Poverty Lawyering in a New Millennium

Louise G. Trubek†

Despite draconian cuts and restrictions in Federal funding for the Legal Services Corporation, the conversations conducted and papers written as part of the 1997 Arthur Liman Colloquium paradoxically highlight the continuing vitality of poverty lawyering. The paradox can be explained by the participation of committed law students and new lawyers who, while lamenting the difficulties of the Legal Services Corporation, see opportunities for productive lawyering. Practicing poverty law requires living in a set of contradictions. Ruth Buchanan describes these contradictions: the issue of disempowerment at the level both of institutions and individuals, the need to understand the law’s double role as a tool for change and reproduction of hierarchies, and the possibility of change and understanding of limits. She points out that each generation of poverty lawyers must deal with these contradictions in the context of its own time.¹

Law school can be central to fostering the ability of lawyers to live and practice in these contradictions. My experiences at the Yale Law School, class of 1960, cultivated and nourished my youthful passion for social change. I received an award for my legal aid work while in law school, validating my choice to do public service. Speeches by public interest alumni discussing contemporary legal actions and courses taught by progressive professors expounding theoretical insights inspired me to envision a public interest law career. Committed law school classmates assisted me in my efforts to create public interest practices in New Haven, Connecticut and Madison, Wisconsin.

These positive experiences were essential for me as I struggled against a sense of marginality stemming from my uniqueness as a woman from a working-class background; the high status of corporate practitioners within the legal culture contributed to my unease.² Law school enabled me to become a poverty law practitioner by providing public serv-

† Clinical Professor of Law, University of Wisconsin Law School. I would like to express my appreciation to Professor Judith Resnik for her longstanding commitment to public interest lawyering. I also wish to thank Karin McEwen and Sara Zeman for their editorial assistance.


2. See ROBERT GRANFIELD, MAKING ELITE LAWYERS (1992) (discussing the influence of law school).
ice opportunities, supportive intellectual mentors, and long-term networks that have maintained my commitment to lawyering for the disadvantaged.

Law school taught the poverty lawyers of my generation how to practice in the context of the 1960s and 1970s. We seized on the opportunities of our time: successful constitutional litigation, national government funding for legal services, and federal legislation guaranteeing income and services for the poor. We created practices that relied on federal funding, emphasized case work based on constitutional and federal legislative protections, and maintained traditional lawyer’s roles and skills.

Law students today must be trained and supported in law school to create practices that enable them to cope with the conditions of poverty law practices in the 1990s context: devolution of poverty programs to the states and localities, unstable lawyer-client roles, and reduced and fragmented funding for poverty lawyering. The interaction of two phenomenon, information on new strategies for lawyering for poor people and opportunities for post-law school fellowships, is creating the supportive law school experience necessary for committed students. Law schools, by teaching about poverty theory and doctrine, demonstrating new practices, and encouraging fellowship programs, are providing guidance and support on how to practice. Students, therefore, are optimistic that practicing poverty law is a realistic goal for their professional life.

I. NEW STRATEGIES FOR LAWYERING FOR POOR PEOPLE

Practicing in the current context of poverty law requires swerving from earlier models by modifying existing practices and creating novel institutions. Reenvisioned strategies meet this challenge by using both historic ideas and institutions and current opportunities. The Arthur Liman Colloquium Papers published in this volume demonstrate in their discussions the new strategies: strengthening community and collaborative alliances, revising the lawyer-client roles, and expanding policy advocacy.

There is a shift to community-based practices. The community model often includes collaborative relationships of lawyers with social workers, teachers, and organizers. The appeal of this strategy is that it provides services that are less expensive and it builds on local institutions and allies. Moreover, this style of advocacy does not require the constitutional and legislative protections and entitlements for effectiveness that were the basis of earlier practices. The community approach is exemplified in Robin Golden’s article, in which she “challenges legal assistance agencies to question their assumptions about the primacy of individual right strategies and to ask themselves ‘who should be the client for our work’.”
Poverty Lawyering in a New Millennium

I suggest that the answer to that question is ‘the community.’” Golden develops a practice in which community institutions and groups are the primary clients for legal services lawyers.³ Leigh Goodmark describes the potential in adding multi-professional collaborations to community lawyering. Interning as a Skadden Fellow, Goldmark served clients in a school setting. Drawing on this experience, she advocates for lawyers located in community sites working with teachers and other professionals as an effective method to provide holistic services to clients.⁴ Poverty lawyers in the 1960s often advocated community and collaborative strategies, but these models were marginalized and failed to become integrated into the dominant practice. The emphasis on community lawyering reflects a renewed interest in this strategy.⁵

Assisting poor people with their individual legal problems remains an essential task of poverty lawyering. Lawyers continue to feel a passion for correcting individual injustice, yet elimination of entitlements and continued funding cuts require a reassessment of how to achieve this goal. Reworking the lawyer-client relationship is one strategy: two approaches are sharing legal tasks and community legal education. Andrea Luby’s article advocates for client payment, in cash or in kind, to encourage involvement and participation in the representation as well as the allocation of resources.⁶ Her article reflects the larger movement to redefine the allocation of tasks between lawyers and clients, sometimes called “unbundling.”⁷ Community legal education also reflects rethinking individual casework by emphasizing teaching clients on how to proceed with their claims. Julia Greenfield, the 1998-99 Liman Fellow, will design and implement a community legal education curriculum to inform workers about their employment rights under state and federal laws.⁸ Such individual education empowers clients to pursue their own claims.

³ 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.
⁶ Andrea Christensen Luby, Shadow Markets for Legal Services: Beyond the Community-Based Approach, infra at 563.
⁸ This project parallels one described by Ingrid Eagly, a Skadden Fellow, in which she challenges the conventional legal services practices to embark on the community education model. Ingrid V. Eagly, Community Education: Creating a New Vision of Legal Services Practice, 4 CLINICAL L. REV. 433 (1998).
Poverty lawyers' interventions in policy decisions through legislative lobbying, administrative agency actions, and class actions are essential for effective advocacy for poor people. Gordon Bonnyman discusses the difficulty in pursuing these highly successful policy strategies within both LSC offices dealing with advocacy restrictions and nonprofit offices struggling with funding dilemmas. Policy advocacy is also changing to reflect devolution of money and authority to the states. Facing restrictions and devolution, community alliances can provide an effective base for legislative, administrative, and litigation strategies. Alison Hirschel, the 1997-98 Arthur Liman Fellow, describes her successful policy work with community groups on long-term care issues for the aging and disabled. She asserts that creation of community networks, administrative advocacy, and individual case representation are essential elements for effective impact on policy development.

These new strategies also present challenges. Each does not operate independently of one another, and they may conflict: community-based programs can ignore confronting the power of state agencies, and individual payment for services may reproduce gender and class bias. The strategies, however, also intersect; no one practice reflects a singular approach. Welfare policy advocacy is based on community collaborations, and unbundling lawyer-client tasks requires revising court policy. Contradictions are inevitable; the most important challenge is maintaining energy and growth. When a group of lawyers, law teachers, and students created the Connecticut Women's Education and Legal Fund (CWEALF) in the 1970s, it attempted to merge litigation, community education, policy advocacy, and coalition-building in one organization. The organization shifted priorities through its twenty-five years of existence but maintained a commitment to a broad range of strategies. It has survived and thrived as an exemplary model of local advocacy that has responded to the context of its time.

II. SUPPORTIVE FELLOWSHIPS

The availability of fellowship funding programs to graduating law students is crucial to rethinking viable poverty practices. The optimism of

11. She also describes her work with Community Legal Services, Inc., in Philadelphia, where they have shifted their welfare advocacy to a community-based approach to modify welfare policy. Catherine C. Carr & Alison E. Hirschel, The Transformation of Community Legal Services, Inc., of Philadelphia: One Program's Experience Since the Federal Restrictions, supra at 319.

464
committed students about their future relates to the availability of jobs. There has been a remarkable flowering of post-law school fellowships over the past ten years; the Directory of Public Interest Fellowships published by the Yale Law School Career Development Office lists thousands of post-graduation grants. The largest and highest-profile are the Skadden Fellowships and the NAPIL/Open Society Institute Equal Justice Fellowships. The Skadden Fellowships, founded ten years ago, are awarded to twenty-five graduating law students each year. The NAPIL Equal Justice Fellowships were recently expanded to seventy-five fellows by a matching grant contribution from the Open Society Institute. The fellowship stipend, while modest, enables law students to work at public interest jobs full-time for two years and provides loan forgiveness for educational debt if the law school does not offer assistance.

The large fellowship programs share important characteristics: significant size, student initiation, peer networking, and post-fellowship fundraising. The fellows develop their own placement in cooperation with a nonprofit organization. The programs require placements in organizations that are willing to sponsor initiative projects; funding cannot support regular staff positions. The fellowships by their own terms encourage rethinking poverty law practice. Students exposed to innovative clinics, internships, law school courses, and scholarship while in law school have an opportunity to create and experiment in their own practice immediately after graduating. In order to obtain additional services of a fellow, nonprofit firms are willing to sponsor innovative projects even though they may be exposed to controversial new ideas and methods.

Networking and communication among the fellows is extraordinary, creating strong morale and energy. The fellowships provide ongoing training and communication during the period of the fellowship including newsletters, e-mail, and fax. These communication systems contain information on the work of the fellows as well as public interest job openings; they often organize communication by interest areas, i.e. children, elderly, and community economic development. The director of the

13. See Telephone interview with Susan Butler Plum, Director, Skadden Fellowship Foundation (June 1, 1998).
14. See Telephone interview with Lori Grange, Program Development Director, National Association for Public Interest Law (June 22, 1998).
Skadden program describes the fellowship program as a "public interest law firm without walls."\(^{16}\)

Communication among the fellows continues after the fellowships end and includes shared information on public interest positions. One program reports that fifty percent of the fellows remain in their fellowship placement after the fellowships end. Many raise their own funding to keep the position alive. Alison Hirschel, the first Arthur Liman Fellow, wrote a successful grant application to the Michigan State Bar Foundation to continue her project for two additional years.\(^{17}\) As one new lawyer said "we learned that we did not want to be the last hired and first fired—we have to raise our own funds."\(^{18}\) The fellowship programs encourage remaining in public interest jobs by providing training in fundraising that includes networking on possible funding sources.

Writing about the experience in fellowship programs is proving to be very valuable. Fellows discuss their insights in articles published in fellowship newsletters and legal journals. These reports quickly reach law students and lawyers who read about current poverty lawyering as described by enthusiastic practitioners. The information on the success of the fellows encourages law students to seek summer internships and clinic placements while in law school, anticipating post-law school fellowships.

The importance of fellowships to people interested in poverty law practice is twofold: availability of post-graduate public interest opportunities and development of information on innovative poverty law practices. The significance of fellowship programs can be increased by expanding the definition of permissible poverty law practice and bringing together current and past fellows with other practitioners and professors. The use of sliding scale fee schedules and unbundling services along with the growing importance of community economic development and entrepreneurial advising for low-income people has increased the importance of for-profit firms in poverty lawyering. Allowing fellowship placements in small and large for-profit law firms that provide substantial public interest work acknowledges the importance of this sector and permits fellows to learn about a range of new strategies. The fellowship programs can provide a forum for people interested in poverty law practice. Annual meetings that bring together current and past fellows with other practitioners, community leaders, and law teachers offer an oppor-

\(^{16}\) Plum, \textit{supra} note 13.

\(^{17}\) See Memorandum from Judith Resnik, Arthur Liman Professor of Law, Yale Law School, to Friends of the Arthur Liman Professorship, Public Interest Fellowship, and Fund (June 16, 1998) (on file with author).

\(^{18}\) Interview with Julie Silas, Attorney, Consumers Union, Madison, Wis. (June 18, 1998).
Poverty Lawyering in a New Millennium

tunity to expand the knowledge in the field. The First Arthur Liman Colloquium provides a model. Building a forum on the work of fellows is useful as it brings to center stage the ideas and work of new practitioners. The forum model should include inviting established public interest practitioners to act as mentors/critics and bar leaders, judges, and corporate practitioners to add historical and comparative perspectives. Any forum should include the importance of exploring new funding sources, a need eloquently expressed by Gordon Bonnyman in his Colloquium article.19

III. CONCLUSION

Law schools must encourage students to maintain and refine their social justice values as they struggle against financial and cultural pressures to swerve from their commitment. The Liman Program squarely places Yale Law School as a site for the continuing evolution of poverty lawyering. By providing supportive mentors, public service opportunities, and long-term networks necessary for students to survive in law school and thrive in practice, the program expresses the tradition of public interest lawyering that is a most valuable asset of the Yale Law School.

19. See Bonnyman, supra note 9.