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## Looking for Justice on a Two-Way Street

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## LOOKING FOR JUSTICE ON A TWO-WAY STREET

Nancy Cook\*

### INTRODUCTION

The theory of community-based practice is that lawyers can better understand people's legal problems if they are closer to the place where the problems originate. Being on-site at a community organization makes lawyers more available to their client base while, simultaneously, giving them a contextualized understanding of clients' lives. A common frame of reference in the field is an "access to justice" paradigm, the primary goal of which is to build a bridge between poor communities and institutions of power.<sup>1</sup> Conceptually, this bridging is accomplished by meeting clients on their home turf, and then serving as their escorts from the home community to the elite institutions where Law rules and justice is dispensed. While lawyers in this model obtain the benefits of greater knowledge of clients' situations, crossing into the community nevertheless is seen primarily as meeting *client* needs.

Over the fifteen years in which I have engaged in community-based work, my ideas have evolved. More and more I've come to believe that "access to justice" is an overstated ideal, if not a cruel joke. Access to justice is not really achievable, at least not in ways most of us have been socialized to believe. What we do as lawyers when, together with clients, we cross into the judicial system, is help the clients stay out of harm's way while in that territory. Lawyers can be guides in negotiating the admittedly confusing and difficult terrain, and since the clients often *must* be there, having been summoned under threat of eviction, loss of parental rights, or incarceration, such assistance has value. Our clients are not getting "access," however; they are getting protection from what passes for justice. Access implies the potential for gain; what we see in most cases is, at best, possibilities for damage control. And the lawyers aren't changing anything.

In recent years, notions of collaborative problem-solving have surfaced.<sup>2</sup> For the most part, collaborative models strip attorneys of their leadership roles; they are no longer, or not necessarily, the enlightened guides. Rather, lawyers in this vision follow the lead of

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<sup>1</sup> In fact, the name of the first such program with which I was associated as co-director was the University of New Mexico's Institute for Access to Justice. For descriptions of this program, see Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 Clin. L. Rev. 41 (1994); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 Clin. L. Rev. 307 (2001); J. Michael Norwood, *Requiring a Live Client, In-House Clinical Course: A Report on the University of New Mexico Law School Experience*, 19 N.M. L. Rev. 265 (1989)

<sup>2</sup> See discussion of collaborative styles *infra*, at \_\_\_\_\_.

community members or clients, providing input and service as needed. The goal of meeting client needs (now, however, as those needs are defined by clients) has not changed. Moreover, the belief in the desirability of “access” – to benefits, services, opportunities to be heard, and just decision makers – remains deeply embedded.

While collaborations within community settings are an improvement over the paternalism of earlier traditions,<sup>3</sup> they hold less hope for change than most of their proponents have imagined. The unstated truth about lawyer-community “collaborations” is that lawyers, by and large, do not intend to bridge the gaps between the powerful (themselves included) and poor communities by giving up their apparent privileges and taking advantage of what communities would have to offer if they did. Access is generally presumed to go in one direction. Lawyers are looking to give client populations access to the halls of political and economic power; but they don’t think in terms of providing judges and the economically privileged access to financially undersupported communities.

This suggests a number of challenges and questions for lawyers working in poor communities: What do we assume about power in this context? What do community lawyers have to say about their own, and others’, accountability to the communities they are connecting with? What assumptions are made about the desirability of access to conventional power, and about the undesirability of accessing the power bases in the neighborhoods? Who really stands to benefit from the interactions between professional service providers and community residents?

In these pages, I look at the contemporary notions of “access to justice,” particularly in relation to poverty lawyers’ goals of “bridge building” between economically distressed communities and institutions of political and legal power. The article commences with brief references to a traditional or conventional model of lawyering and a short description of the criticisms that have been leveled against the traditional model. I go on to explain how these critiques have led to the development of a number of lawyering strategies that utilize collaborative methods and respect communities’ autonomy. A description of one program built around these values, the Community Justice and Legal Assistance Clinic in Rhode Island, is provided by way of example. I then detail a number of structural, strategic and circumstantial problems inherent in collaborative lawyering models.

To begin the process of reevaluating activist lawyers’ approaches to law in service of communities, I want to suggest that a conceptual shift is needed. One thing that appears to be missing from “access to justice” theories is a recognition that access is a two-way street. The underlying goal of collaborative, as well as of traditional lawyering strategies

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<sup>3</sup> See discussion of traditional lawyering *infra* at \_\_\_\_\_.

has been to enable disempowered and disenfranchised clients to reach the power brokers and distributors. Access *to* the communities from which such clients come is not perceived to be part of the imperative, however; implicitly, then, those ostensibly being enabled are also being devalued. This has been a blind spot in the thinking of many community law activists. Thus, in Part II of the article, I propose that lawyers explicitly recognize the value of gaining access to communities, not simply for the purpose of enhancing clients' and communities' standing in the halls of traditionally elite power institutions, but to further the interests of those very institutions--interests that, for the most part, have yet to be articulated or even identified.

Assuming that two-way access is a fundamental goal, the question of what strategies to employ arises. Existing foundations of critical thinking on the subject of community-based law practice suggest certain initial, and essential, elements to whatever strategies are seized upon. The basic ingredients can be summed up as: respect for the homeplace; cross-socialization, and strategic use of social capital. Processed together, these lead toward the goal of creating a mutually beneficial relationship.

Despite the apparent simplicity of this shift in thinking about community-based lawyering, it may, in fact, be quite an ambitious undertaking. For that reason, in the last sections of the article, I suggest a basic beginning methodology: the creation of hospitality space, within the community, where community insiders and outsider allies can interact with a goal toward developing new, as yet unimagined, thirdspaces. Again using the Community Justice Clinic as an example, I describe how the clinic has happened upon hospitable space that has the potential for developing thirdspace and two-way access.

One thing that seems clear, despite shifts in theories of practice, is that presence in the community is essential. The hope for poor neighborhoods is in the neighborhoods. That's where lawyers need to be. But where, precisely, they go, how they get there, and what they do once they arrive are questions still begging for answers. Two-way access is one concept that may expand visions of attorney-client alliances.

## BRIDGE BUILDING AS ACCESS TO JUSTICE

### The "Traditional" Lawyering Model and Its Critics

For a number of years, there have been critiques of the traditional model of poverty law service. "Traditional model" refers to the type of individual case or client representation, in which a client contacts a lawyer to get a problem fixed and /or obtain access to the courts for the purpose of acquiring some right or property. The lawyer is often seen as the actor in such a scenario, as the person who gets things done for the client. This vision of the attorney as the primary force behind the client's case is what Gerry Lopez terms

“regnant lawyering.”<sup>4</sup> In this country, it has been the predominant style of attorney-client relationships for legal services as well as for the private bar.

Lopez and numerous others are highly critical of the “regnant” mode of lawyering. Nevertheless, many core principles of conventional practice survive intact in the models of law practice intended to replace regnant lawyering. In a community-based practice, for example, where lawyers are theoretically positioned both to utilize their law school training and to heed the voices of the community, the lawyer’s role, at its simplest, is still to bring to bear legal proficiencies and knowledge in ways that will make a difference in people’s lives. This is, quintessentially, “traditional” law practice. And lawyers, most would agree, do perform these basic functions in community settings. Most community lawyers believe that their expertise and skill, bought at considerable time and expense, is of particular worth to the communities they engage with. Through the legal services provided, poverty-survivor clients obtain benefits or advantages they would not otherwise obtain.<sup>5</sup>

Even where residents’ empowerment rather than adversarial success is the ultimate goal, conventional litigation methods have value. Non-litigation problem-solving methods are enhanced by legal hooks; “Litigation – or the threat of it – is still a powerful tool.”<sup>6</sup> One community law advocate contends, in fact, that whatever the limits of litigation in engineering social change, the class action lawsuit, at least, remains *the* “most effective means of controlling many illegal policies and practices of government agencies.”<sup>7</sup> In short, there is no great movement afoot that would deny wholesale the value of conventional law practice methodologies. Powerful institutions make and implement decisions with real impact on people’s lives, and lawyers are still generally seen as having advantages in getting access to and putting pressure on key decision-makers.

The critiques of the traditional model focus more on the lawyer’s status and role than on the practicalities of case work. Seeing law as a fix-it profession breeds arrogance on the part of lawyers and dependency on the part of clients. Dependency comes from both the clients’ lack of resources and their assumed lack of expertise. Arrogance results from the lawyers’ security in knowing the system, in having the inside information. One

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<sup>4</sup> Gerald P. Lopez, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

<sup>5</sup> See Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients*, 67 *Ford. L. Rev.* 2475, 2509 (1999) (attesting to the benefits clients receive).

<sup>6</sup> Susan D. Bennett, *Discussion and Response to the Video On Long Haul Lawyering*, 25 *Ford. Urban L. J.* 771, 773 (1998) [hereinafter *Long Haul Lawyering*].

<sup>7</sup> Matthew Diller, *Lawyering for Poor Communities in the Twenty-First Century*, 25 *Ford. Urban L. J.* 673, 679 (1998). See also Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 777-78. (The “legal” mechanisms of class action and legislative advocacy have “undeniable power to address the structural injustices that repeated single inequities expose over time.”)

consequence of this situation is that lawyers — even well-intentioned ones -- tend toward too much enthusiasm for their own ideas, and fail to listen. Ultimately, all this leads to replication of social subordination.<sup>8</sup>

There may always be a threat to autonomy in the lawyer-client relationship because of the lawyer's technical expertise, and because she has access to and familiarity with the legal system. Lawyers are trained not only in procedural formalities, but in the necessary detachment the courts demand.<sup>9</sup> But while this expertise may be an unavoidable barrier to client self-determination in the judicial system, it need not evolve into a particular problem-solving hierarchy. Community activist Ron Chisom, in a critique of activist lawyers, notes that too often lawyers do not understand that legal expertise is only one type of tool in the struggle for economic justice.<sup>10</sup> “Lawyers think only in terms of what will help or hurt the case, but they do not understand that ‘the case’ is not the point...”<sup>11</sup> An unavoidable, but penetrable, barrier can thus become a permanent roadblock.

Chisom blames attorneys for this situation.<sup>12</sup> Other activists, both lawyers and laypersons, agree. Traditional practice hurts poor people by centering the action in the attorney and isolating clients from each other.<sup>13</sup> Litigation, the default position of traditional practice, does not empower.<sup>14</sup> Indeed, lawyers are likely to leave clients exactly where they were found, except to have increased their dependency.<sup>15</sup>

Poor clients, even client organizations, rarely challenge the superiority of the lawyers offering services, however. The need for services is great, and urgent. The paradox is that while it is the struggle for equality that generates the need for lawyers in the first place, in their attempt to meet the need for services, lawyers and clients recreate the clients' dependency on outsiders.<sup>16</sup> The challenge for poor communities and lawyers in their

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<sup>8</sup> See Richard Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?* 1 Clin L. Rev. 639, 649-50 (1995) (discussing similar conclusions reached by, among others, Anthony Alfieri, Stacy Brustin, Clark Cunningham, Gerald Lopez, and Lucie White).

<sup>9</sup> *Id.* at 647-48.

<sup>10</sup> William P. Quigley, *Reflections of Community Organizers*, 21 Ohio N.U. L. Rev. 455, 459 (1995).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 458. (“Lawyers create dependency.”)

<sup>13</sup> Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women*, 53 U. Miami L. Rev. 749, 753 (1999)

<sup>14</sup> See generally, William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960s to the 1990s*, 17 St. Louis U. Pub. L. Rev. 241 (1998).

<sup>15</sup> Virginia P. Coto, *supra* note 13 at 753.

<sup>16</sup> Richard D. Marsico, *supra* note 8 at 646. See especially footnotes 21 & 22

midst is how to foster autonomy, if autonomy is contingent on outsiders' willingness and/or ability to foster it.<sup>17</sup>

It is a challenge that most antipoverty activists insist must be met. In a frequently cited quote, Stephen Wexler observes, "Poverty will not be stopped by people who are not poor."<sup>18</sup> Helping the poor through legal representation simply will not work if it does not enable clients to produce and contribute.<sup>19</sup> The bulk of the work, as well as the impetus, say the critics, must come from the people needing the assistance.

#### "Collaborative" Responses to Traditional Lawyering

This dilemma has prompted a number of corrective responses. While there are multiple variations on the theme, the fundamental proposition is that lawyers ought to be part of the community they want to serve. They should be looking for collaborative solutions.<sup>20</sup> Some characteristics of a collaborative response might include immersion in the community, reluctance on the lawyers' part to assume leadership positions, and recognition that law is politics. Typically, lawyers who espouse collaboration also see the legal work as coming out of intense involvement in local issues; it is understood to be only one tactic of a greater rectifying strategy.

While collaborative notions have been configured in different ways,<sup>21</sup> there is basic agreement on the starting premise: the first step is to break away from the position of regnant lawyer.<sup>22</sup> In Gerald Lopez's vision of the non-regnant, or "rebellious," lawyer, the orientation toward advocacy must nurture the "appropriate sensibilities and skills that are 'compatible with a collective fight for social change.'"<sup>23</sup>

Lucie White has broken this down into three "ideal images" of change-oriented lawyering: 1) those in which official channels are assumed to work for all; 2) those

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<sup>17</sup> *Id.* at 647-48.

<sup>18</sup> Stephen Wexler, *Practicing Law for Poor People*, 79 *Yale L.J.* 1049, 1053 (1970).

<sup>19</sup> Virginia P. Coto, *supra* note 13 at 758; see also Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 780, n. 24.

<sup>20</sup> As used here, "collaborative" means, essentially, joint planning and decision-making, but with a twist: legal professionals may have to earn the right to be on equal footing.

<sup>21</sup> Variations include group representation in economic development context or non-profit agency context (e.g., Susan Jones; Susan Bennett); cross-professional collaborations (e.g. Louise Trubek); and community-situated law offices, (e.g. Parkdale Legal Services, East Bay Community Law Center), to name just a few. For general descriptions, see Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 *Clin. L. Rev.* 217, 232 (1999); Ingrid V. Ealey, *Community Education: Creating a New Vision of Legal Services Practice*, 4 *Clin. L. Rev.* 433 (1998).

<sup>22</sup> John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersections of Race, Space, and Poverty*, 67 *Ford. L. Rev.* 1927 (1999).

<sup>23</sup> *Id.* at 1937

characterized by dominant forces imposing systematic exclusion of certain interests from decision-makers' tables; and 3) those in which conditions of subordination force people to suppress their own interests and discount their own power. If official channels appear to be open to all, litigation is the appropriate response. Where exclusion of some is assumed, public "conversation," or public happenings that "work," are in order. When conditions result in acquiescence to the loss of power, all work must focus on the community's reclaiming of power, and lawyers and communities need to engage in legal strategies together.<sup>24</sup>

Community-focused collaboration has political overtones and implications. This is not new to poverty law practice; but to some extent, political activism in baseline community legal services has been suppressed in recent times, ever since federal funding of legal services exposed how "systemic representation is political and threatening."<sup>25</sup> But the political underpinnings of legal representation have resurfaced in collaborative models in the community. John Calmore, discussing "cause lawyering" as described by Austin Sarat and Stuart Scheingold, observes that the legal profession both needs and is threatened by such ideologically infused lawyering. The threat from this type of law practice is that it can destabilize the dominant understanding of 'moral neutrality.'<sup>26</sup> For many, of course, that is the point.

Politicization, while perhaps not an essential characteristic of collaborative practice from the lawyers' perspective,<sup>27</sup> is often seen by the community as such.<sup>28</sup> This may be because dominant society's — and the lawyers' — "de-politicization of the community client's agenda is a constant threat to the client's autonomy and to its ability to act in stewardship for its community's interest."<sup>29</sup> To the extent that community empowerment rather than access is the primary goal of service, it is generally assumed to have a greater

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<sup>24</sup> Lucie E. White, *To Learn and Teach: Lessons from Dreifontein on Lawyering and Power*, 1988 Wis. L. Rev. 699, 793. White's orientation appears to favor the third conceptualization.

<sup>25</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 775.

<sup>26</sup> John O. Calmore, *supra* note 22 at 1932. Cause lawyering is one of many articulations of non-regnant lawyering. It is defined here as "...various law-related activities, from rights assertion to legal counseling, that rel[y] on law-related means to achieve social justice for individuals and subordinated or disadvantaged groups." *Id.* at 1928.

<sup>27</sup> Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 Clin. L. Rev. 45, 76 (2002) [hereinafter, *The Ill-Structured Problem*] (Lawyer and client, whether individual or group, can view case as political or not and strategize accordingly.) But see, Stephen Wizner, *Beyond Skills Training*, 7 Clin. L. Rev. 327, 331 (2001) (advocating that law teachers profess social, moral and political agendas that inculcate in students a sense of moral responsibility for the redress of injustices).

<sup>28</sup> Susan D. Bennett, *The Ill-Structured Problem*, *supra* note 27 at 76.

<sup>29</sup> Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 Clin. L. Rev. 427, 487 (2000).

likelihood of being realized through mobilization strategies, which are inherently political.<sup>30</sup>

In all collaborative models, however, whether politically driven or not, “[w]hat is critical is that the expansion or narrowing [of agendas] result from conscious choice.”<sup>31</sup> The bottom line of these critiques and proposals is that “Lawyers must know how to work *with* the client and community, not just on its behalf.”<sup>32</sup> For some, this has meant placing lawyers in the role of facilitator;<sup>33</sup> others, like Bill Quigley, have advocated representation of groups, where the goal is to join rather than lead,<sup>34</sup> or, like Louise Trubek, have pointed out the benefits of professional collaborations in the community context.<sup>35</sup> Many of the collaborative model theorists -- White, Lopez, Alfieri — who see politicization as characteristic of the work, blur the distinctions between lawyer and lay person. They also partially define the lawyer’s role by the level of intensity of community involvement, *i.e.*, they advocate becoming insiders.<sup>36</sup>

#### One Community-Based, Collaborative Experiment: The Community Justice Clinic

The Community Justice and Legal Assistance Clinic (or CJLA), created two years ago at Roger Williams University School of Law, is among the alternative, non-regnant responses to the legal and related needs of the poor. CJLA has operated more or less on the basis of partnership with local service provider organizations. The foundational idea

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<sup>30</sup> Paul R. Tremblay, *supra* note 5 at 2511.

<sup>31</sup> Susan D. Bennett, *The Ill-Structured Problem*, *supra* note 27 at 76.

<sup>32</sup> John O. Calmore, *supra* note 22 at 1936. See also, Marie A. Failing, *Face-ing the Other: An Ethics of Encounter and Solidarity in Legal Services Practice*, 67 Ford. L. Rev. 2071, 2097-98 (1999) (advocating as “dialogic praxis” “thinking in service of doing.” This is a version of partnering with clients); Daniel S. Shah, *supra* note 21 at 232 (describing how strategies of client empowerment and shortcomings of individual representation gave way to self-empowerment strategies, collaboration, and process-based lawyering.); Louise Trubek, & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 Clin. L. Rev. 227 (2000) (describing programs in which lawyers collaborate with other professionals, agencies and clients, and also seek to maintain autonomy while providing essential services, which belie the traditional law firm model.)

<sup>33</sup> Daniel S. Shah, *supra* note 21 at 256. Shah sees lawyers as facilitators, in a supportive role. (“When community driven goals and practices are prioritized, the process of the collaboration with the client produces a realignment of legal and social relationships and strengthens community.”) For other articulations of the facilitative role, see Ann Southworth, *Business Planning for the Destitute? Lawyers As Facilitators in Civil Rights and Poverty Practice*, 1996 Wis. L. Rev. 1121; Susan Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy and the Legal Profession*, 4 Duke J. Gender L. & Pol’y 119, 128-44 (1997).

<sup>34</sup> William P. Quigley *Reflections of Community Organizers*, *supra* note 10.

<sup>35</sup> Louise Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 Ford. Urban L. J. 801, 807 (1998).

<sup>36</sup> Richard D. Marsico, *supra* note 8 at 654.

was that by connecting with the people who are connected to the people, the clinic lawyers would be in a prime position to learn what the client needs are and be in a place where the needs could best be met, not by lawyers alone, but more holistically, in cooperation with other service providers. The clinic is, in current terminology, community-based. It also strives to be collaborative.

In its short lifetime, CJLA has entered into three partnerships;<sup>37</sup> the partnering organizations are different in structure, staffing, administration and funding, but they have some basic things in common: each has a highly dedicated staff, with backgrounds in social work, family services, and community building. All are working with populations that are connected in some way to state oversight. Their client populations, whether working or not, are living in poverty.

The Clinic's work with Casey Family Services, the clinic's first partnership site, is illustrative of the community concentration.<sup>38</sup> Casey has two components: direct services and a neighborhood center.<sup>39</sup> Sharing space with the two family services programs is Making Connections, a grass roots organization with solid ties to the community and a strong outreach component. Direct Services, which was Casey's original focus, includes comprehensive services in adoption, post-adoption, foster care, and family support. The professional staff's work in these areas generates some legal work for the clinic in family court and, occasionally, in criminal court.

The Family Resource Center began operating very recently with particular attention to the needs of the working poor, a group which constitutes the largest part of the urban population in the surrounding area. The Resource Center engages in organizational work and asset building with individuals and families. As with Casey's direct services branch, the philosophy of the Family Resource Center is on building safety, trust and strong support systems. Some of the programs coming out of the Family Resource Center include a School to Career program for youth; an IDA Program for Women; VITA low-income tax assistance; and a Youth Opportunity Initiative for youth aging out of foster care.<sup>40</sup>

Even before the Family Resource Center opened and the asset-building programs got underway, Casey anticipated certain barriers to success. Most families coming through

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<sup>37</sup> The partnerships are with Casey Family Services (Casey), the John Hope Settlement House, and the Transitional Services Division of the Rhode Island Adult Correctional Institution.

<sup>38</sup> I focus here primarily on Casey, since that was our first partnership, but much of what I say is relevant to other partnerships.

<sup>39</sup> See web site at [http://www.caseyfamilyservices.org/area\\_rhode\\_island.html](http://www.caseyfamilyservices.org/area_rhode_island.html) (last visited August 10, 2005).

<sup>40</sup> Fuller descriptions are available on the Casey web site at [http://www.caseyfamilyservices.org/area\\_rhode\\_island.html](http://www.caseyfamilyservices.org/area_rhode_island.html) (last visited August 10, 2005).

the doors, they knew, were likely to lack experience with banks, contracts, detailed record keeping, and financial planning. It was also predictable that family stresses, such as domestic violence, pregnancy, and children's behavioral issues would at times surface. Other possible barriers might result from financial crises occasioned by the unexpected loss of a job, eviction, death or serious illness in a family, or involvement with the criminal justice system.

Such difficulties create a need for lawyers. The potential quandaries that could benefit from legal assistance include child support issues, consumer problems, traffic fines, neglect allegations, paternity petitions, and landlord/tenant disputes. Although the Casey staff is accustomed to working with other providers and even, to some extent, with lawyers, like all our partnership sites, Casey has no staff attorneys.<sup>41</sup> When the partnerships got off the ground, therefore, it was expected that student-lawyers would be on site to do intakes and handle some of these legal needs. That has happened.

Clinic students have also engaged in "project work"; that is, the student attorneys have responded to requests for community education or in-service staff workshops at Casey and at the other sites. They have organized panels and put together pamphlets; they made a video on child support issues, and have collaborated on several other law-school supported programs, including a low-income tax assistance program, Street Law and a racial justice initiative. These vary from highly collaborative to fairly simple group task allocation.

Like others in similarly situated law clinics, the more time student lawyers spend in these community settings, the more unsettled CJLA's role has become. Questions, not clearly articulated yet, relate to both our traditional lawyering and to our more collaborative, non-litigation approaches to community-based antipoverty work. We find ourselves caught in a conflict between stressing empowerment and providing service, frustrated by the dearth of options, and uncomfortable with our status as outsider experts. Something has been missing in the bridging paradigm, and the assumptions upon which the bridges are built are eroding.

#### Problems With Collaborative Lawyering

It has not taken long for community activists – lawyers, particularly – to see a huge dilemma in community-based practice. Community lawyers are operating in neighborhoods where legal resources are scarce and where a large percentage of the population is likely to be involved in family, criminal, or housing court. At the same time, these are neighborhoods where long-term relief will not be achieved without

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<sup>41</sup> Casey's Division Director, James Gannaway, has a law degree and is a member of the Rhode Island bar. While this enables him to engage in legal work for Casey's clients, he does so only on a very limited basis and does not view law practice as a significant component of his work.

systemic change, initiated by and for the community. Consequently, poverty law practitioners are constantly faced with a conflict: “whether to stress power or service.”<sup>42</sup>

Any inclination toward collaboration immediately comes up against the “undeniable externals” that pressure poverty lawyers into practicing law “by the case.”<sup>43</sup> Even the strongest proponents of more collaborative approaches to poverty law recognize this. “The regnant mode of lawyering,” notes John Calmore, “is cultivated under the pressing circumstances of practice.” The “circumstances of practice” are direct products of socialization; characteristically, they include an emphasis on and privileging of litigation, a preference for formalities, problem-solving hierarchies with lawyers at the top, and beliefs in *lawyers’* righteousness.<sup>44</sup> The choice to abandon case-by-case representation for larger-scale, longer-term strategies is risky. Community mobilization, as Paul Tremblay has observed, has an inherent disadvantage: it is “enormously speculative.”<sup>45</sup>

Not all lawyers want to undertake the simmering, often slow-moving collaborative process, nor is every attorney in a position to do so.<sup>46</sup> Further, even when they want to be collaborative, lawyers and other professionals may be impeded by codes of conduct that dictate what can and cannot be discussed, or what decisions can and cannot be delegated.<sup>47</sup>

It is not only the lawyers who are conflicted about whether to advocate for the short-term efficiencies of individual cases or, in the alternative, for strategies toward social change that may increase community involvement, but at the cost of more time and less certainty. Economically stressed communities are already stretched too thin. As Susan Bennett so aptly puts it: “For anyone with survival as a day job, doing the night meetings and the weekend work of ‘civil society’ is asking more than most of us usually ask of ourselves.”<sup>48</sup> Nor is it so clear that attempts to be more collaborative necessarily actually

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<sup>42</sup> Paul R. Tremblay, *supra* note 5 at 2509. See also Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 775 (Legal Services offices have had “to choose between meeting the emergency need and building for the long term.” fn omitted.); Richard D. Marsico, *supra* note 8 at 639 (“Lawyers wishing to do social change work are placed in the difficult position of trying to provide the legal representation their clients seek while at the same time not undermining their clients’ autonomy.”)

<sup>43</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 774.

<sup>44</sup> John O. Calmore, *supra* note 22 at 1934-35.

<sup>45</sup> Paul R. Tremblay, *supra* note 5 at 2512.

<sup>46</sup> Richard D. Marsico, *supra* note 8 at 658. He suggests “facilitative lawyering” as an alternative. *Id.* at 659. In Marsico’s words, facilitative lawyering “is more like a corporate counsel, performing important, supportive tasks, but leaving the client intact.” *Id.*

<sup>47</sup> See Louise Trubek, *Reinvigorating Poverty Law Practice*, *supra* note 35 at 808.

<sup>48</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 778-79 (footnote omitted); See also Daniel S. Shah, *supra* note 21 at 253, n. 112 (citing Ayuda as an example of a proposed systemic solution falling on ears of already weary citizens).

result in more equitable distribution of decision-making power. Poor people's organizations often lack resources; consequently, despite everyone's best efforts, they can become dependent on elite assets and technical assistance, leading to disempowerment.<sup>49</sup>

Perhaps an even greater hurdle to true collaboration lies in the sheer magnitude of the struggle. Oppressions are systematically reproduced in major economic, political, and cultural institutions.<sup>50</sup> By and large, the legal system protects existing property rights and status; it was developed to preserve the wealth of the wealthy.<sup>51</sup> Accordingly, those who already have the most riches also have the most access.<sup>52</sup> Poverty-class populations aren't really meant to have the same access, as the most perfunctory view of the courts makes clear; a system that renders assistance one band-aid at a time is not looking for prevention or cure. The reality is that "Legal services cannot end poverty nor are the courts going to redistribute wealth."<sup>53</sup> Exclusion of the poor is the intended, if unacknowledged, outcome of the legal system.

It follows that the procedural benefits of access to lawyers and courts are no assurance that justice will ensue. This is often recognized in the litigation context. Although in some cases, lawyers do attempt to use legal procedures as a way to push for sweeping changes promoting equality or justice, and with some success, this is not the norm in the everyday labor of family, criminal and housing court. Litigation usually doesn't further long-term goals. "One of the weaknesses of litigation," says Bill Quigley, "is the inherent limitation of the judicial system when called upon to produce social reform."<sup>54</sup> Nor is it only judges who back away from aggressive transformation; the advocates themselves may not be invested in substantive justice issues.<sup>55</sup> In the end, even major law reform successes, it seems, don't play out in real life.<sup>56</sup>

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<sup>49</sup> *Id.* at 249.

<sup>50</sup> See John O. Calmore, *supra* note 22 at 1939 (quoting Iris Marion Young, *Five Faces of Oppression*, in *POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER* (Leslie Bender and Dann Braveman, eds., 1995)).

<sup>51</sup> Jane Shukoske *Teaching Law Reform in the 1990s*, 3 *Hastings Women's L.J.* 177, 186, n. 38 (1992). See also Daniel Shah, *supra* note 21 at 256 ("Legal relationships have been designed to produce the formal social relationships that bind and protect elite society....")

<sup>52</sup> This is true even if access is defined narrowly, in terms of ability to retain lawyers. Gary Blasi points out that, looked at in these terms, the "persons" with the greatest access are not actual persons at all, but artificial ones; *i.e.*, corporations. Gary Blasi, *How Much Access? How Much Justice?*, 73 *Ford. L. Rev.* 865, 879 (2004).

<sup>53</sup> Paul R. Tremblay, *supra* note 5 at 2512 n. 155 (quoting Alan W. Houseman, *Political Lessons: legal Services for the Poor—A Commentary*, 83 *Geo. L. J.* 1669, 1705 (1995)).

<sup>54</sup> William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 468.

<sup>55</sup> See Gary Blasi, *supra* note 52 at 906 (discussing lawyers' views toward procedural rights *vis a vis* their views toward the underlying issues of equality and justice).

<sup>56</sup> Jane Shukoske, *supra* note 51 at 189; See also Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 *Ford. Urban L. J.* 813, 827 (1998) [hereinafter,

This state of affairs is not limited to litigation; it is true in the transactional context as well. In the best of circumstances, the poor may not be in a position to claim power. “I am constantly sobered by the realization that my clients have no legal hooks,” says Susan Bennett of her low-income neighborhood association clients.<sup>57</sup> She reports that, notwithstanding the fact that “examples abound of processes that seem to invite participation,” ultimately those processes either “deliberately or mindlessly” eliminate any real opportunity for clients to affect outcomes.<sup>58</sup> Poverty creates, too frequently, an optionless world.<sup>59</sup>

It also makes people vulnerable. Often, in fact, the poor are looking at less than nothing from the legal system. They are constantly at risk of getting noticed and thereby being penalized. For many people living in poverty -- already under the watchful eye of the state because they are receiving public assistance, or are on parole or probation, or have responsibilities under a child support order, or live in Section 8 housing, or have been identified by social services as providing questionable care to their children, or have acquired one too many parking tickets, or are in the country on a temporary visa -- the court system represents a threat to a fragile balance of continuity and even survival. Those seeking the “assistance” of the state have little better chance of forward movement. Many who seek help with mental illness, children’s behavioral issues, domestic violence and other problems put themselves at risk of being exposed or misidentified as offenders themselves. An already bad situation can suddenly make a turn for the worse.

The picture does not inspire optimism. In an “exploding universe of need,”<sup>60</sup> advocates may have to confront the impossibility of meeting that need. Lawyers may have to concede that a “right solution” or even an acceptable one is not likely to be found in the existing system. More sobering, lawyers for poor people in the courts may find that they are there primarily to protect people against additional abuses, or to shift systemic abuse

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*Facing South*] (positing that “moments of community” experienced at the local level may have no impact at all, particularly on a global scale).

<sup>57</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 788.

<sup>58</sup> Susan D. Bennett, *Little Engines That Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 Wis. L. Rev. 469, 470 [hereinafter, *Little Engines That Could*]. Bennett goes on to say that she is troubled when her presence as a lawyer for a neighborhood-based group is “paraded as proof of access to a process of participation, when, in fact, that access has been foreclosed from the beginning.” *Id.*

<sup>59</sup> John O. Calmore, *supra* note 22 at 1938.

<sup>60</sup> Lucie White, *Specially Tailored Legal Services for Low-Income Persons in the Age of Wealth Inequality: Pragmatism or Capitulation?* 67 Ford. L. Rev. 2573, 2578 (1999) [hereinafter, *Specially Tailored Legal Services*].

from one affected population to another.<sup>61</sup> In day-to-day legal matters, a client's choice may be limited to selecting the least drastic from among available penalties. The lawyer's job in this scenario is simply to prevent more harm or greater disaster from befalling that individual. In such a world, the notion of collaboration can seem strangely out of place.

Client concerns must be viewed, therefore, not just as "personal troubles" but as antagonisms, as public issues of social structure.<sup>62</sup> Among the identifiable forms of structural oppression are exploitation, marginalization, powerlessness, cultural imperialism, and violence. As a whole, these various forms of oppression "constitute the packaged opportunity-denying circumstances that must be redressed."<sup>63</sup>

As John Calmore describes it, social problems are demographically linked, to form a cage.<sup>64</sup> The hardships of poverty are concentrated by racial group, so that the experience of poverty, within racially segregated, socially isolated, and geographically constrained places, is more intense.<sup>65</sup> Civil institutions and the social order create "harsh and interlocking systems,"<sup>66</sup> from which other consequences flow. Perhaps most significantly, researchers have documented the cooption of the oppressed. In this way, law becomes "a major vehicle for the maintenance of existing social and power relations by the consent or acquiescence of the lower and middle classes."<sup>67</sup>

Community-based lawyering does have the benefit of forcing the attorneys to see the public issue aspect of clients' circumstances.<sup>68</sup> In fact, the ideal situation for setting up client-attorney collaborations may well be, as Gerald Lopez has expounded upon, that in which the lawyer lives in the community, as a member of the community. This allows the lawyer to get a better "feel" for the community's issues and its goals.<sup>69</sup>

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<sup>61</sup> See Paul R. Tremblay, *supra* note 5 at 2513 n. 158 (Courts at best oversee "horizontal or intra-class transfer of resources without altering class differences." (quoting Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. Rev. 474, 521-22 (1985)).

<sup>62</sup> John O. Calmore, *supra* note 22 at 1937.

<sup>63</sup> *Id.* at 1937-38.

<sup>64</sup> *Id.* at 1938-39.

<sup>65</sup> *Id.* at 1943.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 1933. (quoting David Kairys, *The Politics of Law: A Progressive Critique* 5 (David Kairys, ed., 1982)).

<sup>68</sup> *Id.* at 1937.

<sup>69</sup> Gerald R. Lopez, *supra* note 4 at 31-37. Lopez uses the experiences of three fictional lawyers working with local communities to develop his points. One of the lawyers, Sophie, lives in the community, and has the greatest success. Another, Amos, lost his original insiderness by moving away for a number of years.

Most lawyers are not going to move into poor neighborhoods, however.<sup>70</sup> Established residency in a community, moreover, will not magically transform lawyers from outsiders to community insiders. Looking at the big picture, it is clear that however intent they are on achieving integrative, client-centered collaboration, most lawyers won't blend. Even the best intentioned have difficulty fitting in.<sup>71</sup> To be fair, in all likelihood, lawyers don't "get it" because they can't. Many — probably most — come into client communities from wholly different experiential places, economically, geographically, educationally, racially, and in multiple other ways. To the extent that life experience is what separates outsiders from insiders in the community, becoming a true insider is impossible for many lawyers. Regardless of their goals, beliefs and orientations, many allies of the poor are joined on the side of oppression.<sup>72</sup> Paradoxically, it may be their connection to sources of oppression that makes these lawyers valuable to the client communities they aim to serve or be part of.

## WHAT'S MISSING IN ACCESS THEORIES

### Access Is a Two-Way Street

What poverty lawyers are up against is a situation of too many cases and too little time. Lawyers and clients are operating in a system in which the class-based structure insures that there are no real solutions. Since the lawyers are, by and large, members of the protected class, what power they have is assumed to flow from their connections to that class. They are system insiders and community outsiders.

John Calmore wonders, given the current conditions of urban poverty, "what access to the mainstream 'opportunity structure' means, in practical terms..."<sup>73</sup> As if in response, Lucie White asks whether we would be "better off endorsing the idea that the social needs of disenfranchised groups should be addressed *sui generis*, in ways that reflect their own experiences of need, their embedded historical and cultural realities, the societal power landscapes from their perspectives, their capacities, and their normative

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<sup>70</sup> At the May 2005 Clinical Law Teaching Conference hosted by the Association of American Law Schools, I was part of a working group made up entirely of professional educators working in community-based settings and/or in collaborative, interdisciplinary relationships. A common base of experience was teaching one or more classes based on Gerald Lopez's hypothetical community practice situations (see *supra*, n. 69). Several law teachers in our group reported almost identical student reactions to Lopez's fictional Sophie taking up residence in the community where many of her poverty clients resided. Having somehow missed this crucial point, these students asked incredulously, "She lives there?"

<sup>71</sup> "Lawyers have killed off more groups by helping them than ever would have died if the lawyers had never showed up," says activist Ron Chisom. William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 457.

<sup>72</sup> Marie A. Failinger, *supra* note 32 at 2100.

<sup>73</sup> John O. Calmore, *supra* note 22 at 1947.

aspirations,” than to follow our inclinations to flex our own power muscles.<sup>74</sup> Their questions suggest one answer: that access can work in two directions. Rather than always insist on pulling clients to the doors of powerful institutions, we might ask how to encourage -- perhaps seduce -- the privileged to seek access to the community. The reason for this is, first, simple consciousness-raising. If one sees, one can know. There are no guarantees, of course, but exposure increases the chances of enlightenment. When a community is approached in this way, the lawyers do not enter as residents. They do not enter as collaborators either, although collaboration may be a consequence to be hoped for. They come in, rather, as guests. Although chances are, their outsider status will persist, lawyers will be welcomed if they come in saying “I, too, have something to gain.”<sup>75</sup>

### The Goal: Relationship Building

The essence of two-way access is relationship. While this may be implicit in collaborative lawyering, it has not been explicit, and the nature of the relationship has not been well defined. Thus, it needs to be said that establishing and nurturing a relationship must be a primary goal. As in any relationship, that between lawyer and community requires an ethic of care, some level of commitment, recognition of the evolving nature of attachments, and a practicable approach to communication. Each of these merits examination and definition.

Elements of the ethic of care include deliberate connection, empathy, and responsiveness to needs.<sup>76</sup> This is a perspective that can be consistent with, but differs from, a “justice perspective.”<sup>77</sup> It begins, quite simply, with people meeting each other, with listening, and with seeking the empathic connection.<sup>78</sup> It goes beyond active listening, however, because this connection is not only about personal troubles, but about public issues. Because individual clients’ “problem trees”<sup>79</sup> are part of flawed social structure, where

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<sup>74</sup> Lucie White, *Specially Tailored Legal Services*, *supra* note 60 at 2578. Communities may acquire unexpected advantages from this perspective. See Daniel S. Shah, *supra* note 21 at 252-53. (Ayuda project identified as an example of how educating impoverished communities about the vulnerability of the powerful can head off acceptance of exploitation).

<sup>75</sup> William P. Quigley *Reflections of Community Organizers*, *supra* note 10 at 463 (quoting activist Barbara Major).

<sup>76</sup> See Marie A. Failing, *supra* note 32 at 2090-91.

<sup>77</sup> For elaboration on this idea, see *id.* at 2127.

<sup>78</sup> Susan D. Bennett, *The Ill-Structured Problem*, *supra* note 27 at 77. (“Meeting the clients is often a powerful antidote to assumptions about the intrinsic helplessness of poor people in poor communities.”)

<sup>79</sup> This term was coined by the first class of students in the Community Justice Clinic. It was their way of describing how each case they had taken on for the purpose of providing a client with a particular type of service—obtaining benefits, applying for a name change, defending against an allegation of unpaid support, enforcing an open adoption agreement—seemed to grow from a

violence, powerlessness and marginalization are both localized and intrinsic, residents' substantive goals, as they relate to notions of justice expanding beyond mere procedural access, need to be part of the conversation.<sup>80</sup>

The importance of relationship cannot be overstated. For social action groups, inattention to relationship-building at their inception can spell failure for developing organization and leadership later on.<sup>81</sup> In addition, the ongoing exchange between client population and lawyer has implications for attorney accountability.<sup>82</sup> Without the understanding of potential personal impact, and without recognition of one's responsibility as part of a union, neither lawyers nor community residents can hope for sustainability. This seems simple enough, but, as Ron Chisom points out, "Most lawyers... have a low degree of tolerance with people problems, and will walk away from the effort of community building" with residents.<sup>83</sup>

Commitment is not generally part of an attorney's lexicon, but commitment is essential in this context. Stories of relationship extend over time; they do not occur in a moment.<sup>84</sup> Accordingly, theories about lawyers' accountability stress a process — even if an unconscious one -- of mutual evolution.<sup>85</sup> Interactions over time — the relationship's history -- gives meaning to the work for all involved.<sup>86</sup> As community activist Barbara Major says, it's about "becoming part of the human family..."<sup>87</sup> Community-based practice, in other words, is not about going to work *in* a community; rather, "lawyers have to learn how, with all of their skills, to journey *with* the community."<sup>88</sup> The skill and art of community practitioner is, therefore, that of "long-haul lawyering."<sup>89</sup>

### Ingredients: Place, Socialization, and Social Capital

#### *Place*

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single legal issue to a vast array of related, but frequently not legal, problems that needed attention.

<sup>80</sup> Gary Blasi, *supra* note 52 at 922.

<sup>81</sup> Susan D. Bennett, *Little Engines That Could*, *supra* note 58 at 499 (footnote omitted).

<sup>82</sup> *Id.* at 495 (discussing William Simon's work).

<sup>83</sup> William P. Quigley *Reflections of Community Organizers*, *supra* note 10 at 458. As Susan Bennett reflects, "The notion of 'clients for life' is sobering." Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 774.

<sup>84</sup> Marie A. Failinger, *supra* note 32 at 2072.

<sup>85</sup> Susan D. Bennett, *Little Engines That Could*, *supra* note 58 at 495.

<sup>86</sup> Marie A. Failinger, *supra* note 32 at 2072.

<sup>87</sup> William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 463.

<sup>88</sup> *Id.* at 462 (quoting activist Barbara Major; emphasis added).

<sup>89</sup> *See generally*, Special Issue, Conference on the Delivery of Legal Services to Low-income Persons: Professional and Ethical Issues, Fordham Law Review, Volume LXVII (1999).

To achieve two-way access, there must first be a sense of place. The social order of law, courts and political process is only one side of the bridge; on the other is “community,” vaguely defined and often only vaguely understood. But community, Calmore reminds us, is not a remote abstraction. While it may be “the site of material deprivation and relations that are formed to cope with oppressive circumstances,” it is, also, “a homeplace.”<sup>90</sup> In the nation’s poorest neighborhoods in particular, “place and identity are tied together and bonded by culture.”<sup>91</sup> For that reason, Calmore advises, non-regnant cause lawyering must be physically and emotionally grounded in poor communities.<sup>92</sup> According to Susan Bennett, lawyers, in fact, need to be community-based in order to be collaborative.<sup>93</sup> “Presence,” she says, “a moral and geographical presence, is an imperative.”<sup>94</sup>

Community belongs to those who reside there; “presence,” therefore has, at least in the beginning, more of a symbolic meaning than any measurable impact. Those who live outside the community, however great their expertise and however pure their intentions, need the support of residents to put their skills to use. A grounding in community space, with increasing familiarity over time, then, is essential to a community-centered approach. Calmore offers this advice to outsiders who want to help: “Search for invitation, opportunity, and connection.” Enter with an open mind, and be prepared to learn as you go.<sup>95</sup> While providing needed assistance, recognize not only the limits of what conventional lawyering can do, but the ultimate goal of reclamation of community space by, as well as for, the community.<sup>96</sup>

### *Socialization*

Within any environment, socialization — the process by which knowledge and understandings are absorbed -- occurs. If one grows up on farm, she is more apt than her urban peers to be comfortable interfacing with the land, weather, and domestic animals. Someone born into a restaurant-owning family learns in that environment about food, the mixture of ingredients, cooking temperatures. Raised on the water, a person is more likely to be able to read the tides or the clouds. It is the same with storytelling, singing, praying, swinging a bat, changing a tire or changing a diaper. And the same is true with

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<sup>90</sup> John O. Calmore, *supra* note 22 at 1937.

<sup>91</sup> *Id.* at 1948. See also Susan D. Bennett, *Little Engines That Could*, *supra* note 58 at 470 (“...when we talk about community groups, whether sentimentally or historically or practically, we are talking, first, about groups rooted in neighborhoods bounded by the shared experience of place.”)

<sup>92</sup> John O. Calmore, *supra* note 22 at 1936-37.

<sup>93</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 773.

<sup>94</sup> *Id.* at 773.

<sup>95</sup> John O. Calmore, *supra* note 22 at 1956.

<sup>96</sup> See *id.* at 1950.

money: If you live among the rich and powerful, you will absorb their ways; if you live among those who have nothing, you learn how to survive.

Anthropologist Clifford Geertz tells us that culture is a context, an interworked system of signs.<sup>97</sup> In effect, we learn by osmosis. Recently, the New York Times, in a series on “Class in America,” reported that “Parents with money, education and connections cultivate in their children the habits that meritocracy rewards.”<sup>98</sup> The converse, presumably, is also true. In communities characterized by isolation, lack of political participation, and poverty, residents do not absorb the norms and practices that are characteristic of wealthy society. The experience of material deprivation, too, however, is part of the culture-making phenomenon. Moreover, commonalities of experience as racial and ethnic minorities, as poverty survivors, or as marginalized subgroups provide the coherence that helps define culture.<sup>99</sup> Whatever the situation, behaviors deemed problematic or socially desirable are not necessarily manifestations of cultural traits or cultural aberrations, but of circumstances.<sup>100</sup>

Law itself is culture. Law school is a socialization process, albeit one that is often a continuation of earlier experience. It is a setting that provides specialized knowledge and training, as well as experiential opportunities. In this environment, social codes are absorbed. The existence of a legal culture means that the profession has a shared mental model of what the institution of justice looks like.<sup>101</sup>

Regnant lawyering is tied directly to this socialization process. As a consequence of socialization, most law practice is steeped in formalities and most lawyers are positioned in the role of primary problem solver. Lawyers, even in group settings and law firms, tend to work independently, and not often with connection to other structural networks or

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<sup>97</sup> Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 Clin. L. Rev. 127, 136, n. 19 (1999).

<sup>98</sup> See Janny Scott and David Leonhardt, “Class in America: Shadowy Lines That Still Divide,” N.Y. Times 1, 16 (May 15, 2005). What follows is that “[w]hen their children then succeed, their success is seen as earned.” *Id.* The authors quote Eric Wanner, president of the Russell Sage Foundation, a New York City based social science research group that conducted studies on the subject, as saying that the former system of inherited privilege is being replaced by these “new ways of transmitting advantages.” *Id.* See also Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 Clin. L. Rev. 1, 17 (1997).

<sup>99</sup> Lucie White, *Facing South* *supra* note 56 at 825.

<sup>100</sup> See John O. Calmore, *supra* note 22 at 1952. The process of labeling the behavior is also part of the cultural transmission.

<sup>101</sup> Andrea M. Seielstad, *supra* note 97 at 137, n. 21. See also William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 475 (“Lawyers, especially white lawyers, are trained to understand and be comfortable with the system even when they criticize it.”)

institutions.<sup>102</sup> This socialization is not, for the most part, involuntary; lawyers generally want to be part of the system. By and large, they believe in it.<sup>103</sup>

A change in circumstances can bring about a change in culture, however. Moreover, from all environments come important knowledge and useful skills. In a shared environment, even one that is artificially created, people can learn from each other.

### *Social Capital*

A third ingredient in developing two-way access is social capital. Social capital is shorthand for the idea that within the community are “stocks” of social trust, communication and relationship networks, and operating norms that people can draw on to solve problems.

In the post-Reagan era, poverty law clients are often described as oppressed, silenced, and disempowered.<sup>104</sup> As a consequence, lawyers too frequently overlook strengths in the community.<sup>105</sup> But the essence of community lawyering is localism, and this means relying on the communities’ assets.<sup>106</sup> Whatever wisdom or knowledge lawyers carry into the community does not outweigh the wisdom or knowledge of the community, about itself, especially.<sup>107</sup> Lawyers ignore these assets at risk of doing harm to the causes they espouse. While it does no one any good to romanticize clients, “... there is something undeniably compelling about seeing first hand the evidence that gives the lie to the causal story that inner city poverty arises from a complete absence of human capital.”<sup>108</sup>

Several studies comparing the efficacy of lawyers with that of nonlawyers demonstrate the measurable value of life experience, contacts, informal communication strategies and skills, not only with respect to clients’ subjective satisfaction, but in obtaining concrete results.<sup>109</sup> Studies also show that, in terms of progress, the physical neighborhood is less

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<sup>102</sup> John O. Calmore, *supra* note 22 at 1934.

<sup>103</sup> William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 475.

<sup>104</sup> Marie A. Failing, *supra* note 32 at 2072.

<sup>105</sup> William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 462 (lawyers don’t know enough about the power of the community; quoting activist Barbara Major).

<sup>106</sup> Matthew Diller, *supra* note 7 at 678.

<sup>107</sup> William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 462 (quoting activist Barbara Major). Moreover, it is helpful for client populations to see the vulnerability of the powerful. Such realizations can help ward off the risk of exploitation. See, e.g., Daniel S. Shah, *supra* note 21 at 253.

<sup>108</sup> Susan D. Bennett, *The Ill-Structured Problem*, *supra* note 27 at 78.

<sup>109</sup> Gary Blasi, *supra* note 52 at 887-89. (discussion of Herbert M. Kritzer, *Legal Advocacy: Lawyers and Nonlawyers at Work* (1998) and Richard Moorhead et al., *Contesting Professionalism: Legal Aid and Non-Lawyers in England and Wales*, 37 *Law & Soc’y Rev.* 765 (2003) )

significant than the intangible social networks available to residents within any given neighborhood.<sup>110</sup> According to Calmore, social capital both provides the glue within a community and serves a social bridging function. The “glue” element supports residents and helps them cope; the bridging element is what helps residents get ahead and obtain access to those with clout. In their quest to help communities, lawyers tend to seize on the possibilities that “bridge” capital provides; however, lawyers are well advised to also value the “glue” capital, which is essential to both making the bridge capital work and, equally importantly, to preserving the homeplace.<sup>111</sup>

#### Methodology: Creating Thirdspace Hospitality Zones

To maximize opportunities for cross socialization and social capital utilization, there needs to be a place where relationships can develop. While presence in the community is necessary, locating particular space requires some consideration. One possibility is to create a temporary gathering place, a hospitality zone, to capture or encourage “thirdspace.” Thirdspace, as used here, is a fluid conceptualization of integrative space. It begins with community homespace, but allows for the presence of and contributions from allies in the struggles to redefine political realities and reclaim identity rights.<sup>112</sup>

Although thirdspace exists without clearly delineated geographical or physical boundaries, interactions must take place within a framework of time and space. Thus the idea of a temporary hospitality zone is to bracket a space within the community homespace, where circles of culture can overlap, at least for a time. Rather than provide access to lawyers by bringing people out of their home community, this prototype creates a safe space inside the community. The bracketed space is not lawyer space; nor, conceptually, are outsiders given “ownership” of the space by virtue of its being dedicated to their purposes or use. Rather, the space is more in the nature of receptive or orienting space. Because hospitality zones are inside the geographical bounds of a neighborhood, the community is better protected from outsider domination. At the same time, outsider guests get the benefits of access to community life.

Such bracketed community-centered spaces are consistent with notions of contextual law practice. They allow lawyers to work, as Peter Margulies has suggested, with factors, interacting in contingent and unpredictable ways, rather than with problem-solving categories.<sup>113</sup> Hospitality space, by reducing some of the awkwardness associated with

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<sup>110</sup> John O. Calmore, *supra* note 22 at 1954.

<sup>111</sup> *Id.* at 1953-54.

<sup>112</sup> *Id.* at 1949-51. Calmore discusses the term as developed by, among others, bell hooks and Edward Soja.

<sup>113</sup> Peter Margulies, *Multiple Communities of Monolithic Clients: Positional Conflicts of Interest and the Mission of the Legal Services Lawyer*, 67 Ford. L. Rev. 2339, 2349 (1999). Margulies notes that in order for such a concept to be operational, there must be appropriate space for people to organize and speak.

lawyers and laypersons entering each other's provinces, means greater opportunity to focus on "changing the processes of everyday life as lived by those within the client community"<sup>114</sup> It also creates a safe environment in which lawyers can begin to unbundle their own comfort (or lack thereof) in confronting power issues.<sup>115</sup> Thus, and most importantly, perhaps, it encourages adoption of the indeterminate "thirdspace" mentality that helps lawyers "avoid harming the client community with [their] friendly fire."<sup>116</sup>

#### An Experiment in Hospitality Space and Two-Way Access

Partnership relationships like those developed in the Roger Williams Community Justice Clinic provide one means by which notions of hospitality space and two-way access might be tested. The Clinic's partnerships provide lawyers with multiple opportunities to network with service providers and, in the space made available by the service providers, to interact with community residents. In the first eighteen months of operation, for example, student attorneys were invited to various gatherings that included staff meetings, lay-person board or council meetings, family forums, educational workshops, and resource fairs. The lawyers' presence at these gatherings served the articulated purposes of providing information about legal services, identifying possible clients, and learning about the communities and their needs. The learning and service opportunities were greater than anticipated, however, and, with increased awareness, could have expanded considerably. A look at the Casey partnership illustrates how such expansion might occur.

The Annie E. Casey Foundation is one of a small group of foundations that in the 1990s funded comprehensive community initiatives, or CCIs, whose purpose was to revitalize poor neighborhoods through well-financed strategies to generate community development, increase employment, stabilize families and achieve other, related goals. While sometimes faulted for the "inherent tension in a research design that imposes participatory democracy from the top down," the CCIs nevertheless were recognized as a much-needed boost in a time of acutely decreased funding and compromised legal and social services.<sup>117</sup>

In Rhode Island, the criticisms of top-down strategies and "outsiderness" were taken seriously and, in 2002, the Casey Family Services Center relocated from suburban Warwick to the urban Washington Park neighborhood in a southern sector of Providence. The explicit purpose of the move was to make greater connections with Casey's client

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<sup>114</sup> John O. Calmore, *supra* note 22 at 1938. There is some precedent for this. A Settlement House project, for example, described by Susan Bennett, began with "some loosely connected participants, and 'grew' its problem out of their developing relationship." Susan D. Bennett, *Little Engines That Could*, *supra* note 58 at 499.

<sup>115</sup> William P. Quigley, *Reflections of Community Organizers*, *supra* note 10 at 475.

<sup>116</sup> John O. Calmore, *supra* note 22 at 1950.

<sup>117</sup> See Susan D. Bennett, *Little Engines That Could*, *supra* note 58 at 487-90.

base and eliminate some of the distancing factors that prevented families in financial need from participating in planning and problem solving strategies meant to benefit them. The move was consistent with Casey's direct services philosophy of holistic service and lifetime commitments, and, simultaneously, its goal of aiding clients in self-determination and self-sufficiency.<sup>118</sup>

When Casey Family Services moved to Washington Park, the staff and management adopted as their first rule: do no harm.<sup>119</sup> The Foundation provided the support to renovate an old buckle factory, but in the process of design, construction, and staffing Casey hired locally for all needs, blue and white collar. As the abandoned buckle factory was undergoing renovation, a team of four family service workers rented space in a nearby building. For months before the full complement of service providers came on site, this small troupe made personal visits to neighborhood homes and businesses to introduce themselves. They also met with faith ministries and neighborhood organizations. Even after the center officially opened, the staff basically asked questions and listened for the first two years. During this time, Casey continued to provide direct services to clients, engaged in normal professional development services, and opened the facility to neighborhood use.

Lawyers first entered the picture in 2003. For three months there were talks and casual interactions. In January, 2004, a pilot program with students was launched, during which time students conducted a limited number of case intakes and were involved in a staff in-service presentation and an on-site housing fair. The relationship developed, in other words, one step at a time. Within a year, the partnership had some measurable outcomes: numbers of intakes, short service clients, and court proceedings could be counted; cooperative efforts involving staff and students could be identified; and a pilot tax assistance program involving 42 volunteer students, a half-dozen Casey staff, about the same number of outside resource providers, and more than fifty residents was established.

In many ways, however, it was the intangibles that provided the greatest possibilities for making a difference in the community. Students reflecting on their experiences did not highlight the "practical experience" of client representation or case successes. Nor did they find great meaning in the numbers of clients served or reached through community education workshops. Although they felt these experiences were valuable, they often found more meaning in unexpected encounters. At one level, such encounters were with the professionals they met at the partnership sites. Students were impressed by the Division Director's interest in their work, for example, and they learned from

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<sup>118</sup> See generally, Annie E. Casey Foundation website at [http://www.aecf.org/initiatives/learn\\_more.html](http://www.aecf.org/initiatives/learn_more.html) (last visited August 10, 2005)

<sup>119</sup> See Douglas E. Nelson, *Welfare Reform: The Next Generation*, AdvoCasey 2 (Summer 2002) (philosophy of community programs explicated by Nelson, President of the Annie E. Casey Foundation).

collaborating with one of Casey's social workers on a simulation exercise for class. Conferences with non-lawyer professionals focusing on client goals shaped students' perspectives on practice. Occasional encounters at the court house or other off-site locations became memorable learning opportunities.

At another, perhaps more intense level, student attorneys valued the opportunities to see clients and community members in comfortable settings. They had casual conversations with clients who were working at Casey, joined in interactions between clients and members of the Casey staff with whom the clients had developed long-term relationships. They met clients' families, shared meals, asked and answered questions. In these ways, they were unconsciously imitating the social workers and other service providers at Casey, who have created, tentatively at first, a presence in a neighborhood with economic needs: The student lawyers were absorbing important lessons: Be there. Listen. Share stories. Make it safe.

In retrospect, more than what numbers and program descriptions reflect, what Casey has given us as partners in their community-grounded work is a safe space where relationship building can begin. It is both within the community and friendly to us, the outsiders. From their experience we have learned to begin with place, and find a corner to settle in. We are also learning to recognize social capital, take care to use it wisely and contribute to it. The process for this, as we can observe, is to engage in the slow building of trust, and to be open to new relationships. Thus, having set an example, and by opening their doors to us, Casey has made it possible for us, the lawyers, to begin to engage with community, too.

Searching out a hospitality space between elitist culture and the economically threatened homeplace in no way guarantees a resolution of tensions between resource-rich service provision and community-driven agendas; but it narrows the breach. While the Annie E. Casey Foundation, with its business orientation, subscribes to the discipline of measurable outcomes, the staff, many of whom are experienced in counseling arts and many of whom have community roots, provide the intangibles of consistent listening, outreach and openness to transformation that may constitute the real engine fuel for success. These open up two-way access and may prove to be key elements in the creation of thirdspaces where lawyers can join in the real struggle for justice.

## CONCLUSIONS

All community-oriented lawyers discover, sooner or later, that representation in the community is "unbounded, in both nature and duration."<sup>120</sup> This unboundedness results in

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<sup>120</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 773.

a kind of fluidity, a sharing of tasks, and a blurring of demarcation of roles.<sup>121</sup> Outside the confines of the law office, community lawyers are working without a blueprint, and have to come to grips with contingency and unpredictability. They have to be willing to respond as needs arise.<sup>122</sup> This may well mean abandoning current notions of creating bridges solely, or even primarily, to increase the flow of access to institutionalized halls of justice.

Lawyers have perhaps been too intent on identifying aims and have gotten stuck looking in one direction for the targeted end place. Letting go of the normative goal of providing equal representation—a common synonym for access—to all is particularly challenging for lawyers, who are socialized to be in charge and to control the turf. But it helps to recognize that people are looking to validate their lives-- to improve them, yes-- but to preserve them, also. And most people want to share, not just to take. When lawyers start as community guests, when they see the community as the place to *be*, not as a place to start from, the relationships they build over time will determine their roles and what their place in the community will be.

In the end, “We come back to presence.”<sup>123</sup> Presence requires more than just being there, however; it is contingent on space, space that is within the community, yet, at least for a time, is corralled. Within hospitality spaces are opportunities to just hang out with each other, sometimes with an active agenda and sometimes passively.<sup>124</sup> There is discomfort in this approach. In addition to feeling like outsiders and giving up well-ingulcated beliefs in the superiority of their expertise, lawyers feel the pressure of time “wasted” and have to ignore urgent calls to conform to traditional norms of practice. What is lost by letting go of the notion of “access to justice” in favor of a notion of “access to communities,” however, may hasten both lawyers’ and communities’ access to other forms of problem-solving resources.

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<sup>121</sup> *Id.* at 773.

<sup>122</sup> Peter Margulies, *supra* note 113 at 2349.

<sup>123</sup> Susan D. Bennett, *Long Haul Lawyering*, *supra* note 6 at 777. (“Being able to stay put and to dedicate resources over time is the greatest contribution that a program can make to the practice of long-haul lawyering.”)

<sup>124</sup> The lawyers’ silent presence in community space CJLA students have come to call “face time”; the non-business interactive opportunities they refer to as “talking story.”

