institutions that created those rights.”<sup>25</sup> This was the now-classic law reform approach, with legal services programs as the “chief law enforcers for federal agencies”<sup>26</sup> on behalf of poor people. In earlier days, opponents had vigorously objected to law reform efforts, likening them to social

---

19. See Marc Feldman *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529 (1995); Alan W. Houseman, *Political Lessons: Legal Services for the Poor - A Commentary*, 83 GEO. L.J. 1669 (1995).

20. See Diller, *supra* note 13 at 1404.

21. *Id.* at 1405.

22. Congress created the LSC in 1974. See Legal Services Corporation Act, Pub. L. 93-355, 88 Stat. 378 (1974) (codified as amended at 42 U.S.C. § 2996)

23. See Houseman, *Political Lessons*, *supra* note 19, at 1684

24. *Id.*

25. *Id.*

26. *Id.*

engineering<sup>27</sup> and bad policy.<sup>28</sup> More recently, legal services programs have been criticized for ignoring law reform responsibility.<sup>29</sup>

Fourth, legal services, through "community education, outreach efforts and physical presence in the community"<sup>30</sup> would assist clients in identifying legal needs. Legal services programs would respond to need rather than demand.<sup>31</sup> Legal services would be proactive, empower clients and achieve community goals.<sup>32</sup>

Finally, legal services would provide a "full range of service and advocacy tools,"<sup>33</sup> including litigation, appeals, administrative representation, legislative advocacy, rule drafting and comprehensive strategies.<sup>34</sup>

These five elements were goals set for legal services programs. Critics such as Marc Feldman,<sup>35</sup> Gary Bellow and Jean Charn<sup>36</sup> disagree with Houseman's view that these goals were accomplished.<sup>37</sup> While Houseman supports his conclusions with empirical data, Bellow and Charn assert that no such data exists. They are all correct. Volumes of numbers exist, but such data is of minimal value.<sup>38</sup>

Throughout the history of federal funding for legal services, local legal services lawyers have felt pressure to emphasize quantity above quality. As a legal services attorney in Pennsylvania and

---

27. See Martin L. Haines, *Voice of the Bar: Openness Becomes Us*, N.J. L.J., Apr. 26, 1993, at 16; *Inside the Courts: The Secret System, Part I*, N.J. L.J., June 14, 1990, at 11.

28. See Geoffrey C. Hazard, Jr., *Social Justice Through Civil Justice*, 36 U. CHI. L. REV. 699 (1969). Hazard argues that legal services programs should focus on civil justice (enforcing property claims recognized by law) and not social justice (transfer of property interests by means of law operating posterior to the formation of property). See *id.* at 711.

29. See generally Feldman, *supra* note 19; see also Gary Bellow & Jeanne Charn, *Paths Not Taken: Some Comments on Feldman's Critique on Legal Services Practice*, 83 GEO. L.J. 1633 (1995).

30. Houseman, *Political Lessons*, *supra* note 19, at 1685.

31. *Id.*

32. See Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 VILL. L. REV. 521, 524-25 (1981) (noting one of the original purposes of the early OEO legal services program was "to assist groups of poor people in organizing as groups.").

33. Houseman, *Political Lessons*, *supra* note 19, at 1685.

34. See *id.*

35. See generally Feldman, *supra* note 19.

36. See Bellow & Charn, *supra* note 29.

37. *Id.*

38. We recognize that there is no such animal as "legal services programs" and no description can possibly apply to every program. As Alan Houseman points out, each local program was and remains unique, with localized skills, experience levels, resources and politics, strengths and weaknesses. Perhaps most important, the 326 legal services programs have 326 directors. Just as elementary schools tend to reflect their principals, so do many legal services programs reflect the abilities and inclinations of their directors. See Houseman, *Political Lessons*, *supra* note 19, at 1686.

Connecticut from 1972 through 1985, one of the authors<sup>39</sup> remembers meetings where the sole purpose was to learn how to report and distinguish “information and referral,” “advice only,” and “brief services.” These categories magnified productivity beyond reason and “proved” that attorneys were not spending their time on class actions and other forms of social engineering.

The “data” overstated client outcomes. For example, in the mid-1970s, recipients of funds through Title XX of the Social Security Act (the predecessor to Social Services Block Grant Funds) had to complete a statistical reporting form for each service provided. One category of service was “Information and Referral.” The form included a box for “objective achieved” or “objective not achieved.” One day, a client called, seeking housing. She said she had gone to the welfare department, which referred her to a local housing agency, which referred her to family services, which referred her to legal services. No one could help her. Nor could the author. It did, however, occur to him that the federal government would receive four forms, and identify four “cases.” In three of those cases, the client’s objective was achieved through successful information and referral. The client, however, still did not have a place to live. Any legal services worker can tell similar stories about LSC statistics. There was, of course, a political rubric for the numbers game. Continued and increased funding depended on service, not on impact: quantity, not quality.

Moreover, while the legal services community talked about law reform, the cases trotted out for “show-and-tell” in newspapers and in Congressional testimony were usually non-political service cases. Legal services advocates showcased cases of the worthy poor. They argued that these individuals would have suffered from the unfair actions of government or landlords or unscrupulous businesses if not for our intervention. This tendency has not changed. In the December 29, 1997 Connecticut Law Tribune tribute to legal services, local programs identified four “worthy poor” cases to showcase: (i) a working mother, whose childcare benefits from the state were delayed for several months (the client eventually paid her child care worker with her rent money, resulting in the commencement of an eviction proceeding against her); (ii) a quadriplegic “father of two” suffering from Lou Gehrig’s disease, whose home care health services were terminated; (iii) a child with

---

39. Robert Solomon, who worked for Buck’s County Legal Aid Society in Doylestown, Pa. and New Haven Legal Assistance in New Haven, Conn. is the oldest of the authors.

“a debilitating condition,” whose parents “endured for two years without help from supplemental security income (“SSI”) disability benefits, which could have eased the suffering of the child;”<sup>40</sup> and (iv) a mother and children facing domestic violence. (This last story included a “before and after” poem from one of the children).<sup>41</sup> There was no mention of any of the following: client participation in decision making; that these cases reflected broader community needs; a description of the full-range of services offered by the programs.<sup>42</sup>

Each of these clients presents a compelling case. Each should have legal representation. In fact, each would have been near the top of the list under the old, discredited “legal aid” system. It is instructive that the image legal services chooses to project in its most public opportunity is one that totally ignores Houseman’s five elements differentiating legal services from “band-aid” representation.<sup>43</sup>

### C. Ronald Reagan and the Drive Toward Quantity

The pressures to report large numbers of cases increased dramatically in 1981, when Ronald Reagan appointed a hostile board of directors to the LSC. Former LSC insiders, once considered by attorneys in the field as “Washington” or “LSC bureaucrats,” were now the heroes of a government in exile. The real enemies were now in power, routinely passing regulations limiting what they saw as the worst abuses of legal services (i.e., class actions, suing governments, representing illegal aliens or farm workers, organizing

---

40. *A Welcome Respite for Legal Services*, CONN. L. TRIB., Dec. 29, 1997, at 1.

41. *See id.*

42. What is equally troubling is the extent to which each of the individual clients outlined in these stories is described as helpless without legal assistance; indeed, the extent to which the individual clients were mythologized as helpless was most likely consistent with the legal strategies employed to assist them, thereby strengthening the isolation and dependence of the clients rather than using the legal advocacy as a means of empowering them. For an analysis of this tension between traditional advocacy and empowerment, *see, e.g.*, Anthony Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 673-674 (1987/88); Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for AFacilitative Lawyering?*, 1 CLINICAL L. REV. 639, 646 (1995).

43. This decision to publicly sublimate an activist agenda in favor of a “service to the worthy poor” face has internal repercussions as well. So much effort goes into creating the public image that, over time, the imagery becomes reality both internally as well as externally.

and lobbying legal services programs).<sup>44</sup> With a twenty-five percent reduction in federal funding (more in some cases, due to the impact of the cut in the Social Services Block Grant and other funds originating with the federal government), programs faced retrenchment. Staff size shrank. Neighborhood offices were closed.<sup>45</sup> In a move toward efficiency, programs turned to increased specialization, causing greater attorney isolation and separation from the client community.

In late 1981, the National Legal Aid and Defenders Association ("NLADA") sponsored a conference to deal with the Reagan assault on legal services and the resulting retrenchment issues. Legal services offices, which never had the luxury of meeting the legal needs of their communities, were forced to determine how to meet the same needs with fewer resources. And they had to do this with completely demoralized staff.

It is impossible to prove empirically what effect retrenchment had on Houseman's five elements. Anecdotally, however, a common theme at the 1981 NLADA conference was a restructuring of priorities, with emergencies placed first.<sup>46</sup> Many legal services workers would not accept serving fewer clients facing eviction, benefits termination or domestic violence. While some programs experimented with pro-se representation and community education, involvement in the client community declined and, in many instances, disappeared. "Emergencies," which had been the bulk of legal services representation, now occupied legal services offices full time. While priority lists looked impressive, many offices never moved beyond the top of the list. The great majority of clients went unrepresented.

Although LSC staff did not engage in law reform advocacy generally, with the future of LSC in doubt, clients were mobilized, often with great effect, to "Save Legal Services."<sup>47</sup> This legislative advocacy was focused on securing more funds for the legal services programs at the expense of lobbying efforts on other issues directly effecting clients.

---

44. See Legal Services Corporation Act, Pub. L. 93-355, 88 Stat. 378 (1974), (codified as amended 42 U.S.C. § 2996); Houseman, *Political Lessons*, *supra* note 19, at 1680-91 (discussing consequences of legislative actions).

45. *Id.*

46. Robert A. Solomon, one of the authors of this article, attended this conference as the incoming Executive Director of New Haven Legal Assistance Association.

47. "Save Legal Services" was an organized effort and included support from local programs, NLADA, the ABA and unions.



#### D. The 104th Congress's Assault on Legal Services

With the election of President Clinton came a brief glimmer of hope. While the first two Clinton budgets increased LSC funding, the Republican Congressional landslide of 1994 reversed this momentum and brought swift and massive changes to LSC.

Total funding to the Corporation was reduced by almost thirty-three percent to \$278 million.<sup>48</sup> The remaining funding was tied to new, wide-ranging and substantive restrictions on staff activity.<sup>49</sup> The legislation poisoned the entire funding well of organizations receiving any LSC funds by imposing the restrictions on all work performed by such organizations, regardless of the funding source. Unlike in the past, LSC recipients could no longer raise non-LSC funds to perform otherwise restricted activities.

In the face of these changes, programs throughout the country formulated different responses. Some, like the Legal Aid Society of New York, the nation's largest public interest law firm, declined to accept any LSC funding, thereby relieving themselves of LSC restrictions.<sup>50</sup> Others, like the legal services networks in Connecticut and Pennsylvania, devised new corporate structures to separate restricted from non-restricted activities.<sup>51</sup> But a number of programs have adhered to the new restrictions. For many programs, the restrictions simply did not require much change in their services, which speaks volumes about the extent to which LSC-funded offices were engaged in "political" or "unpopular" work.<sup>52</sup>

Funding cuts have resulted in further retrenchment during the past two years. Alan Houseman reports that LSC funding was cut by thirty percent. Staff size was reduced by 12.9% and 12.7% of local offices were closed.<sup>53</sup> Thus, due to reductions in staff and the

---

48. See Jost, *supra* note 5, at 22.

49. See *id.*

50. See JOHN A. DOOLEY & ALAN HOUSEMAN, LEGAL SERVICES HISTORY 25 (1984); see also Symposium, *The Future of Legal Services: Legal and Ethical Implications of the LSC Restrictions*, 25 FORDHAM URB. L.J. 279, 287 (discussing reaction to the restrictions imposed by Congress by various legal services offices.).

51. These structures appear cumbersome at best, with increased administrative costs and an isolation of services and staff.

52. See Alan W. Houseman & Linda E. Perle, *What Still Can Be Done: Representation of Clients by LSC Recipients*, REPORT OF THE CENTER FOR LAW AND SOCIAL POLICY (Dec. 2, 1997) (reporting that "[o]ver 95% of the work done in legal services in 1995 can continue in 1997 and over 98% of the cases brought to court in 1995 could be brought in 1997").

53. See Alan W. Houseman, Can Legal Services Achieve Equal Justice, Materials for the First Annual Arthur Lyman Colloquium, Yale Law School (Mar. 5-6, 1998) YALE L. & POL'Y REV. (forthcoming). It is instructive that both New Haven Legal

new limits on the substantive work such staff can perform, programs are retreating from the community and moving more completely toward the individualized "legal aid" model of representation.

## II. Critique of the Service Model of Representation

After the initial funding cuts in legal services programs in the early 1980s, many programs engaged in a conscious retrenchment. They withdrew from the community, both physically and politically. This withdrawal was marked by an explicit return to the service model of delivery; the same model which had been denigrated as a "band-aid" approach in the 1960s.<sup>54</sup>

Recent LSC funding cuts, substantive restrictions, and sweeping changes in the nation's welfare laws have contributed to a sense of crisis in legal services. We believe, however, that the emphasis on individualized services and the withdrawal from the community-based models present as great a challenge to legal service's programs continued vitality and relevance. In the face of this crisis, legal services programs should move toward a community-based delivery system. Because the traditional model has both practical and political shortcomings, we advocate a movement away from the service delivery model. This change will bring LSC back to its original goal of a community-oriented approach to the provision of legal services. Such programs will better serve their communities and become, once again, a positive force for structural change.<sup>55</sup>

What follows is (1) an analysis of the service delivery model and (2) some of what we and others have seen are the practical and political shortcomings of such an approach.

### A. The Service Model and the Assumptions That Justify It

Service model defenders presume that its implementation will result in high quality services in discrete areas (i.e., those individuals served will avoid significant harm through legal intervention). We believe this presumption is exaggerated. While legal services programs provide valuable services, benefits from a service model are less than generally reported. Other models could provide similar results, but with greater lasting value. Also, a different model

---

Assistance and MFY in New York have closed all of their neighborhood offices, centralizing their respective programs in single, "downtown" offices.

54. See Diller, *supra* note 13.

55. See *infra* Part. IV.D.

will avoid programs becoming overly-specialized, lawyer-dominated and isolated from the community.

The core assumption of the service model is that individual clients with discrete legal problems will receive formal representation by an attorney or paraprofessional. Over the course of the representation, the staff member meets with the client, identifies and assesses the problem, plots the strategy that will be employed, drafts documents and negotiates orally and in writing. If necessary, she appears in court or in an administrative proceeding on behalf of her client. Finally, the advocate prevails, either through formal or informal dispute resolution. The problem is resolved; disaster is averted. Resolution may include obtaining or maintaining welfare benefits, reinstating tenancy or obtaining child support. The client has been served and the staff member moves on to serve another client. The result is significant (in many cases, critical) for those clients who actually receive this idealized service.

Even accepting, as legal services advocates do, that serving a small minority of eligible clients justifies implementation of the service model, the defense of the model still hinges on several assumptions: (i) that clients face discrete legal issues which are subject to the type of individual client representation offered; (ii) that clients have the wherewithal to approach legal services offices with their problems at the right procedural moment in their case;<sup>56</sup> (iii) that the legal services office has adequate staff to handle such problems; and (iv) that the problem is susceptible to resolution.<sup>57</sup>

If any of these assumptions fail, the model fails, because the assumptions are mutually interdependent. If the breadth or quality of the legal problem does not lend itself to individual client representation, or clients fail to present their problems to legal services offices in a timely manner, or staff is unavailable or unwilling or incapable of addressing the problem, then the services actually available to clients lose their significance. The service model, therefore, provides little or nothing to the large majority of eligible

---

56. The dynamic can result in a particular client seeking assistance either too early or too late, depending on the type of legal problem the office identifies as being susceptible to representation. For example, in landlord-tenant litigation, an office may make a decision that (1) it will not screen cases for intake if a tenant has not received an eviction complaint from her landlord and (2) it will not accept a case if the tenant has already filed a pro se answer in the eviction proceeding, thus providing the potential client with a very narrow window in which her case may even be considered for representation.

57. See Stephen Wexler, *Practicing Law for Poor People*, 79 *YALE L.J.* 1049 (1970).

clients in need of legal services. This fact is borne out by statistics showing that legal services offices fail to address a significant number of the legal issues poor people face.<sup>58</sup>

Legal services programs cannot serve the entire eligible client pool. The model assumes, however, that those cases that are accepted reflect the primary needs of low-income communities. We believe this assumption is incorrect. Members of poor communities face extreme adversity, including environmental degradation, joblessness, a lack of marketable skills, poor education, political alienation and pervasive discrimination.<sup>59</sup> Many are unable to meet even their most basic needs without extensive governmental intervention. Despite these factors, legal services providers have chosen to address only those limited types of cases that fit the service model. The range of cases accepted is based on one or more of the following: staff skills, preferences and availability; funders' preferences; and whether the client is the first or the fifth case of that type that the office has been asked to handle that week. This model does not address the complex needs of the community. Rather, representation is limited to a narrow range of specialties, usually landlord-tenant disputes (offering exclusively tenant-side representation), denial of government benefits, child custody cases, and restraining orders in domestic violence cases. Even within these different areas of representation, the attorney's specialty drives the services provided. Lawyers decide which cases they believe fit the program's priorities. These decisions are made usually unilaterally with little or no community involvement. As a practical matter, "lawyer preference" and "high priority" become synonymous.<sup>60</sup> As Gerald Lopez states, activist lawyers equate "what

---

58. See DOOLEY & HOUSEMAN, *supra* note 50, at 5.

59. See Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1734-1735 (1993).

60. Additionally, there is the pressure of accepting the hardship cases that may appear at the office door. Recognizing what is described as "the visceral urge to respond to present crises," one commentator suggests that two ways to improve the ability of legal services attorneys to engage in a more structural approach to a community's legal problems would be (1) to remove the decisions of what cases to accept or reject from "front-line attorneys," thereby minimizing the psychological strain of having to reject clients with pressing, immediate needs when a more efficient approach would require devotion of staff time to structural issues, and (2) to "explore the prospect of representing groups more often" because in such representation, "the rescue mission is at least diffused, and the [structural, long-term approach to client problems] may be more attainable." Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 969-970 (1992).

they already [do] best (or most often) with what would most help the community."<sup>61</sup>

Even a client with a problem that fits this model may not receive assistance. Legal services programs and the American Bar Association report the chronic inability of programs to meet all the legal needs of poor communities.<sup>62</sup> In places like New York City, roughly one in ten tenants in housing court has attorney representation, a figure that includes wealthy tenants as well as poor. It is thus more likely than not that a potential client will go unrepresented, even where her legal problem falls within the range of cases the office handles.<sup>63</sup>

In this sense, the service model operates like a lottery in which a minority of eligible clients receive valuable service. The majority of clients are forced to deal with eviction, loss of benefits, domestic violence and custody disputes without the benefit of legal services, not to mention the whole host of other needs that go ignored.

Proponents of the service model argue that the service model is superior to others because too many emergency needs will go unmet if other models are implemented. Yet, as we can clearly see, far too many emergencies slip through the gaping holes in the delivery system and a whole range of issues go unaddressed, even with implementation of the service model. The service model cannot meet its own aspirations. Such aspirations, therefore, do not justify employing this model over other approaches.

## **B. The Practical and Political Effects of the Increased Emphasis on A Service Delivery Model**

### *1. Practical Effects*

Faced with dwindling resources, many programs have increased subject matter specialization in an effort to achieve more efficiency. After years of implementing the service model, staff members have become quite skilled in several substantive areas of law. Their work has led to significant changes in the way that government and private actors treat the poor in these areas. These skills, however, have been acquired at the cost of developing others. Community input concerning subject matter priorities is limited. If, as we believe, poor communities require a broader range of skills than those offered, the value of these specialized attorneys diminishes.

---

61. See GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S EXPERIENCE* 3 (1992).

62. See David Barringer, *Downsized Justice*, 82 A.B.A. J. 60, 64.

63. *Id.*

Legal services programs perpetuate the problem. Staff members are trained within a set model of traditional and increasingly arcane practice areas and methods. Burdensome caseloads curtail the possibility of more broad-based work. Clients with multiple problems are unlikely to have all of their problems addressed by a single attorney. For example, consider a defense to an eviction proceeding. Many legal services' attorneys have developed a specialized knowledge of the substance and procedure of eviction defense and provide exceptional representation in such cases. At the same time, their knowledge in other areas is limited. If a lawyer becomes aware of benefits problems, another attorney with benefits expertise will handle such matters. If the apartment has lead paint, a third attorney might handle a special education problem for a lead-poisoned child, provided the legal services program provides assistance with special education issues. Any personal injury problem will be referred to the private bar. If a community's primary housing problem is a need for quality, low-income housing, the legal services office should seek out potential developers of such housing. Instead, legal services' offices will likely maintain its anti-eviction practice, because representing tenants in eviction cases is work it has always done. Moreover, the nature of these eviction defenses will not change with changing vacancy rates or changing neighborhoods.

Another limitation of the service model can be seen in a legal services office's welfare practice. In many communities, with the advent of significant changes in the nation's welfare laws, large numbers of recipients will face termination of their benefits. With drastic reduction in staff size, legal services offices cannot possibly handle client demand. They must engage in extensive triage, either attempting to identify the worthiest cases, or worse, arbitrarily selecting a certain number of cases from the pool of individuals and families seeking assistance. Legal services programs instead could train lay advocates and law students to provide representation in benefits termination cases. Most offices, however, fail to train others to provide such representation. They opt instead in favor of providing staff representation for a few individuals, rather than some less perfect form of representation for many individuals.<sup>64</sup>

---

64. Non-legal services offices have successfully implemented high-volume models of representation using law students in administrative hearings, notably, the Unemployment Action Center (dealing with unemployment compensation hearings) and the Urban Justice Center (dealing with welfare fair hearings). See DAVID LUBAN,

Physical and political withdrawal from the community creates a lawyer-driven system that often results in fewer clients served ultimately, both because of the narrowing of the subject matter of the representation and the breakdown of lines of communication between legal services programs and low-income communities. The commitment to the service delivery system and resulting retrenchment has other practical effects.

First, by closing community-based offices and consolidating staff into centralized space, program staffs become physically removed from the community. The effects of this consolidation can be minimized by community outreach. In practice, however, there are more than enough potential clients who come to the central offices. Unfortunately, only those clients who are aware of the program's existence and who survive the case selection and intake process will receive assistance. As a result, many needy families are forced to rely on word-of-mouth for information regarding the potential availability of representation and the scope of that representation.<sup>65</sup>

Second, programs misuse resources by allowing attorneys to represent clients at administrative hearings instead of assigning lower paid paralegals or volunteer students. This is a predictable result of over-specialization. Once an attorney's workload is limited to social security and welfare cases, the social security and welfare cases must fill that attorney's time. If the bulk of those cases require representation at administrative hearings, the attorney may need to attend those hearings to fill the workday, even though a paraprofessional or law student could serve in a meaningful capacity in this representation. Strict adherence to a lawyer-driven, service delivery model obligates that attorney to provide extensive, high quality legal services to a few, deserving clients, while many more equally deserving clients go completely unrepresented. Attorney time would be better spent training and supervising lay advocates.<sup>66</sup>

---

LAWYERS AND JUSTICE: AN ETHICAL STUDY 240-242 (1996) (discussing the drop in volume and related reactions by law schools and legal services offices).

65. Given subject matter specialization, staff within a single program may not even know the entire scope of representation provided by the office. It is thus highly likely that the word "on the street" concerning the availability of legal assistance will also be uninformed, thereby foreclosing the program's ability to meet the legal needs of those poor families that will never even seek assistance.

66. For a description of how an office can utilize staff to train lay advocates, see Jennifer Gordon, *We Make The Road By Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change* 30 HARV. C.R.-C.L. L. REV. 407 (1995).

Third, there is constant pressure to maintain quantity. Legal services lawyers face institutional pressure to accept cases which can be disposed of within manageable time limits. This emphasis mitigates against long-term community education or community development projects, the success of which cannot be easily quantified.<sup>67</sup>

Finally, even if programs perceive the need for new skills, they are slow to broaden services. Funding limitations impede staff development, sometimes overwhelming it completely. Priority setting tends to reflect funders' preferences, current staff skills, and staff willingness or unwillingness to learn new areas of law.

## 2. *The Political Role of the Service Delivery Model*

Emphasis on the service delivery model has significant political effects as well. The service model undermines the possibility of more broad-based and, at the same time, more efficient, collaboration between legal services programs and the communities they serve.<sup>68</sup> Priorities are determined in a top-down, attorney-dominated process, instead of a bottom-up, community-oriented process. Retrenchment and withdrawal from the community increase the likelihood that staff will dictate the program priorities. Community needs are frequently disregarded or misinterpreted. The staff's ability to provide certain services becomes the driving reason for providing them, regardless of whether this approach is detrimental to the community-at-large.

Without significant community input into resource deployment and priorities, the services ultimately provided may actually result in some negative effects.

First, staff representation of certain individuals may perpetuate nuisances or otherwise impede the development of safer communities, e.g., the representation of drug dealing tenants, particularly in public housing.<sup>69</sup>

Second, focusing on representing discrete individuals may impede the development of coalitions to deal with common problems. Common problems remain undetected, in part, because legal services programs deal with individual manifestations of these problems separately. As Stephen Wexler pointed out almost thirty

---

67. See *supra* note 60 and accompanying text.

68. See, e.g., LOPEZ, *supra* note 61, at 10.

69. See Robin Golden, Towards a Model of Community Representation for Legal Assistance Lawyering, Materials for the First Annual Arthur Lyman Colloquium, Yale Law School (Mar. 5-6, 1998) YALE L. & POL'Y REV. (forthcoming).



years ago, poor peoples' problems cannot be isolated from the rest of their lives.<sup>70</sup>

Third, legal services may impede the growth of community organizations by defining problems as deprivations of individual legal rights, as opposed to community problems susceptible to community solutions. This encourages people to turn to legal services offices for assistance instead of community-based groups, thereby foreclosing the possibility of truly community-based solutions.

The isolation of legal services offices raises another issue. People in poor communities have little, if any, positive interactions with the civil justice system. The State is a constant presence in peoples' lives. If that presence becomes overwhelming, an attorney might intervene. For instance, the court will appoint a lawyer if the state tries to remove children from the home. A lawyer might stop a welfare termination or delay an eviction. A lawyer might get a restraining order to prevent domestic abuse. As this demonstrates, under the service model, poor people only get lawyers to stop something bad from happening.

That is not true in the world of middle-class or wealthy people. Lawyers help clients buy houses, establish businesses, act proactively with government (zoning variances, SBA loans) and plan estates. Even litigation is different. Plaintiffs seeking to be made whole hope litigation will improve their current status. Poor people, at least under the service model, use litigation to maintain the status quo (e.g., to keep the benefits they already have).

Assume that the service model actually works. Assume that low-income individuals can appear at the door of the local legal services office, hand over their problem for a few months, and have it resolved. Even in this idealized scenario, what has the model accomplished? Proponents of the service delivery model see the service as an end in itself and ask: "What more could anyone ask of a legal services office?"

But what has the service model taught the client? Although some may argue that such an experience is empowering for the client, it is hard to see what power is acquired when a legal services office becomes just another in a long line of agencies that interact with low-income individuals. If one entity is incapable of fixing the problem, whether it is the local welfare office or public housing authority, low-income individuals move on to the next office until

---

70. See Wexler, *supra* note 57, at 1050.

the issue is resolved.<sup>71</sup> Under this model, legal services offices risk being perceived (or may already be perceived) as a social welfare agency, reminiscent in many ways of the old legal aid offices from which early legal services offices so carefully distanced themselves. Remember Houseman's five critical elements of legal services? What happened to representing the client community?

### III. Towards a Model of Community-Based Legal Services

#### A. The Theory of Community

The origins of the word community come from the Latin *communis* or fellowship "implying the quality of a community of relations and feelings."<sup>72</sup> This "sense of community" or "felt experience of belonging, connection, shared meanings or identity, of being in relation with fellow members"<sup>73</sup> is the "organizing concept for the psychological study of community."<sup>74</sup> Before American society became as mobile as it is today, this sense of community was synonymous with a geographical location such as town or neighborhood. Much has been written about the delineation of community in these terms.<sup>75</sup> Today, we have other competing conceptions of community which include definition by work group, ethnic identity and sexual orientation. These competing conceptions of community do not diminish the importance of geographical definitions, particularly for poor urban neighborhoods. Since our focus is on a meaningful concept of community for the purpose of providing legal services, a geographical concept makes sense, recognizing that legal services programs generally define their client populations geographically.

---

71. Many legal services staff have had the unfortunate experience of being referred to as a "caseworker," which shows the inability of at least some clients to differentiate between legal services programs and local welfare departments.

72. Godfrey T. Barrett-Lennard, *Toward a Person-Centered Theory of Community*, 32 J. OF HUMANISTIC PSYCHOLOGY 63 (Summer 1994).

73. *Id.* at 65.

74. David M. Chavis & J.R. Newbrough, *The Meaning of Community in Community Psychology*, 14 J. OF COMMUNITY PSYCHOL. 335 (1986) (psychological study of community must include the difference between territorial and non-territorial community).

75. *See id.*; *see also* Thomas M. Meenagan, *Community Delineation: Alternative Methods and Problems*, 56 SOC. & SOC. RES. 345 (Apr. 1972) (definition of community as geographical or not is essential to defining social research); Thomas J. Glynn, *Neighborhood and Sense of Community*, 14 J. OF COMMUNITY PSYCHOL. 341 (Oct. 1986) (study looked at significance of neighborhood to community); Marc Fried, *The Structure and Significance of Community Satisfaction*, 7 POPULATION AND ENV'T. 61 (Summer 1984) (study of relationship of residential community satisfaction to life satisfaction).

Research in the fields of psychology and sociology have linked this "sense of community" to positive characteristics for an individual. Thomas Glynn found a significant relationship between a sense of empowerment and community satisfaction.<sup>76</sup> In a study of the relationship between numerous variables and life satisfaction, Marc Fried found that community satisfaction makes a significant contribution to life satisfaction, "even by comparison with such major variables as marital and work satisfaction" and that this finding is most striking at the lowest status level.<sup>77</sup> David Chavis and J.R. Newbrough cite "fifty years of research in American social sciences" which shows a relationship between "the strength of a sense of community" and improved mental health, the quality of child rearing and parenting, neighborhood beautification, informal social control, crime prevention and even disease prevention.<sup>78</sup>

The development of a sense of community within a neighborhood is arguably more important for groups of isolated, severely impoverished people. For example, welfare recipients living in public housing have limited access to alternative communities such as those available through the employment context. The current status of community in the public housing population is endangered by the high level of violence in the projects.<sup>79</sup> The level of violence must be lowered to encourage community development. Tenants who feel safe are more likely to attend community meetings, visit friends, allow children to play outside with other children, and attend school functions. As Robert Bellah emphasizes: "Where social trust is limited and morale is blasted, one of the most urgent needs is a recovery of self-respect and a sense of agency that can come only from the participation that enables people to belong and contribute to the larger society."<sup>80</sup>

---

76. Glynn, *supra* note 75, at 350.

77. Fried, *supra* note 75, at 82.

78. Chavis & Newbrough, *supra* note 74, at 336.

79. See Stephen Schmitz, *Three Strikes and You're Out: Academic Failure and the Children of Public Housing*, 174 J. EDUC. 41, 42 (1992) (stating that "[a]t the family level, this same fear of violence and its manifested stress reactions foster the development of a stockaded mentality where families retreat from the outside environment to the safety of their own apartments").

80. ROBERT BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* xxxii-xxxiii (1985).

In addition, institutions facilitate participation.<sup>81</sup> Researchers Chavis and Newbrough emphasize the importance of institutions in the development of community:

Central to this process is the participation of community members in collective problem-solving. This often is accomplished through the strengthening of mediating structures such as the neighborhood, family, church, voluntary association, schools, and the workplace. . . The empowerment of people and groups through these structures leads to . . . the "competent community."<sup>82</sup>

For example, an elected body of tenant leaders is a community-building institution for the public housing community. Outside groups, like legal services programs, can support the development of community by validating such institutions.

Thus, the development of a sense of community by public housing tenants can lead to other positive outcomes in the lives of the individual tenants. In fact, a sense of community may be a necessary first step to any meaningful amelioration of the problems facing this beleaguered population.

## **B. Rights and Responsibilities: The Conflict between Communitarianism and Individual Rights**

If we accept the importance of community, we still must examine how to consider the needs of the community in relation to the rights of the individuals who comprise it. Most communitarian visions conflict with the liberal tradition in our country of emphasizing the rights of individuals.<sup>83</sup> Communitarians believe that this tradition has led to an impoverishment of individuals as well as of society as a whole. Mary Ann Glendon notes that while there is little agreement about what deserves to be a right, many seem to feel that "if rights are good, more rights must be even better, and the more emphatically they are stated, the less likely it is that they will be watered down or taken away."<sup>84</sup> Glendon argues that this

---

81. See, e.g., AMITAI ETZIONI, *THE SPIRIT OF COMMUNITY* 134-160 (1993) (finding that communities form around institutions such as schools, community policing stations, etc.).

82. See Chavis & Newbrough, *supra* note 74, at 338.

83. There is also debate surrounding when and if community played a more important role in American life (e.g., several communitarian visions are nostalgic for a previous era). See ROBERT BOOTH FOWLER, *THE DANCE WITH COMMUNITY* 23-37 (1991); BELLAH ET. AL., *supra* note 80, at 27-51. Exploration of this issue is outside the scope of this paper.

84. MARY ANN GLENDON, *RIGHTS TALK* 16 (1991).

“rights talk . . . promotes unrealistic expectations, heightens social conflict, and inhibits dialogue that might lead toward consensus, accommodation, or at least the discovery of common ground.”<sup>85</sup> Critics of communitarianism, like the ACLU’s Ira Glasser, feel that “communitarianism really means majoritarianism. The tendency is to make constitutional rights responsible for the failure to solve social problems.”<sup>86</sup>

One way to explore this issue is to examine the impact of individual rights strategies on the social and economic struggles of African-Americans. The civil rights movement emphasized individual rights. There is no question that those efforts resulted in important victories for African-Americans. Yet, as John Calmore points out, “[the civil rights movement] was essentially demand or protest focused, rather than program focused. While the reforms sought were radical in their call for inclusion of blacks in the American dream, the movement was not protesting much against the ‘system’ as against being ‘left out of it.’”<sup>87</sup>

The movement’s emphasis on ending segregation made it difficult to simultaneously support the development of the black “community,” in a sense blurring “the distinction between a compulsory ghetto and a voluntary community.”<sup>88</sup> To move beyond the limitations of the strategies used in the civil rights movement, Calmore argues, a focus on “rights” must be replaced by one which improves “group conditions.”<sup>89</sup>

Other observers point to the questionable efficacy of the traditional (individual rights focused) strategies employed by legal services lawyers for meeting the needs of clients of color<sup>90</sup>:

---

85. *Id.* at 14.

86. See ETZIONI, *SPIRIT*, *supra* note 81, at 49.

87. John O. Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 201, 215 (1982).

88. *Id.* at 223.

89. See *id.* at 236; see also Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 67 NOTRE DAME L. REV. 615, *passim* (suggesting that ethnic rights are only considered in individualistic terms, groups are seen as collections of individuals, which does not allow minorities to be seen as anything except “other” in the dominant majority society).

90. There are those who, in response to Critical Legal Studies’ call to discard rights, see the language of rights as critical to American blacks. Patricia J. Williams has written that, despite the fact that only some, and not most, blacks have benefited from what is promised by an emphasis on rights, and that “the constitutional foreground of rights was shaped by whites, parceled out to blacks in pieces, rights are empowering and, in some senses, defining for blacks.” PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 146-165 (1991). See also Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies have what Minorities Want?*, 22 HARV.

Despite hard work by legal services advocates, the plight of poor clients is as bad as or worse now than at any time during the twenty-five years that legal services programs have been in existence. Although few in legal services will acknowledge it there has long been suspicion among legal services clients and advocates of color that many non-minority members of the legal services community, especially those in legal services leadership, have gained self-esteem by looking down upon their poor clients of color. Other motivations may exist as well in the personal and professional biases of those who control legal services. Their biases are reflected in embedded advocacy strategies that fail to address emerging issues and clients' hunger for empowerment and self-determination.<sup>91</sup>

The adversarial system itself encourages a focus on individual rights by requiring the zealous representation of particular clients. David Luban suggests that the system allows behavior which "excuses lawyers from common moral obligations to non-clients."<sup>92</sup> In the process, lawyers focus their professional concern on their client's interests not the interests of justice.<sup>93</sup> While Luban raises ethical issues, the basic premise is virtually identical to Houseman's goal of representing the client community.<sup>94</sup> Luban advocates for "politically motivated" lawyers who responsibly "represent the political aims of [their] entire client constituency, even at the price of wronging individual clients."<sup>95</sup>

Critics of communitarianism fear the oppression of individuals by the collective. There is no doubt that "'communitarianism' has a 'dark side.'"<sup>96</sup> However, communitarians do not advocate a com-

---

C.R.-C.L. L. REV. 301, 305 (1987) (arguing rights as a force bring minorities closer together).

91. See Paul E. Lee & Mary M. Lee, *Reflections from the Bottom of the Well: Racial Bias in the Provision of Legal Services to the Poor*, 27 CLEARINGHOUSE REV. 311, 312 (Special Issue 1993).

92. LUBAN, *supra* note 64, at 20.

93. See *id.*

94. See Houseman, *Political Lessons*, *supra* note 19, at 1669.

95. LUBAN, *supra* note 64, at 25. This quote seems to violate rules of professional conduct. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(a) ("a lawyer shall abide by a client's decisions concerning the objectives of representation."); MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7(a) (stating that "a lawyer shall not represent a client if the representation of that client will be directly adverse to another client"). In his book, Luban suggests that the client-centered nature of the bar's ethical codes might be insufficiently "sensitive to the unique features of political law practice." LUBAN, *supra* note 64, at 321.

96. See Kevin J. Worthen, *The Role of Local Governments in Striking the Proper Balance Between Individualism and Communitarianism: Lessons for and from Americans*, 1993 BYU L. REV. 475, 476 (1993).

plete abandonment of rights. They search for a balance between rights and responsibilities which, in today's American society, requires a de-emphasis on rights.<sup>97</sup> What will keep the moral views of the community from isolating or victimizing a minority? Responsive Communitarians appeal to "higher-order values" that no community has a right to violate.<sup>98</sup> Together with the Bill of Rights, these over-arching guides will keep communities from making demands which are repugnant.<sup>99</sup> Michael Walzer provides a vision of community that rejects domination (or tyranny) by recognizing differences.<sup>100</sup> This regime of "complex equality" as he calls it "establishes a set of relationships such that no citizen's standing in one sphere can be undercut by his standing in another." This would seem to require a particular value system, one which recognizes that "the principles of justice are themselves pluralistic in form . . . ." <sup>101</sup> The question, finally, is an empirical one.

Can a tolerant community be maintained which encourages responsibility and moral behavior by emphasizing the collective without oppressing individuals? This question needs to be explored. But even in the short run, understanding that there are risks to validating community needs over absolute individual rights should not require a complete rejection of communitarianism. Amitai Etzioni suggests that "just as we do not avoid swimming because some people drown, we should not hesitate to raise our moral voice."<sup>102</sup>

Critics argue that traditional individual rights strategies have failed to meet the complex needs of legal services client populations. Gerald Lopez challenges the inherently conservative legal work performed on behalf of the poor that emphasizes asserting legal rights through litigation and minimizes the influence of the client. Lopez promotes a collaborative method of lawyering, which he calls "rebellious lawyering," that minimizes the subordination of clients by lawyers and promotes client participation in the strategic, decision-making process. Lopez argues that lawyers and their clients and the client communities are partners. Some legal services providers have recognized the limitations of an exclusive focus on

---

97. See, e.g., AMITAI ETZIONI, RIGHTS AND THE COMMON GOOD: THE COMMUNITARIAN PERSPECTIVE 1 (1995).

98. *Id.* at 37.

99. *Id.* at 53.

100. See MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY xii-xv (1983).

101. *Id.* at 5-6.

102. See ETZIONI, RIGHTS AND THE COMMON GOOD, *supra* note 97, at 53.

individual representation and have branched out into community work.<sup>103</sup>

In addition, Ann Southworth, in her review of Lopez' book suggests that his focus primarily on community organizing and public education ignores other ways that lawyers can use their skills to empower communities. "Lopez neglects the potential for lawyers to play other distinctive roles, particularly as general counsel and as providers of transactional services to community organizations and small businesses."<sup>104</sup> She then describes the preliminary results of her interviews of seventy Chicago lawyers working on urban poverty issues which reveals that many are branching out beyond traditional individual rights, litigation strategies.<sup>105</sup> Many legal services providers, however, resist the adoption of alternatives to individual rights strategies.<sup>106</sup>

### C. Poverty and Communities

The growing recognition of the need for community-based strategies could not come at a better time for poor communities. The changed welfare landscape places new stresses on poor communi-

---

103. See LOPEZ, *supra* note 61, at 231 (recognizing that attorneys for subordinated communities are regularly turning to more constructive, long-term development work as opposed to relying solely on litigation-based model of representation); see, e.g., Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121 (1996) (describing role of civil rights attorneys in planning work with community groups and individual entrepreneurs as possibly "reflect[ing] a shift in lawyers' roles in the civil rights movement away from rights creation and enforcement and toward counseling organizations and structuring arrangement for future projects"). Southworth also offers reasons why we might expect lawyers who perform planning work for community organizations and minority entrepreneurs generally to help in efforts to mobilize poor communities rather than inhibit such processes. See *id.* This trend is also marked by the creation of "Community Economic Development clinics" in several law schools, which are a product of both student interest and community need. See Peter Pitegoff, *New Approaches to Poverty Law, Teaching and Practice: Law Schools in Housing and Community Development*, 4 B.U. PUB. INT. L.J. 275 (1995) (describing the work of the SUNY-Buffalo, Seton Hall and Yale community and economic development clinics).

104. Ann Southworth, *Review Essay: Taking the Lawyer out of Progressive Lawyering*, 46 STAN. L. REV. 213, 215 (1993) (reviewing GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION* (1992)).

105. See *id.* at 231.

106. See Sol Stern, *The Legal Aid Follies*, CITY J., at 22 (Autumn 1995) (suggesting Legal Aid of New York reaffirmed a continuation of existing strategies when it hired a new Executive Director). "The ultimate goal of legal services for the poor ought to be to help poor people escape poverty." *Id.* Instead, Legal Aid has dedicated itself to maintaining a permanent victim class. In the process, it has undermined the very qualities that over the generations have helped poor people rise: the work ethic, social responsibility, and respect for law and order. See *id.*



ties with new restrictions on receiving welfare, new models for its delivery, and deep cuts in eligibility. At the same time, an incredibly robust economy has failed to diminish the growing inequality between the wealthiest and poorest members of society and failed to stem the decline of the inner city, where much of the nation's poverty is concentrated. These factors have increased stress on low-income communities and created a growing demand for legal services.

We are just beginning to appreciate the extent to which poverty is a community problem. The keys to fighting such poverty lie in community-based approaches. In his recent book, *When Work Disappears*, William Julius Wilson asserts that several factors have had a mutually reinforcing and destructive effect on individuals in poor communities.<sup>107</sup> The loss of capital, well-paying jobs and the middle class, the erosion of social networks and the decline of housing markets, further isolate these communities in their poverty and make it more difficult for their members to become free of poverty's hold. Despite the growing hardships facing poor communities, through neighborhood-based efforts many communities have found innovative ways to keep capital within their communities and restore stability to them. Supporting these efforts should be a high priority for legal service programs.<sup>108</sup>

#### D. Towards a Community-Based Model<sup>109</sup>

While a service model is centered around the representation of distinct, individual clients in discrete legal disputes, the community-based model, as its name suggests, starts from the fictional presupposition that the *community* itself is the client. The lawyer must learn from "the client" its goals, legal needs and aspirations. The legal resources of the office can and must be marshaled to respond to these needs and priorities as the client, that is, the community, sees fit.

---

107. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE URBAN POOR* (1996).

108. Some legal services programs have been supporting such efforts for years. See Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. OF L. & SOC. CHANGE 105 (1997) (describing the work of the economic development unit of Brooklyn Legal Services Corporation A in assisting local community development corporations).

109. This model requires a degree of retooling, training in new substantive areas, community outreach and a commitment to client based services. It does not require a fundamental restructuring of legal services organizations. For such a model, see Golden, *supra* note 69, at 45-51.

A community-based model strives to bring coherence to the array of services offered by legal services offices by matching community needs with the services provided. Under this model, not only will services more accurately reflect the needs of the community, but this model will also insure that a significant number of individual clients with "emergency" cases, the main justification for a service model, will have their crises managed. It will provide the critical, "bread-and-butter" services, albeit in different ways.

### 1. *Community Mobilization and Priority Setting*

The first steps in any attorney-client relationship are determining the client's needs and aspirations, gauging the strengths and vulnerabilities of her situation, and developing the best strategy to advocate effectively on behalf of the client's interests. Proponents of the "client-centered"<sup>110</sup> approach to lawyering emphasize the "client voice," in order to avoid the attorney's domination and control of the client. Under the client-centered approach, the attorney must not allow professional status and expertise to replace the client's goals or judgments. A critical collaboration between lawyer and 'pro se lay advocate' is necessary to fully realize the opportunity for development of a relationship which is truly empowering and which does not dehumanize or decontextualize the experience of the client.<sup>111</sup>

Legal services programs should apply a client-centered approach to their relationships with the communities they serve. This requires the provider to hear, and perhaps even aid the development of the "community voice." The community reveals its legal needs through this voice. It is impossible to hear the community voice without listening. It is impossible to listen to a community without a community presence. Most legal services offices have failed to develop a constructive relationship with the communities they serve. Therefore, they have failed to construct a law practice around the needs of that community.<sup>112</sup> As a result, the services

---

110. See Stephen Ellman, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987); David Binder et al., *Lawyers as Counselors: A Client-Centered Approach*, 35 N.Y.L. SCH. L. REV. 29 (1990) (discussing client-centered lawyering).

111. See Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1 (1990); see also Alfieri, *supra* note 42, at 670.

112. Peter Edelman has outlined a wide range of issues facing poor communities. Edelman recognizes the challenge that these issues pose to those engaged in the struggles of these communities. Indeed, Edelman describes a comprehensive anti-poverty program as including the following elements: (1) structural economic policy to create jobs; (2) job creation targeted to give work experience; (3) low-income housing devel-

rendered are rarely in response to community demand. Legal services must learn to value community insight into problems. Appreciation for this insight by legal services providers is critical to developing a truly collaborative relationship with the community. A collaborative relationship is central to the community model we espouse.

Accordingly, legal services offices must train themselves to hear the voices in the communities they serve. This goes beyond asking a few prominent members of the bar and a token representative of a local church to serve on the office's board of directors. Rather, this requires developing relationships with community leaders from all sectors of society, including: representatives of block associations, schools, community development corporations and local businesses; as well as local elected officials, sympathetic government workers, local business, homeowners and leaders of tenant groups. Every community is different and will organize itself according to different physical, political and geographic fault lines. Members of different sides of the same street might self-identify with different neighborhoods, fall in different census tracts, or find themselves in different political subdivisions. Office staff must reach out to and try to understand how community residents relate to each other and solve problems.<sup>113</sup>

Once legitimate neighborhood-based institutions are identified, legal services staff should work with the representatives of those institutions. Together they should identify the issues that concern the members of those institutions, both as individuals and as a group. They should collaborate on developing strategies for addressing those issues. Most importantly, community priorities as identified by the members of those institutions should trump priorities set by legal services offices. If there is little confluence between the priorities of the community and those of the legal services office or if these two sets of priorities are fundamentally

---

opment; (4) health coverage; (5) child care and Head Start; (6) improvements in public education; (7) enforcement of anti-discrimination laws; (8) family support services; (9) substance abuse treatment; (10) law enforcement; (11) child support enforcement; (12) income support for those who cannot find work. See Edelman, *Comprehensive Antipoverty Strategy*, *supra* note 59, at 1734-35.

113. The Department of Justice, Office of Justice Programs has recognized the importance of community based strategies for dealing with crime and for promoting community development. The "Weed & Seed" program works with sites in 170 neighborhoods across the country. At these sites, community residents are implementing local strategies. These efforts would provide excellent partners for legal services offices.

opposed, extensive reordering of the office's priorities will be necessary.

This process is more difficult than serving those clients who appear at the office. It requires a great deal of patience, time and hard work. The benefits of this process are not as readily apparent as when an individual client's benefits are restored or her tenancy reinstated. The benefits promise, however, to be more fundamental and long lasting.

## 2. *The Role of Community Institutions*

Community institutions assist legal services offices in understanding and hearing the community voice. Legal services programs collaborations with community-based institutions will insure that community representatives speak on behalf of and embody the communities' needs and aspirations. At the same time, community institutions serve other, no less critical functions.

Community-based institutions reflect the needs of individuals to align themselves with like-minded individuals.<sup>114</sup> This is particularly true for low-income communities.<sup>115</sup> From a political perspective, the grassroots efforts of community organizations encourage democratic participation in those communities. They provide essential protagonists for fundamental change on behalf of low-income communities. From a community development perspective, community groups serve as engines of community development and provide essential community services.<sup>116</sup>

Additionally, grassroots advocacy organizations often provide services similar to those provided by legal services offices. For example, these organizations assist individuals in negotiations with landlords and attend fair hearings on behalf of their constituents. They also contact local service providers (even legal services offices) to ensure that their constituents' needs are being met.

Most importantly, institutions that truly reflect their community's needs prove that subordinated communities can become ac-

---

114. See also Stephen Ellman, *Client-Centeredness Multiplied: Individual Autonomy and the Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992).

115. See generally KATZ, *SHADOW OF THE POORHOUSE*, *supra* note 12; FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1993).

116. See Glick & Rossman, *supra* note 108; *SO GOES A NATION: LAWYERS AND COMMUNITIES* (Sight Effects 1997) (on file with the *Fordham Urban Law Journal* and attached to 25 FORDHAM URB. L.J. (1998)).

tive agents in their own betterment. It is our belief that only through such institutions is fundamental change possible.

These institutions serve as a bulwark of the civic fabric. Their absence contributes to the rapid descent of low-income neighborhoods from stable, working communities into volatile, fragmented areas.<sup>117</sup> Accordingly, the importance of working with community institutions cannot be exaggerated.

### 3. *Collaborations between Community Institutions and Legal Services Offices*

Legal services offices and community institutions can collaborate in carrying out their collective missions. First, legal services offices can serve as "corporate counsel" to community institutions. This role includes handling incorporation, assisting in regular corporate and tax filings, and advising on licensing, contracting and leasing issues.<sup>118</sup> Second, legal services offices can provide critical "backup" for advocacy efforts. Legal services staff are justifiably proud of their ability to get results from a single phone call to an adversary. Community advocates also engage in this type of advocacy every day. The credentials of legal services staff members may give them an edge in negotiations with government officials and private landlords. However, it is more likely that the threat of a lawsuit brings results. In a collaborative relationship, there is no reason why advocates from community institutions cannot benefit from the threat of litigation when adversaries are aware of the presence of legal services support for such groups. Community groups should remain the first "line" of advocacy, with legal services staff serving as powerful backup when necessary. Adversaries will recognize that community institutions have legal representation and, therefore, have the ability to pursue legal remedies if negotiations fail. When this occurs, community institutions gain real power.

Several commentators have argued strenuously that it is more important for subordinated clients to develop their own problem-solving capacity than for attorneys to engage in a litigation- and lawyer-driven campaign to deal with the problem.<sup>119</sup> Moreover, a

---

117. See, e.g., WILSON, *supra* note 107.

118. See, e.g., Southworth, *supra* note 104.

119. See Wexler, *supra* note 57; Anthony Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, *supra* note 42 at 704-710. For a further description of the critical role group representation can play in furthering client empowerment, see Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619, 663-667 (1992). In or-

relationship between the community and a legal services office that is defined by the community will help to develop that office's capacity as a force in the community. At the same time, this reputation will also help build relationships with individuals with discrete legal problems.

Third, a community organization can serve as a plaintiff on behalf of its members in litigation affecting the community, with the local legal services office as counsel. This dynamic may prove challenging for legal services offices. As they learn to be more responsive to community needs, they will be asked to develop litigation from a community perspective. No longer will they be crafting theoretical test-case models and then trying to find plaintiffs to fit the contours of their lawsuits. Litigation will be community-based, not lawyer-driven.

Finally, decisions about what kinds of services to provide, and to whom to provide them, must be thoroughly integrated with the work of community institutions. Legal services offices can take referrals from and refer individuals to these institutions. They can conduct intake at regular times in the community at the offices of these community institutions. Through these collaborative efforts, each group will develop a deeper understanding of how the other works. Together they can identify common issues facing the clients they jointly assist and determine what community efforts are necessary to address these problems. For example, if certain types of "boilerplate" administrative hearings appear frequently, lay advocates and law students can be trained to represent individuals in high volume. If political mobilization is necessary, legal staff can brief the community representatives on the potential legal issues that will arise and arm them with "talking points" to respond to their opponents.

#### 4. *Emergency Cases*

Through a community model, emergency cases still can be handled when they arise, although they will be handled differently. Aggressive community education and institution building will help avert some emergency situations due to the greater knowledge held within the community of member rights and responsibilities. One example of aggressive community advocacy shows positive ev-

---

der to combat the range of issues impacting upon subordinated communities, a more comprehensive, community-driven approach must be implemented. A successful model must take into account the opportunities for legal services programs to assist in the development of the community's problem-solving capacities. *See id.*

idence that even caseload size counts of the service model can be matched by the community model.

The Community Law Offices of The Legal Aid Society of New York ("CLO") is a community-based legal services office located in East Harlem. Of its fifty staff members, six attorneys, five paralegals and one supervising attorney make up the Housing Development Unit ("HDU"). HDU represents tenant associations throughout Northern Manhattan. Like most legal services offices in New York City, CLO handles eviction defense cases for households eligible for Emergency Assistance to Families (EAF). Through this program, legal services providers are paid on a per case basis by the City of New York for representing this client population. This population, though significantly large in New York City, is not the sole demographic group in the City needing eviction defense representation. Unfortunately, however, because of the funding potential, most New York legal services offices, CLO included, serve an increased number of EAF-eligible clients to the detriment of other needy, though less "lucky," client groups.<sup>120</sup>

Like most legal services offices in New York City, CLO management decided that each staff attorney and supervising attorney would be required to represent a certain number of EAF cases. Although members of the HDU would not be required to handle a full complement of these cases due to their building-wide representation, they were still required to meet a reduced quota with their time not dedicated to group representation because of commitments to funding sources. For several years, members of HDU met their "quota" through individual client representation. HDU's members, believing that such individual representation diminished their ability to represent group clients, decided, in conjunction with CLO management, to attempt to meet their quota through their standard group practice, including aggressive outreach to the membership to insure that staff was fully aware of all EAF-eligible clients. By conducting their normal group outreach and accepting referrals from those groups, HDU's staff members are now able to represent individual clients and such representation then serves the ends of their group clients, while still meeting their individual client quota.

A full year and a half into this approach, the HDU has been able to meet its pre-determined quota of cases with almost no individual

---

120. CLO has experienced significant cutbacks in funding due to State budget cuts and Legal Services Corporation program changes (The Legal Aid Society of New York does not accept LSC funding).

outreach. At the same time, however, the community has benefited from the ongoing group representation. The HDU has been able to work with the community to develop and expand tenant associations, to institute affirmative litigation and aggressive advocacy strategies on behalf of these groups to remedy housing code violations and environmental problems, to assert rent overcharge claims, and to undertake community education efforts. CLO's experience shows that legal services offices need to take a lesson from community-based policing. It does make a difference to be on the beat, in the community, trying to do something positive.

### CONCLUSION

Recent funding cuts and restrictions imposed on legal services programs have created a sense of profound crisis among legal services staff. Most advocates blame this perceived crisis on restrictions of the programs' work and forced cutbacks in staff.

We agree that legal services programs face a crisis that threatens to undermine their legitimacy and relevance. We do not believe, however, that this crisis is caused solely by funding cuts or restrictions. Such problems are overshadowed by the programs' failure both to comprehend the full scope of challenges facing their client communities and to adapt services to the needs of those communities. The historical commitment to individualized, service-oriented work leaves legal services programs in danger of becoming obsolete and irrelevant. Even worse, in some cases, the lack of a community focus will align programs against efforts to bring about progressive community development.

The traditional LSC service model is ill-equipped to combat the range of issues affecting subordinated communities. The service model has failed to address the root causes of poverty or to play a significant role in the political, community-based struggles of poor communities. Stephen Wexler addresses this issue simply and eloquently:

Poverty will not be stopped by people who are not poor. If Poverty is stopped, it will be by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves . . . .

. . . .

. . . Traditional [poverty law practice] hurts poor people by isolating them from each other, and fails to meet their need for a lawyer by completely misunderstanding that need. Poor people



have few individual legal problems in the traditional sense; their problems are the product of poverty, and are common to all poor people. The lawyer for poor individuals is likely, whether he wins cases or not, to leave his clients precisely where he found them, except that they will have developed a dependency on his skills to smooth out the roughest spots in their lives . . . . He can be another hook on which poor people depend, or he can help the poor build something which rests upon themselves — something which cannot be taken away and which will not leave until all of them can leave.<sup>121</sup>

Given the range of issues that affect client communities, we believe that many offices would find that their priorities differ from those identified by the communities they serve. While we prefer on-going representation of institutions and their individual members over short-term, stop-gap representation, the ultimate decision should be in the hands of the client-community.

Legal services programs must develop a comprehensive and tactical understanding of the role of the law and legal advocates in the process of social change. Only then can we expect legal services programs to operate as a significant force for such change.

---

121. Wexler, *Practicing Law*, *supra* note 57, at 1053.

