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Legal Services: Then and Now

Judith Resnik[†]
Emily Bazelon^{††}

This volume includes papers from the first annual *Arthur Liman Colloquium, The Future of Legal Services*, held at Yale Law School in the spring of 1998. There, we learned that half of the federally funded legal services offices no longer receive free of charge the national publication *The Clearinghouse Review*¹ and that many staff attorneys do not have computer links to the Internet and other electronic sources. We thus are pleased to provide this collection of essays, written by lawyers (both public and private), academics (both students and faculty), judges (both state and federal), and program administrators, all concerned about the system of justice for and the provision of legal services to people unable to pay attorneys directly.²

This is an eclectic set of essays, representing the array of individuals (some 125 people) who gathered in March 1998 in New Haven³ to

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We thank the family, friends, and colleagues of Arthur Liman, who funded the Arthur Liman Public Interest Program at Yale; Colloquium Co-editor Kim Demarchi for her many insights; Susan Feathers, former Director of Public Service Counseling and Programming at Yale Law School, who worked effectively and thoughtfully to create the Colloquium; law student coordinators Hannah McElhinny and Damon Hemmerdinger; Helaine Barnett, Lawrence Fox, Alan Houseman, Karen Lash, David Udell, and Stephen Wizner for their thoughts about the structure of this volume; and Deans Anthony Kronman, Stephen Yandle, and Michael Thompson, whose commitment to this program enabled the Colloquium, the publication of its papers, and ongoing work for the public interest by students, graduates, and faculty of Yale Law School.

1. *The Clearinghouse Review*, currently published by the National Clearinghouse for Legal Services, has since 1971 enabled legal services lawyers to keep abreast of each other's work.

2. We are pleased to be one among several law schools that have addressed these questions. See, e.g., *The Future of Legal Services: Legal and Ethical Implications of the LSC Restrictions*, 25 *FORDHAM URB. L. J.* 270-392 (1998) (including remarks from several speakers on legislative, implementation, constitutional and ethical issues raised by the 1996 restrictions); Symposium, *Crisis in the Legal Profession: Rationing Legal Services for the Poor*, 1998 *ANN. SURV. AM. L.* (forthcoming); Symposium, *Lawyering for Poor Communities in the 21st Century*, 25 *FORDHAM URB. L. J.* (1998) (forthcoming). Conference, *Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues*, 67 *FORDHAM L. REV.* (1999) (forthcoming).

3. Thirty-five years earlier, one of the first lawyer projects funded by the Ford Foundation's program to combat urban poverty began in New Haven. See EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM 21-26* (1974) (describing the brief life of a neighborhood "multiservice" center, run by then recent Yale graduates Jean Cahn and Frank Dineen and subsequent proposals for "neighborhood social-legal programs").

explore the state of legal services in light of congressional legislation that placed restrictions on the kinds of services provided by federally funded programs, limited funding of legal services programs, and increasing poverty. The 1996 restrictions provided a focal point for some of the discussion, because lawyers working for legal services programs receiving federal funds are now barred from initiating or participating in class action lawsuits, engaging in some forms of legislative advocacy, handling voter redistricting claims, initiating representation on behalf of prison inmates, advocating that welfare laws are unconstitutional, or seeking attorneys' fees.⁴ Simply put, federally funded lawyers for the poor are regulated and limited in the kinds of representation that they provide in a way that other lawyers are not.

Together, we grappled with—and the papers that follow address—three central questions: 1) how the 1996 restrictions and cutbacks on funding by the Legal Services Corporation (LSC) affected the services and priorities of recipients of such funds; 2) what adaptations and innovations have occurred in response to changes in funding, to the restrictions, and to new legal regimes relating to the receipt of government benefits; and 3) whether funding cutbacks, the restrictions on lawyering, and contemporary issues facing poor people require an altered vision for legal services.

An answer to the first question (about the effects of funding cutbacks, the restrictions, and new legal regimes governing poor people) comes from the contributions of practicing and former legal services lawyers Lawrence Fox, Alan Houseman, David Udell, Gordon Bonnyman, Catherine Carr and Alison Hirschel. Lawrence Fox⁵ and Alan Houseman⁶ provide the necessary context by giving the history of legal services and the array of options once available to poverty lawyers. Houseman also details legal services operations before 1996 and then discusses the impact of the restrictions on the kinds of services that federally funded legal

4. See Pub. L. No. 103-34 § 504(a); see also 45 C.F.R. §§ 1612, 1617, 1626, 1632, 1639, 1642. The Supreme Court recently denied review of one circuit decision upholding the restrictions; appeal is pending in a second case. See David Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia and Oregon Describe the Costs*, *infra* at 337, 339.

5. Lawrence J. Fox, *Legal Services and the Organized Bar: A Reminiscence and a Renewed Call for Cooperation*, *infra* at 305.

6. Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, *infra* at 369; see also LINDA E. PERLE & ALAN W. HOUSEMAN, *THE LEGAL SERVICES CORPORATION: ITS FUNCTIONS AND HISTORY* (1993). For a history of the difficulties in legal service provisions in the decade before the 1996 enactments, see UNEQUAL JUSTICE: A REPORT ON THE DECLINING AVAILABILITY OF LEGAL SERVICES FOR CALIFORNIA'S POOR, 1980-1990, prepared by Public Interest Clearinghouse, a consortium of law schools in Northern California, June 1991. The efforts to create federally financed legal services and reformers' fear of restrictions in kinds of services coming either from the bar or from government are discussed in JOHNSON, *supra* note 3, at 39-64. See also Gary Bellow, *Legal Aid in the United States*, CLEARINGHOUSE REV. 337 (1980).

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services attorneys can provide.⁷ His essay and others in this volume document how those restrictions have disrupted client services, discontinued pending cases, and curtailed access to justice for thousands of poor people.

In detail-rich specifics, contributors describe how their programs and their clients have had to cope. Some have terminated services, and others have had to create two sets of providers, one federally funded and one freestanding. In the process, many lawyers (both public and private) have had to contribute their talents and energies to restructuring legal service programs rather than to delivering services to clients. A comprehensive and poignant illustration comes from Catherine Carr and Alison Hirschel, who describe the break-up of Philadelphia's Community Legal Services into two separate organizations: one that engages in class-action litigation and political lobbying, and so cannot accept federal funds, and another that provides only direct services to individual clients so that it can take the restricted money.⁸

More description of contemporary problems comes from David Udell, who reports on how the restrictions prevented him, as a then-staff member of Legal Services for the Elderly in New York City, from continuing to represent disabled recipients in several class actions.⁹ He discusses LSC implementation of the new mandates, including the prohibition on "adversarial" enforcement of final judgment and consent decrees. Udell and others argue that the restrictions should be rescinded because it is fundamentally wrong to impose limits on poverty lawyers' ability to represent their clients as paid lawyers can.¹⁰ Udell adds to the description of his own clients the accounts of similar difficulties, disruption, and retreat provided to him by legal services attorneys in Oregon, Virginia, and Florida. In these states, the new rules forced programs to pull back from remote locations, reshuffle staff, and scramble for funds.¹¹ Those organizations deserve credit for making the best of the post-restrictions reality and for their candor and scrupulousness in following mandates.

But the cost—in terms of clients not served and lawyers having to

7. See Houseman, *supra* note 6, at 375-79.

8. See Catherine C. Carr & Alison E. Hirschel, *The Transformation of Community Legal Services, Inc., of Philadelphia: One Program's Experience Since the Federal Restrictions*, *infra* at 319; see also Sharon M. Deitrich, Irv Acklesberg, Deborah L. Freedman, Louise E. Hayes, & Richard P. Weishaupt, *Welfare Advocacy: Tactics for a New Era*, CLEARINGHOUSE REV. 419 (1998).

9. See Udell, *supra* note 4, at 346-50.

10. See also Committees on Civil Rights and Professional Responsibility of the Bar Association of the City of New York, *A Call for the Repeal or Invalidation of Congressional Restrictions on Legal Services Lawyers*, 53 REC. OF THE ASS'N OF THE B. OF THE CITY OF N.Y. 13 (1998).

11. See Udell, *supra* note 4, at 346-66.

sever the provision of individual representation from that of aggregate responses—has been enormous. As Karen Lash, Pauline Gee, and Laurie Zelon detail, many of the poor are women, children, and the elderly, a disproportionate number of whom are people of color.¹² The populations served by legal services programs live within a web of legal regulations and, sometimes, with discrimination. Felix Lopez adds moving descriptions of the needs of individual clients, some of whom have a history of drug or alcohol addiction, others of whom have been diagnosed as HIV-positive. His account makes plain the contributions that lawyering can make to people's well-being.¹³ The proliferation of regulations related to the receipt of government benefits for housing, food, and medical care have made lawyers all the more necessary, and limitations on legal assistance all the more disabling.¹⁴

The prominent role of law in the lives of people seeking government assistance underscores another disheartening effect of government restrictions on legal services—the dismantling of national networks of coordination and communication. Lawrence Fox, now a lawyer at Drinker Biddle & Reath in Philadelphia and in the 1960s a legal services lawyer, recounts the energy and insight gained in the early days of legal services, when newly entering attorneys came together in orientation programs.¹⁵ Few such nationally based mechanisms exist today.¹⁶ It was striking at the *Arthur Liman Colloquium* to learn that people experienced in the provision of legal services in states as close as Connecticut and New York did not know of each others' programs. Given that ordinary methods of exchange (such as e-mail, web sites, conference calls, funded travel to conferences, and newsletters) are still not routinely available to many direct providers of legal services, the occasion was a luxury—a rare opportunity to share information and to offer empathy and support.

The issue of communication relates to another problem spawned by the 1996 restrictions and the limited funding. Since its inception at the national level in the 1960s and with the creation of the Legal Services Corporation in 1975, federal organizations have been a conduit for information about the legal needs of many within the United States. Yet in the

12. See Karen A. Lash, Pauline Gee, & Laurie Zelon, *Equal Access to Civil Justice: Pursuing Solutions Beyond the Legal Profession*, *infra* at 489, 491-93.

13. See Felix Lopez, *Lawyers Matter, Policy Matters: How One Small Not-for-Profit Combats Discrimination Against Ex-offenders, People in Recovery, and People with AIDS*, *infra* at 443.

14. See Sylvia A. Law, *Ending Welfare as We Know It*, 49 STAN. L. REV. 471 (1997).

15. See Fox, *supra* note 5, at 305-08.

16. Such occasions include annual conferences of organizations such as the National Legal Aid and Defender Association or the National Association for Public Interest Law, or periodic gatherings sponsored by a variety of entities, such as specific legal services programs or law schools.

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1990s, even as many private-sector corporations consolidate resources through mergers that create ever-larger corporate entities, government-sponsored legal services programs are declining in numbers and legal services attorneys are working under fragmented conditions.

As several of our contributors note, the congressional funding restrictions have left both an economic and an organizational gap. Cutbacks have made fundraising a requirement for all legal services programs, and those that choose not to follow federal mandates must not only do their own fundraising, goal-setting, and institutional planning, but often must do so as solo ventures. Upon reading about the labor-intensive process of legal services lawyers learning to do “development” (also known as fundraising),¹⁷ it is difficult to tell a cheerful story about the many small spin-offs the restrictions have produced. While programs in some states may blossom, “devolution” risks leaving behind many poor clients, including those who live in states that do nothing to fill the gap¹⁸ and those who seek assistance from providers without the skills to generate the needed funds. Small legal services organizations struggling to pay salaries and shield their clients from cutbacks may not have the wherewithal to do the multifaceted work of client representation, coalition-building, institutional infrastructure reorganization, and fundraising. While in the last few years some states have increased state-wide coordination and integration, in other states the restrictions have made the late twentieth-century provision of legal services resemble the early twentieth-century era, in which a diverse group of individual programs provided a patchwork set of services across the United States.¹⁹

What institutions might provide unifying functions? Will LSC-funded back-up centers be able to sustain such activities? How much coordination can the National Legal Aid and Defender Association do? Should efforts be made to reconstitute a well-funded national network, either public or private, or should the focus shift to private sources or to the state or regional level? Such questions are familiar to those immersed in issues of federalism. One of our contributors, Gordon Bonnyman of the Tennessee Justice Center, proposes a national “brokering” organization to appeal to funders who might not respond to a series of calls from small local organizations.²⁰ Alan Houseman of the Center for Law and Social

17. See, e.g., Udell, *supra* note 4, at 354-55; Carr & Hirschel, *supra* note 8, at 328-30.

18. See Gordon Bonnyman, *Adapting Without Accepting: The Need for a Long Term-Strategy for “Full Service” Representation of the Poor*, *infra* at 435, 438.

19. See JOHNSON, *supra* note 3, at 6-19. Until the 1960s, legal aid efforts were “almost exclusively a privately financed undertaking. Local legal aid organizations derived their support from community chests (60 percent), bar associations (15 percent), individual lawyers, and special fund-raising campaigns.” *Id.* at 14.

20. See Bonnyman, *supra* note 18, at 439-40.

Policy focuses on state-wide coordination, working at a level that reflects the devolution of welfare policy.²¹ Lorna Blake, executive director of New York's Interest on Lawyer Account (IOLA) Fund, stresses the Fund's role in promoting statewide planning and coordination.²² Lawrence Fox recounts the work done by the American Bar Association (ABA) in helping to preserve LSC funding.²³ He sees the ABA as an important mechanism for coordination of ongoing efforts,²⁴ while both Professor Louise Trubek of the University of Wisconsin Law School and Professor Louis Rulli of the University of Pennsylvania Law School call for greater reliance on law schools to fill some of the gaps.²⁵

As their discussion illustrates, inquiring into the problems caused by the 1996 restrictions and the details of restructuring yields answers to the second question posed, about the adaptations and innovations that have occurred in light of the forced reorganization, ever-more limited funds, and growing numbers of poor people. Alan Houseman describes the use of telephone hot lines and forms of "brief advice systems" to provide quick and limited services.²⁶ Lorna Blake explains how New York distributes IOLA funds in ways that create incentives for new programs and services. The goal is to avoid the fragmentation and isolation of programs by tying funding to collaborative efforts that push legal services providers to use new technologies, team up with law school clinics, and organize regionally.²⁷ Professor Louise Trubek details the role that fellowship programs, some based at law schools, others supported by law firms or foundations, have played in generating a new group of public interest lawyers well-versed in "cobbling" together funds to create small projects servicing a targeted population or a specific kind of legal problem.²⁸

21. See Houseman, *supra* note 6, at 384-86.

22. See Lorna K. Blake, *The IOLA Fund and LSC Restrictions*, *infra* at 455.

23. See Fox, *supra* note 5, at 311-12; see also CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, AMERICAN BAR ASSOCIATION, TWO NATIONWIDE SURVEYS: 1989 PILOT ASSESSMENT OF THE UNMET LEGAL NEEDS OF THE POOR AND OF THE PUBLIC GENERALLY (1989). The ABA's work in recent decades stands in contrast to the attitude of the organized bar (both local and national) in the earlier part of this century. See JOHNSON, *supra* note 3, at 5-10.

24. See Fox, *supra* note 5, at 312-14; see also Steven B. Rosenfeld, *Mandatory Pro Bono: Historical and Constitutional Perspectives*, 2 CARDOZO L. REV. 225 (1981) (discussing the possibility of legal rules to mandate public service).

25. See Louise G. Trubek, *Poverty Lawyering in a New Millennium*, *infra* at 461, 462; Louis S. Rulli, *Access to Justice and Civil Forfeiture Reform: Providing Lawyers for the Poor and Recapturing Forfeited Assets for Impoverished Communities*, *infra* at 507, 509-11. Law school clinical programs have long served impoverished clients. See John S. Bradway, *The Nature of a Legal Aid Clinic*, 35 S. CAL. L. REV. 173 (1930); Symposium, *Clinical Legal Education*, 64 TENN. L. REV. 939 (1997); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 S.M.U. L. REV. 1461 (1998).

26. Houseman, *supra* note 6, at 370.

27. See Blake, *supra* note 22, at 457.

28. See Trubek, *supra* note 25, at 511-13.

Turning to the third question, about revising underlying aspirations for legal services, this volume is filled with suggestions for fundamental restructuring. Some of the recommendations are doctrinal, some are functional, and many call for changes in several institutional settings and in their interrelationships. For some, the answer is expanding legal rights. The Honorable Robert Sweet of the United States District Court for the Southern District of New York argues for what he calls a “civil *Gideon*,” a federal constitutional right, based on the Due Process Clause, to counsel for poor people dealing with civil justice matters such as family and housing law cases. Professor Louis Rulli also calls for a change in the legal rights regime by proposing a statutory right to counsel for a poor person facing forfeiture of property.²⁹

Many contributors propose new means of funding legal services. Judge Sweet suggests a tax on for-profit lawyering to pay for lawyers for poor litigants in civil justice matters.³⁰ Professor Rulli urges the use of forfeited money as a means of providing services.³¹ Helaine Barnett, head of the Civil Division of the Legal Aid Society of New York, describes the funding proposal of a committee she participated in, appointed by the Honorable Judith Kaye, Chief Judge of the State of New York. The New York State committee proposed the use of “abandoned property” as an alternative source of funds for legal services.³²

Several contributors address the problems of representation of impoverished clients, a disparate population tied together only by its members’ inability to pay for legal representation. The poignancy for legal services lawyers, unlike attorneys in the private sector, is that choice of cases and legal strategy always require allocation of resources. The clients they turn away cannot “shop” for other options, for the market offers none. The choices and priorities of legal services lawyers thus become decisions about distribution of scarce resources, necessarily carrying political and social freight.³³ To respond to the difficulty of such allocation decisions, Andrea Luby proposes an innovation she terms a

29. See Rulli, *supra* note 25, at 519.

30. See Robert W. Sweet, *Civil Gideon and Confidence in a Just Society*, *infra* at 503.

31. See Rulli, *supra* note 25, at 522-25.

32. See Helaine M. Barnett, *An Innovative Approach to Permanent State Funding of Civil Legal Services: One State’s Experience—So Far*, *infra* at 469.

33. See JOHNSON, *supra* note 3, at 82-90 (discussing the role of clients in governance of legal aid programs); GERALD LOPEZ, *REBELLIOUS LAWYERING* (1992); Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474 (1985); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L. J. 2107 (1991); Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1979); Lucie E. White, *Collaborative Lawyering in the Field?*, 1 CLINICAL L. REV. 157 (1994); Stephen Wizner, *Rationing Justice*, in *Crisis in the Legal Profession, Rationing Legal Services for the Poor*, 1998 ANN. SURV. AM. L. (forthcoming).

“shadow market.” She suggests having poor clients “pay” in a minimal or “shadow” fashion to provide a mechanism by which clients, rather than lawyers, decide how to set priorities and allocate resources.³⁴ Robin Golden also argues that members of the client community should help set priorities and criticizes modes of representation of some legal services offices. She uses the example of housing evictions to propose that community input would create a shift away from individualized representation (of those evicted) and towards pursuit of group-based interests in safer living spaces.³⁵

Several essays discuss the reorientation of law schools. Professor Rulli proposes that law school clinical programs reorganize their work to fill gaps in services, to teach students about lawyers’ obligations to all segments of society, and to use the resources of law schools to analyze legal rights and government obligations.³⁶ Professor Stephen Wizner of Yale Law School similarly calls on law schools to revamp their curricula. He argues that law schools need to reorient their educational mission away from a technocratic “think-like-a-lawyer” approach that privileges problem-solving and rule-memorizing over moral responsibility. Professor Wizner believes that law faculty need to help students tackle the broader moral questions they will face in their practices; to do so, law schools need to understand the integral relationship among all aspects of their curriculum, both clinical and nonclinical, and to undertake service to the poor as a goal of legal education and of law students’ future practice.³⁷ Professor Louise Trubek draws on her own experiences as a law student, which she describes as nurturing her commitment to public interest work, to remind law schools of their longstanding efforts to provide legal services to the poor and their obligations to remain faithful to the values of social justice.³⁸

Other contributors call for changes in the institutions of which they are members. Lawrence Fox writes of the distance between private lawyers and public interest lawyers. He describes efforts to integrate the two groups and hopes for a reconceptualization of the relationship between the various sectors of the bar.³⁹ Alan Houseman discusses the ways in

34. See Andrea Christensen Luby, *Shadow Markets for Legal Services: Beyond the Community-Based Approach*, *infra* at 563, 574-81.

35. See Robin S. Golden, *Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing*, *infra* at 527, 555-61.

36. See Rulli, *supra* note 25, at 508-09.

37. See Stephen Wizner, *Is Learning To “Think Like a Lawyer” Enough?*, *infra* at 583, 590-91.

38. See Trubek, *supra* note 25, at 461-62; see also Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415 (1996).

39. See Fox, *supra* note 5, at 317.

which legal services providers had themselves become too large, too bureaucratic, and too distant from the populations that they serve. He argues that one benefit of the current restrictions is that they have forced restructuring, a focus on flexibility, and outreach to law schools and the private bar to create more collaborative, community-based work.⁴⁰ Felix Lopez, Catherine Carr, and Alison Hirschel all note the possibility of integrating lawyering services with other social services in hopes of providing new sources of funds and better services.⁴¹

A few essays call not only for reorganization of legal education and the practice of law but also of the very processes of law themselves. The Honorable Denise Johnson of Vermont's Supreme Court, proposes restructuring the processes of justice to be less lawyer-dependent,⁴² as do University of Southern California Law School Associate Dean Karen Lash and attorneys Pauline Gee and Laurie Zelon.⁴³ These contributors argue that the problem needs to be framed not as a discussion only about access by "poor" people to law but as a conversation about improving all citizens' access. Justice Johnson discusses the difficulty faced by the middle class in paying for legal help to handle divorce matters or landlord-tenant disputes. To begin to solve the problem, Justice Johnson would increase reliance on alternative dispute resolution, self-representation, and paralegals.⁴⁴

A few shared themes merit further discussion. First is the fragility of even the current, limited programs. Legal services lack stability not only because of the threat of further reductions and greater restrictions in government funding, but also because of the uncertainty surrounding the legality of using interest from lawyers' trusts accounts.⁴⁵ A second theme is the interrelationship between lawyering for poor people and lawyering in general. Dissatisfaction by members of the bar with their own practice and by users of courts with court processes is prompting a range of "reform" proposals. Thus this collection of papers discusses how court systems and legal practice can be revised to serve better not only poor clients but all clients. A third shared theme is that response to both of these issues cannot be expected to come only from the bar. Lawyer-based solutions are not now—if they ever were—sufficient to the task. However

40. See Houseman, *supra* note 6, at 382-83.

41. See Lopez, *supra* note 13, at 452-53; Carr & Hirschel, *supra* note 8, at 330-34.

42. See Denise R. Johnson, *The Legal Needs of the Poor as a Starting Point for Systemic Reform*, *infra* at 479.

43. See Lash, Gee, & Zelon, *supra* note 12, at 495.

44. See Johnson, *supra* note 42, at 484-86.

45. See *Phillips v. Washington Legal Foundation*, 118 S. Ct. 1925 (1998) (holding that "interest earned on client funds" held in such accounts constitutes "private property" of clients for "taking clause" purposes but not deciding either whether such funds are "taken" by states that use them for legal services or whether, if taken, any compensation would be due").

energetic both private and public lawyers may be, they alone cannot fill the demand for services nor respond to the needs that underlie the search for legal help.

Rather, coalitions—cutting across class and professional lines and informed by an appreciation of the color and gender of many of the impoverished—need to work together to engender concern and compassion for a range of individuals and groups not currently commanding popular support. In essays by contributors from around the country, we learn of efforts to create such coalitions. Helaine Barnett writes about the Legal Services Project of the New York State Courts. Its membership included individuals (such as business leaders) who had not had any prior affiliation with legal services, and its purpose was to bring together this diverse set of supporters to persuade New York State's legislators of the social utility—for all segments of society—of enhancing access to legal services and to courts.⁴⁶ Karen Lash, Pauline Gee, and Laurie Zelon (respectively an academic, a poverty lawyer, and a member of the private bar) write together about another model of broad partnership, the California Access to Justice Commission, which also endeavors to draw all segments of the community into improving the justice system and making it more accessible to those who cannot pay for lawyers, including but not limited to the “officially” poor.⁴⁷

The papers published here capture a good deal of the discussion at the *Colloquium*. But the exchanges that transpired during the *Colloquium* deserve mention as well, for from those conversations come other dimensions of the current state—and future—of legal services. The *Colloquium's* atmosphere was both congenial and charged. Practitioners, administrators (including the president of the Legal Services Corporation), faculty, and students generated conversation from a range of perspectives. The fault lines were many: between legal services organizations that accepted restricted federal funding and those that did not; between lawyers who believed strongly in providing individual representation to poor clients and those who emphasized group or “community-based” approaches; between participants who saw the fact of restrictions as an opportunity for needed changes in the delivery of legal services and those to whom the cutbacks spelled only disaster.

The tensions led to some distress, particularly from some long-term legal services lawyers. These participants voiced frustration that even as

46. See Barnett, *supra* note 32, at 470.

47. See Lash, Gee, & Zelon, *supra* note 12, at 495-97; see also AMERICAN BAR ASSOCIATION, SUMMARY OF STATE AND LOCAL JUSTICE INITIATIVES (1997); ACCESS TO JUSTICE WORKING GROUP, AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE IN CALIFORNIA (1996).

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they faced attacks from Congress on the right, they also heard criticism from allies, students, and community activists on the left.⁴⁸ For participants old enough to remember the 1960s, when the first federally subsidized poverty lawyers worked on projects sponsored by the Office of Equal Opportunity, it was remarkable to see that, from the vantage point of later generations, government-funded legal services had become old and entrenched enough to be a tradition against which a current generation might rebel. That's a measure of success, of sorts. We cannot help but wish that this intergenerational struggle was generated by a more cheery occasion than the sharp reduction in funding for such programs. But impatience helped to launch legal services thirty years ago; it is now the next generation's turn to push.

We also wish that, during the past thirty years, the commitment to economic equality had become sufficiently strong to make the prospect of joining the public interest bar less daunting for law school students and young lawyers. Students reading guides about public interest law learn of hundreds of legal services organizations and dozens of public interest fellowships. But they also learn of the absence of coordination among legal services providers and fellowship sources. Law students now speak of seeking their own support, of applying to a multitude of post-graduate fellowships, of "cobbling together funding" by obtaining bits of money from an array of grantors who themselves have a diverse set of stated objectives. While Professor Louise Trubek reminds students of the creativity thus engendered, the fellowship mill is an exhausting process in which not all prospective public interest lawyers flourish. Moreover, as Burt Neuborne pointed out in the *Arthur Liman Colloquium* discussions, the split between organizations that do and do not take government funds also threatens to create a two-tier career track, separating out "daily" individual representation from work such as class-action litigation or state capitol lobbying that is often seen as more prestigious. We will need another thirty years of experience to learn what kinds of careers lawyers entering legal services today will have and how the strains on the practice of law experienced by all lawyers will affect the ongoing efforts to expand services beyond those who can afford them.

In the end, we are both celebratory and distressed. We are pleased that Yale Law School sponsored both the *Colloquium* and this volume, impressed with the commitment and energy of all the participants, especially delighted by the level of student interest, and glad that public interest programs not only exist at law schools but are the focus of a great deal

48. During a coffee break, one participant asked another why radicals put so much energy into criticizing liberals. The response: "Because the liberals are the only ones who will listen."

of attention outside the academy. We are proud of the academy's willingness to donate resources, institutional presence, and capability to exploring poverty law concerns; we recognize and applaud the capacity of universities to be a locus of exchange that helps to create enduring and effective institutional infrastructures.

Yet we are deeply troubled by the scarcity of services and the seeming lack of national political interest about the needs of so many members of this society. Neither lawyers nor poor people are currently objects of popular affection. We are keenly aware of the insufficiency of a response based in an array of specialized settings, such as universities and foundations. The central lesson to be learned is that shared responsibility—public and private, academic and general, legal and non-legal—is required. Over the last three decades, federally funded legal services grew from a model program to a nationwide multi-faceted institution, and then recently shrunk (due to the unremitting debate about legitimacy and propriety of funding lawyers for the poor) to a fragile, limited project. Legal services attorneys can no longer participate in the full range of activities understood to constitute “lawyering.” As several contributors note, the public needs to be reminded that it has a self-interested as well as selfless stake in making justice accessible to all. The ability to enforce the rule of law cannot—and should not—be available only to certain segments of a social order.

Lawyering as an array of activities, lawyering as an act of shared responsibility, those were the tenets of Arthur Liman's life. The *Foreword* to the volume by Lewis Liman⁴⁹ and the *Afterword* by the Honorable A. Leon Higginbotham⁵⁰ are eloquent statements of Arthur Liman's efforts to weave together the many institutions needed to respond, comprehensively, to enable justice for all members of this polity.⁵¹ As Judge Higginbotham reminds us, Arthur Liman recognized the need to move beyond his role as a private attorney throughout his legal career. He took responsibility for broader social concerns not out of professional obligation, but because he could. Judge Higginbotham remembers that his friend used to say “Having a successful career in private practice was more than a matter of earning a good living. It gave me the independence when I took public assignments to do what was right.”⁵²

In providing for a program on public interest law at Yale, the Liman family, Arthur Liman's firm, his friends, and his colleagues have begun to weave together the relevant segments of the legal community—

49. Lewis J. Liman, *The Quality of Justice*, *supra* at 287.

50. A. Leon Higginbotham, *An Open Letter to Arthur Liman*, *infra* at 593.

51. See ARTHUR LIMAN, *LAWYER: A LIFE OF COUNSEL AND CONTROVERSY* (1998).

52. Higginbotham, *supra* note 50, at 594.

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academics and practicing lawyers, young and old lawyers, public and private lawyers, members of the judiciary—needed to continue the work that was so much a part of Arthur Liman’s life. It is an honor to dedicate to his memory this first volume of papers from the Arthur Liman Public Interest Program and Fund. Through projects such as this, his work carries on.

