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SERVING THE POOR: THE NEED FOR UNIFICATION WITHIN TODAY'S LEGAL SERVICES

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I. INTRODUCTION

"The legal services lawyer is uncertain about whether she is a social worker, community organizer, or litigator."[1] This statement sums up the basic challenge of today's legal service lawyer for the poor. An attorney's expertise cannot always remedy poverty's effects. The client's legal problems are often blended with health, family, and financial problems. Yet access to the courts and help understanding the law can be essential to assisting both the individual client and his or her community. Legal services attorneys are left to determine the most effective way to serve clients and the clients' community. The lawyer must decide and what role to assume when assisting them.

Three basic types of legal services structures have emerged to answer these questions: community education, multidisciplinary practice, and impact and individual litigation. Each attempts to meet the needs of the client and the client's community in very different ways.

Impact and individual litigation attorneys treat clients' disputes one at a time.[2] The attorneys focus on presently existing claims.[3] They also aim to provide access to courts and administrative agencies that have frequently been inaccessible to disadvantaged persons.[4] In this system lawyers in private law practices assume the authoritative role in helping clients solve their legal needs.[5] Often, clients receive individual representation through pro bono programs and law reform projects.[6] Attorneys who take on these roles are usually only assisted by staff within their offices.[7]

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1. Marc Feldman, *Political Lessons: Legal Services for the Poor,* 83 GEO. L.J. 1529, 1535 (1985).

2. *See* Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice,* 1996 WIS. L. REV. 1121, 1126.

3. *Id.*

4. *Id.*

5. *See* Louise G. Trubeck & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People,* 7 CLINICAL L. REV. 227, 228 (2000).

6. *See id.*

7. *Id.*

Community education includes pamphlets, news columns, "do-it-yourself" kits, workshops for local schools and community organizations, and television and radio shows produced with the help of lawyers.[8] Under the community education model the client is put in the position of self-advocate.[9] The theory behind this model is community empowerment—the lawyer acts as a facilitator who imparts knowledge to the community so that individuals within it will empower themselves. Community education programs demystify the law and facilitate community organizations. The programs encourage individuals to make plans for their neighborhoods using legal rights; then mobilize these individuals and groups to pursue their rights, thereby providing self-help activities not involving lawyers.[10]

Yet another approach is to broaden services through multidisciplinary practice. Multidisciplinary practice combines the knowledge and experience of professionals, lay advocates and community agencies to confront the obstacles hindering their clients' lives.[11] Professionals working in this field understand that their clients face both legal and non-legal problems.[12] They also realize that when clients need help, their greatest barrier is often determining how to access legal and non-legal services.[13]

This article examines these three forms of legal services. After looking at the history of these programs and analyzing how they operate today, this article will discuss which attributes of each structure are the most effective, how they can be used together to provide the most comprehensive form of legal service delivery to the poor, and what obstacles stand in the way of implementing the suggested changes. This article will argue that the narrow focus of each form of legal service alone is not enough to meet the needs of the poor. However, a combined vision incorporating the best elements of each approach—including litigation, community empowerment, and support from other professions—would provide greater benefits to the impoverished.

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8. Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433, 442 (1998).

9. Truebeck & Farnham, *supra* note 5, at 228.

10. Eagly, *supra* note 8, at 442.

11. Trubeck & Farnham, *supra* note 5, at 229.

12. *Id.*

13. *Id.*

II. HISTORY OF THE DELIVERY OF LEGAL SERVICES TO THE POOR

Lawyers, social workers, social service agencies have looked for ways to work together for decades.[14] However, a perpetually contested issue is how to jointly administer services.[15] The poor and disadvantaged have typically received legal services in the form of individual representation from pro bono attorneys.[16] By the turn of the Twentieth Century, however, groups of lawyers and bar associations established legal aid societies to create a more organized form of legal services.[17] Pro bono work and legal aid societies focused on providing legal services to individual clients, but not on creating substantial change in the law itself.[18] Many questioned whether legal aid should separate or combine individual legal representation and to pursue broader asocial goals.[19]

The first Legal Aid Society was founded in 1876 in New York City.[20] By 1965, 157 Legal Aid Societies had emerged in nearly every American city, employing 200 full-time lawyers with a combined total budget of approximately $4.5 million.[21] These organizations were not uniform and did not follow a national program.[22] Some programs gained funding through private corporations, while others were formed through local bar associations and operated on pro bono time donated by members.[23] Other legal aid societies were run through clinics, law schools, or government municipalities.[24]

Although visionary, all legal aid societies were plagued by a lack of adequate resources.[25] In 1963 for example, the annual funding for the Los Angeles program was roughly $120,000.[26] Nationally, Legal Aid employed 400 full and part-time lawyers to serve almost fifty million eligible persons—a ratio of one lawyer to every 120,000 potential clients.[27] The lack of adequate resources resulted in

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14. *Id.*
15. *Id.*
16. Southworth, *supra* note 2, at 1127.
17. *Id.*
18. *Id*
19. Trubeck & Farnham, *supra* note 5, at 229.
20. Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary,* 83 GEO. L.J. 1669, 1670 (1995).
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at 1671.
27. *Id.*

inadequate service to the poor.[28] Court appearances were rare; appeals were not filed; and lobbying, administrative representation, and community legal education were nonexistent.[29] High staff turnover and low salaries made it practically impossible for the programs to develop any sense of purpose or continuity in the fight to help those in need.[30]

With the civil rights movement, came a more active from of lawyering.[31] Social reform was pursued through lobbying, impact litigation, and administrative advocacy.[32] Through the 1940s and 1950s, the NAACP and the NAACP Legal Defense and Education Fund, Inc., illustrated this aggressive style through their litigation and lobbying activities to end racial segregation.[33] By the 1960s, other organizations recruited lawyers to help fight against racial inequalities and enforce civil rights legislation in the courts.[34]

The Johnson Administration's War on Poverty developed a new structure for the delivery of legal services to the poor.[35] With the creation of the Office of Economic Opportunity, through the passage of the Economic Opportunity Act of 1964, the federal government had, for the first time, committed itself to the support of legal services.[36] Unlike then-existing programs, the Office of Economic Opportunity's agenda was reform-oriented.[37] Among the initiatives called for by the OEO was organizing groups of poor citizens, developing community education materials, and involving poor people in the administration of OEO programs.[38] Although the OEO stressed client education in local programs, the idea was never fully implemented.[39]

The Legal Service Corporation Act of 1974 created the structure for Legal Service Corporations (LSCs) and replaced the OEO program.[40] Under the Act, funds were distributed to local offices. These local offices were prohibited from participating in strikes, boycotts, picketing, political activity, public demonstrations, criminal

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28. *Id.*
29. *Id.*
30. *Id.* at 1672.
31. Southworth, *supra* note 2, at 1127.
32. *Id.*
33. *Id.*
34. *Id.* 1127.
35. Pub. L. 88-452, 78 Stat. 508 (1964) (codified as amended at 42 U.S.C 2701 and repealed in 1981).
36. Eagly, *supra* note 8, at 437.
37. *Id.*
38. *Id.*
39. Houseman, *supra* note 20, at 1715.
40. Eagly, *supra* note 8, at 438.

proceedings, and school desegregation cases.[41] By the 1980s, Congress imposed more restrictions on LSCs by prohibiting class actions, legislative work, and welfare reform.[42] Previously, LSCs could circumvent such restrictions by segregating private money to fund the work. The new restrictions prohibited LSCs from receiving *any* federal funds if the organization was involved in restricted activities.[43]

LSCs were designed to differ from Legal Aid in several ways. First, legal services envisioned a responsibility to all poor people as a "client community" rather than representation of individual clients who happened to be indigent.[44] The LSCs also wanted clients to control decisions about the solutions to their problems.[45] Rather than act as an agency established to provide help for poor people, LSCs wanted to serve as an advocate whose role would be determined by their impoverished clients.[46] LSCs also sought to reform the law and legal institutions to make them more accessible and responsive to the underprivileged.[47] Legal services focused on the need of the client community rather than the demands of the individual client.[48] In contrast, legal aid focused its limited resources on addressing the narrow legal problems of the individual client.[49] As a result, the larger problems of both the individual and the community went unaddressed.[50]

Finally, legal services employed a variety of advocacy and representation tools in their programs.[51] Beyond litigation and appeals in federal and state courts, LSCs sought to represent their clients in rule drafting, legislative advocacy, administrative hearings, and policy implementation.[52]

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41. 42 U.S.C. 2996 (1974).
42. 45 C.F.R. 1617.3, 1612.3, 1639.1 (1997).
43. 45 C.F.R. 1610.4 (1997).
44. Houseman, *supra* note 20, at 1684.
45. *Id.*
46. *Id.*
47. *See generally id.* at 1670.
48. *Id.* at 1684.
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at 1684-85.

III. DEFINING TODAY'S LEGAL SERVICES

Today, LSCs exist in a variety of forms.[53] For the most part, LSCs follow one of three models: individual and impact litigation, community education, or multidisciplinary practice. Some programs have annual budgets of a few hundred thousand dollars with one or two professional staff members; others operate on several million dollars a year with hundreds of professional staff.[54] Some organizations are completely dependent on LSC funds while others work with mostly non-LSC funds. Because of the wide ranging differences, the capacity, orientation, and degree of effectiveness varies from LSC to LSC.[55]

A. Individual and Impact Litigation

Generally, today's legal services for the poor concentrate on litigation strategies consisting primarily of high-volume representation of individual clients.[56] LSCs continue to use traditional litigation and high volume representation because, under the Code of Federal Regulations, they cannot participate in lobbying, class actions, or organizing activities.[57] LSC funds may also not be used in trainings that:

> (1) Advocate particular public policies;
> (2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation rulemaking;
> (3) disseminate information about such policies or activities; or
> (4) Train participants or engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.[58]

Previously, the litigation victories achieved by the NAACP also encouraged lawyers to assume that they could bring about social

53. *Id.* at 1688.
54. *Id.*
55. *Id.*
56. Eagly, *supra* note 8, at 434.
57. *Id. See generally,* 45 C.F.R. §1600-1643 (1997).
58. 45 C.F.R. 1612.8 (1997).

change through litigation.[59] Courts appeared more receptive to arguments based on principle than legislatures and administrative agencies.Courtroom victories gave clients' cases publicity and legitimacy.[60] Congress allowed recovery of attorneys' fees in civil rights and other types of statutory claims, giving lawyers a financial benefit for accepting litigation cases.[61] Law schools also contributed to this emphasis on litigation by emphasizing trial strategies in their curricula.[62]

However, since the civil rights era, courts have been reluctant to expand the legal rights established in the 1960s and 1970s.[63] Discrimination suits have become more difficult to win because discrimination in lending, housing, and employment has become more subtle, and therefore, more difficult to prove.[64] Many attorneys are deterred from taking on law reform cases because judicial rulings frequently limit attorneys' fees and lawyers face potential sanction for pursuing frivolous claims.[65] Some organizations have taken funding away from litigation activities and transferred it to community-based projects.[66] Congress has also threatened to take away funding, making organizations eager to preserve existing services and reluctant to consider new ideas in effective lawyering for the poor.[67]

Academics have debated whether high-volume representation of individual clients is an effective means of combating the problems of poverty.[68] Stephen Wexler argued that a case-by-case litigation of claims does very little to help the collective situation of the poor, but instead, causes the disadvantaged to become reliant on lawyers and isolated from their peers.[69] Formal legal devices, such as litigation, rarely effect change in institutions having the greatest impact on the

59. Southworth, *supra* note 2, at 1128.
60. *Id.*
61. *Id.*
62. *Id.* at 1128-29.
63. *Id.* at 1129.
64. *Id.*
65. *Id.*
66. *Id.*
67. Eagly, *supra* note 8, at 434.
68. *See id.* at 443. (citing Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1049 (1970); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 953-54 (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2139 (1991); Wes Daniels, *"Derelicts," Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFF. L. REV. 687 (1997); Anita Hodgkiss, Note, *Petitioning and the Empowerment Theory of Practice*, 96 YALE L.J. 569 (1987)).
69. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1049 (1970).

poor, such as welfare and health services, unless the tide of public opinion is already in favor of such change.[70] Studies performed by social scientists show that legislation and lawsuits alone will not relieve the deplorable standards of living found in poor minority urban populations.[71] The problems that poor people face are not merely legal problems; their plight is the result of poverty and is the same for all people who suffer from poverty. After an attorney has won a case for a poor client, he returns the individual to the same life—but now with a dependency on a lawyer's help to resolve any future problems.[72]

However, individual litigation should not be dismissed entirely. The original purpose of legal services was to provide impoverished individuals with access to not only legal expertise, but to the institutions and systems which can help provide solutions to their problems.[73] What institution is more out of reach for a poor person than the court system? Legal fees and the lengthy judicial process are daunting to those with the means to afford litigation, but they are utterly impossible hurdles for the poor. The impoverished still need the courts to uphold their rights and to settle disputes.

Effective individual representation in trials and settlements gives the impoverished a powerful weapon. At the very least, the threat of trial may prevent employers, abusive landlords, or others from taking advantage of less sophisticated poor persons.[74] Experiencing litigation preparation itself empowers the poor by showing them the importance of keeping documents, locating witnesses and recognizing which agencies to contact about a given issue.[75]

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70. Southworth, *supra* note 2, at 1124.

71. *Id.* at 1130. (citing FARRELL BLOCH, ANTIDISCRIMINATION LAW AND MINORITY EMPLOYMENT: RECRUITMENT PRACTICES AND REGULATORY CONSTRAINTS 99-109 (1994); Marta Tienda & Leif Jensen, *Poverty and Minorities: A Quarter-Century Profile of Color and Socioeconomic Disadvantage, in* DIVIDED OPPORTUNITIES 23 (Gary D. Sandefur & Marta Tienda eds., 1988); WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 134 (1987); William J. Wilson, *The Urban Underclass, in* MINORITY REPORT 75, 75 (Leslie Dunbar ed., 1984); WILLIAM J. WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR at xiii (1996); C. Boger, *Race and the American City: The Kerner Commission in Retrospect—An Introduction*, 71 N.C. L. REV. 1289, 1309-47 (1993); John J. Donohue III & Peter Siegelman, *The Changing Nature of Employment Discrimination Litigation*, 43 STAN. L. REV. 983, 1032 (1991); E. Douglass Williams & Richard H. Sander, *The Prospects for "Putting America to Work" in the Inner City*, 81 GEO. L.J. 2003, 2056 (1993)).

72. Wexler, *supra* note 69, at 1053.

73. Trubeck & Farnham, *supra* note 5, at 229.

74. *See generally* Feldman, *supra* note 1, at 1550-51 (1985).

75. *Id.*

B. Community Education

Community education programs provide clients with a supportive environment in which they can learn about issues relevant to their own problems while meeting others who face similar situations.[76] It also supplements the litigation process by empowering clients with knowledge, peer support, and participation in formulating strategies for their own cases and other community advocacy projects.[77] Through this empowerment, clients can develop strong leadership skills and a greater understanding of issues facing them and their neighbors.[78]

Community education programs originated as legal service attorneys' attempt to meet the individual clients' needs while simultaneously reaching out to the client's community.[79] To serve the poor more effectively, LSCs required a greater understanding of the community's organizations, such as church groups and neighborhood alliances, and the people who relied upon them.[80] The community lawyer used his or her legal training to help provide opportunities for individuals within the community to define common problems.[81] By doing so, the lawyer could gain invaluable insight into the needs of the community while also empowering its members.[82]

LSCs often try to provide community education programs to clients in the form of "know-your-rights" workshops.[83] Since many community lawyers also work as litigators, student interns and paralegals often conduct these workshops. The workshops generally include a presentation about the law, time for questions from the audience, and distribution of pamphlets about local services.[84]

The definition of community education is expanding as lawyers look for new ways to serve the poor while imparting a sense of confidence and knowledge in the client. Today, many lawyers are turning to planning activities to remedy the blight of poverty.[85] Planning involves helping clients foresee issues related to future

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76. Eagly, *supra* note 8, at 474.
77. *Id.*
78. *Id.* at 478-79.
79. Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 159 (2000).
80. *Id.*
81. *Id.*
82. *Id.*
83. Eagly, *supra* note 8, at 442.
84. *Id.* at 443.
85. Southworth, *supra* note 2, at 1133.

activities and enables them to make arrangements in private sectors.[86] It also enables the lawyer to transform their legal training and expertise into something tangible for the client.

Current federal regulations place boundaries on what roles attorneys can serve in outreach programs. However, community education and planning activities meet the requirements of the LSC funding laws. According to the Code of Federal Regulations, LSC funds may not be used "to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance or any similar entity." This restriction does not eliminate community educational work, as long as the work performed by the LSC does not initiate or form a formal alliance.[87] The regulation further provides that:

> . . . nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them: (1) To provide adequate legal assistance to eligible client; or (2) To provide advice to any eligible client as to the legal rights of the client.[88]

Thus, the regulatory restrictions imposed on LSCs do not prevent lawyers from providing planning services to clients. In addition, Rule 6.1 of the Model Rules clearly supports lawyer involvement with poor community groups when it encourages aid to "charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes."[89] Taking these laws into account, lawyers have looked to planning activities as a way to put their legal skills to use while empowering their client.

There are a variety of ways in which lawyers can engage in planning advocacy. Compliance counseling enables lawyers to advise community service organizations and minority entrepreneurs about laws and regulations governing their operations, liability risks, and benefits associated with different structuring techniques.[90] Lawyers

86. *Id.*
87. Eagly, *supra* note 8, at 450.
88. 45 C.F.R. § 1612.8 (1997).
89. MODEL RULES OF PROF'L CONDUCT R. 6.1 (1993).
90. Southworth, *supra* note 2, at 1135.

can also serve the poor through planning by helping them draft and negotiate transactions.[91] Helping clients obtain outside funding for projects and facilitating community organizing efforts is another form of planning advocacy.[92]

The clients who typically use lawyers for planning activities include nonprofit community-based development organizations, service organizations, neighborhood associations, and community self-help groups.[93] These organizations often deal with issues such as improving schools, reducing crime, promoting homeownership, building and repairing housing, providing recreational programs for children, and obtaining capital for minority entrepreneurs and community projects.[94]

All of these activities are similar to litigation in that they require the lawyer to possess negotiation and drafting skills.[95] Unlike traditional litigation, however, planning puts a greater emphasis on understanding the client's goals, clarifying how future risks and opportunities will affect these goals, and preserving relationships between negotiating parties.[96] Often these planning services help clients avoid future litigation.[97]

Although the work they do can have a lasting effect on their clients, many lawyers who perform planning activities see themselves not as activists but as skilled facilitators of client projects.[98] Planning requires lawyers to defer to clients' wishes more than litigation. Often, clients are more familiar with planning skills than litigation procedures giving them the ability to evaluate their lawyer's suggestions.[99] While many clients would not understand the legal forms and procedures involved in securing the objects of planning activities, they do understand issues such as how to structure and run an organization; whether to accept an arrangement; how much to pay for a product, property, or service; and which risks they ought to assume.[100] The very nature of planning activities requires the attorney to seek out the client's wishes, making it more difficult for these

91. *Id.* at 1136.
92. *Id.* at 1138-39.
93. *Id.* at 1140.
94. *Id.*
95. *Id.* at 1133.
96. *Id.*
97. *Id.* at 1142.
98. *Id.*
99. *Id.* at 1154.
100. *Id.* at 1155.

lawyers to substitute their own goals.[101] Most planning activities seek to benefit impoverished communities and often do not receive very much publicity, giving attorneys fewer opportunities to use clients' cases as a means of propelling their own political careers.[102] In fact, many of the individual clients and organizations that receive planning services gain sophistication and greater understanding of their operations after working with an attorney.[103]

There is certainly a need for planning services in the area of community empowerment. In 1992, the American Bar Association concluded that community-based development organizations require legal services in forming and structuring organizations, identifying and receiving private and public funding, managing daily operations, and contracting for various projects.[104] Only one national organization, the National Economic Development and Law Center, devotes itself entirely to assisting community-based development companies with an annual budget of approximately one million dollars.[105]

Community organizations and minority entrepreneurs are often unable to obtain affordable private legal services.[106] Public funding could help supplement the cost of these services, but convincing legislators that poor people are entitled to assistance in planning future activities outside the courtroom could be very difficult.[107]

While planning and community education projects are in demand, lawyers face many problems when taking on these cases. The most prevalent ethical dilemma for planning lawyers is determining who the client is.[108] Often client organizations remain informal without any internal governance procedures.[109] The lawyer is left to determine the interests of the "entity" when there may be conflicting interests within the group and no procedure to resolve disagreements.[110] There is little guidance from the Model Code and the Model Rules on how to address these problems in the planning

101. *Id.* at 1154-55.
102. *Id.* at 1157.
103. *Id* at 1159.
104. *Id.* at 1163.
105. *Id.* at 1164.
106. *Id.* at 1165.
107. *Id.*
108. *Id.* at 1160.
109. *Id.* at 1161.
110. *Id.*

context.[111] Lawyers also have few professional or social connections to poor urban communities where the needy organizations operate.[112]

Determining how successful community education projects are is a very subjective process. While litigation can be evaluated on who won or lost, it is difficult to measure the success of a community education program.[113] This can make securing funding and evaluating progress very difficult for the community lawyer.

Often, community education programs have difficulty accessing potential clients because of miscommunication and misunderstanding.[114] People sometimes assume that they will not be able to afford the legal services.[115] Immigrants often fear that they will be reported to the Immigration and Naturalization Service.[116] Some potential clients don't turn to LSCs because of language barriers and fear of retaliation.[117]

Planning activities can certainly play a very important part in LSC practice. The best form of legal practice seeks to prevent the client from facing litigation. However, although planning will prevent some litigation, it cannot extinguish the need for it entirely. For this reason, it is necessary for LSCs to anticipate the need for both planning activities and litigation strategies. Lawyers who are competent in trial practice will always serve a crucial role in helping those in need.

C. Multidisciplinary Practice

Lawyers in LSCs often find themselves stretched thin working in multiple roles and not having the resources or expertise necessary to fulfill all of them at once.[118] The following scenario illustrates this common problem:

> The lawyer represents a client who is being sued for owed rent money, arguing that she has not paid the rent in her apartment because of illegal conditions within it

111. *Id.* at 1160.
112. *Id.* at 1165.
113. Eagly, *supra* note 8, at 472.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.* at 472-73.
118. *See Conference: Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons.* 67 FORDHAM L. REV. 1751, 1766 (1999).

> that have gone unfixed by the landlord. The client also has a pathological gambling habit. Unless this habit is treated, any resolution of the present lawsuit will eventually unravel. The landlord owns three other poorly maintained buildings in the same community that are likely to have the same conditions that the client complained about and will most likely pose health and safety concerns to new tenants.[119]

In many cases, the lawyer fulfills the role of the attorney, social worker and community organizer. Clearly, it would be more productive if a lawyer, social worker, therapist, and community organizer could all sit down and find ways to help both the individual client and the community where the poorly maintained apartments exist. One way to address the problems illustrated in this hypothetical is to allow professionals within law, social services, health and education to work together in multidisciplinary practice.

The multidisciplinary model allows each professional to assist the client and the community in his or her area of expertise without sending the client to multiple organizations.[120] This efficient "one-stop shopping" helps save scarce time and resources and provides higher quality services for the client.[121]

Multidisciplinary practice places lawyers, health professionals, social workers, therapists and other professionals in a team setting.[122] Team members may be housed in one building or they may be located in separate locations with frequent team meetings.[123] Most important to the effectiveness of an MDP is the principle that all professionals engage in constant communication with one another.[124]

While MDPs seem attractive in theory, they run into problems with legal ethical regulations. The Model Rules on ethical conduct prohibits lawyers from assisting non-lawyers in the unauthorized practice of law.[125] Non-lawyers are allowed to participate in the delivery of legal services only as employees or independent

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119. *Id.*

120. John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century,* 69 FORDHAM L. REV. 83, 117 (2000).

121. *Id.* at 118.

122. Trubeck & Farnham, *supra* note 5, at 239.

123. *Id.*

124. *Id.*

125. MODEL RULES OF PROF'L CONDUCT R. 5.5.

contractors under the supervision of lawyers.[126] Some community lawyers have argued that this standard is too rigid for multidisciplinary practice and places non-lawyers in a subservient role to attorneys.[127]

In 1999, the American Bar Association's Commission on Multidisciplinary Practice considered arguments concerning how multidisciplinary services should be integrated into the current ethics regulations.[128] The Commission provided this definition for multidisciplinary practice:

> A partnership, professional corporation, or other association or entity that includes lawyers and nonlawyers and has as one, but not all, of its purposes the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing nonlegal, as well as legal, services. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, and there is a direct or indirect sharing of profits as part of the arrangement.[129]

While poverty law organizations do not stand to profit from the services they offer to low income clients, multidisciplinary practices in the private sector, where, for instance, professionals such as lawyers and accountants team up in business consulting, do stand to profit substantially from a change in the current rules. A change in the current rules could open the doors to potential abuses in other areas of the legal profession.

The Commission anticipated this dilemma by recommending that the bar should allow lawyers and non-lawyers to offer multidisciplinary services to the public, so long as the bar imposed regulations on the non-lawyer controlled providers of MDPs.[130] When making its recommendations, the Commission sought to preserve the core values of the legal profession.[131] The commission defined these values as (1) independence of judgment, (2) confidentiality, (3) loyalty

126. Dzienkowski & Peroni, *supra* note 120, at 84.
127. Trubeck & Farnham, *supra* note 5, at 239.
128. Dzienkowski & Peroni, *supra* note 120, at 85.
129. ABA Commission on Multidisciplinary Practice, Final Report to the ABA House of Delegates *at* http://www.abanet.org/cpr/mdpreport.html
130. *Id.*
131. *Id.*

and (4) competence.[132] Although proponents of MDPs have argued for less lawyer control over non-lawyer professionals within organizations, it is important, not only for low income clients, but for every person seeking legal assistance, that any legal advice they receive comes from a person who has been deemed qualified to give that advice. Ultimately, the ABA House of Delegates rejected the Commission's Recommendations and decided not to change the rules until additional studies could be performed.[133]

There are ways in which lawyers and professionals can work together and not violate the Model Rules. Through the cooperation model, law firms can work with non-lawyer professionals through contract or an employee arrangement.[134] The non-lawyers could not become owners of the law firm or share directly in the legal fees, but the firm could advertise the full-service nature of its practice.[135] Here, the lawyer would be required to supervise the work of the non-legal employee even if the work did not involve any legal service.[136] In addition, the non-legal worker would be required to follow the rules of the legal profession when carrying out their work.[137]

Another viable option for MDPs is the joint venture model.[138] This model allows the non-law firm and law firm to remain separate and distinct.[139] An important distinction is that the rules of each entity's respective professions continue to govern to conduct of each institution's professionals.[140] Clients could gain legal and non-legal services through a joint delivery or through referral to one of the separate entities.[141]

Both the cooperation and joint venture model would provide an effective structure for the delivery of legal services to the poor. Of the two, the joint venture model would most likely serve the interests of all the professionals involved more than the cooperation model. Through joint venture, social workers and other professionals could follow their own guidelines and maintain a sense of equality with lawyers involved in the MDP, yet still routinely interact with one another to provide better service to disadvantaged clients.

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132. *Id.*
133. Dzienkowski & Peroni, *supra* note 120, at 86.
134. *Id.* at 153.
135. *Id.* at 154.
136. *Id.*
137. *Id.*
138. *Id* at 168.
139. *Id.*
140. *Id.*
141. *Id.*

IV. COMMON PROBLEMS AMONG ALL FORMS OF LSCs

While innovative ideas have emerged from the community education and multidisciplinary practice movements, the majority of LSCs remain plagued with problems. Dwindling resources require LSCs to take cases only if the client has a high degree of need, is suffering from severe poverty, and has a high likelihood of success.[142] The high volume of cases reduces the time attorneys are able to spend with clients and to discuss with the client ways he or she can become involved in the legal process.[143] Attorneys respond to client concerns with prepared answers and manage interviews by asking questions that will return only legally relevant information.[144]

Civil rights and poverty lawyers have also been criticized for serving their own interests over the needs of the individual client.[145] Lawyers can take a dominating role over the client that can usurp the client's self-reliance and diminish her confidence in her own power to bring about change in her life.[146]

Many legal services groups also lack the initiative to create innovative forms of service.[147] In addition, the majority of law schools and clinical law programs have not required students to learn non-traditional forms of advocacy, including community education.[148] As a result, few graduates of law school are fully prepared to enter the world of poverty law.[149]

Even within the best LSCs, internal and structural problems exist. Directors, board and staff often do not have a shared long-term vision about the goals and direction of their program.[150] When clarity is lacking within an organization and levels of participation and decision-making remain undefined, employees often experience anxiety, frustration, and anger.[151] Often staff, board members, and program directors are uncertain about their roles within the organization.[152] Without a focused vision, LSCs are less likely to use their scarce resources effectively; develop appropriate advocacy and

142. Eagly, *supra* note 8, at 440.
143. *Id.* at 441.
144. *Id.*
145. Southworth, *supra* note 2, at 1123-24.
146. *See id.* at 1124.
147. Eagly, *supra* note 8, at 434.
148. *See id.* at 435.
149. *Id.*
150. Houseman, *supra* note 20, at 1688.
151. Feldman, *supra* note 1, at 1542.
152. *Id.*

delivery strategies; or attract and serve clients with energy, competence and commitment.[153] Many LSCs have also become social service bureaucracies which spend more time and resources on internal struggles rather than the more important external issues.[154] In the words of Peter Drucker:

> Non-profits are prone to become inward-looking. People are so convinced that they are doing the right thing, and are so committed to their cause, that they see the institution as an end in itself. But that's a bureaucracy. Soon people in organization no longer ask: Does it service our mission? They ask: Does it fit our rules? And that not only inhibits performance, it destroys vision and dedication.[155]

These organizations also lack a uniform model for training and technical assistance.[156] Within existing support structures there are problems with communication and information sharing.[157] Staff members and the physical location of offices are often isolated from the communities they are trying to assist.[158] As a result, staff members and directors spend little time becoming involved in community institutions and activities.[159]

The trend against individual litigation has left some clients with no legal remedies. LSCs often fail to challenge adverse rulings against their clients.[160] Many legal services steer clear of litigation all together.[161] The problems of avoiding court appearances, when it is not just for the benefit of the client, is that the lawyers fail to develop their own advocacy skills and risk portraying public interest attorneys as incompetent.[162] To quote Marc Feldman: "When Legal Services lawyers neither master or exhibit traditional skills, such as the ability to engage in significant amount of sustained litigation, nor alternatively develop and pursue other political skills with

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153. Houseman, *supra* note 20, at 1689-90.
154. *Id.* at 1690.
155. PETER DRUCKER, MANAGING THE NON-PROFIT ORGANIZATION: PRACTICES AND PRINCIPLES 113 (1990).
156. Houseman, *supra* note 20, at 1694-95.
157. *Id.*
158. *Id.* at 1696.
159. *Id.*
160. Feldman, *supra* note 1, at 1556.
161. *See id.* at 1594.
162. *See id.*

accomplishment, they fail to undermine the false consciousness of prevailing values about poverty lawyering."[163]

V. A UNIFIED THEORY OF LEGAL SERVICES FOR THE POOR

Individual representation, community education, and multidisciplinary practices have challenged traditional assumptions about poverty law practice, but they have failed to provide a synthesis of services to the poor. The objectives of each LSC, when practiced alone, are not sufficient to meet the needs of the poor. Litigation will not remedy ignorance within poor areas without community education programs. Community education is only effective if it can direct clients to services offered by other professionals. Multidisciplinary practice will not offer complete assistance unless lawyers are providing clients with both litigation and planning advice. An ideal LSC would combine aspects of each of these models into one joint venture multidisciplinary practice.

The most flexible form of an LSC is the joint venture multidisciplinary model. As discussed earlier, it allows lawyers to work with other professionals without violating the Model Rules on ethical conduct. More importantly, it provides the maximum amount of service options to its clients. This model would ideally include the services of lawyers, educators, social workers, and health professionals. As long as effective communication exists between its members, and a clear vision is adopted, a joint venture MDP has the potential to be a very successful LSC.

The proposed MDP would include individual representation, community education and planning activities. The structure would consist of a poverty law office that would replace the legal aid model. Lawyers who had expertise in family, health, employment, and administrative law would work there together. These law offices would also enlist the services of attorneys capable of helping community members with planning activities. Like other law firms, this office would be adept at handling clients' concerns in court, in hearings or at administrative meetings. These attorneys would not seek out litigation as the only means to address the client's needs, but they would not hesitate to use it when necessary.

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163. *Id.*

The client and the client's community would remain in the center of all legal practice. Attorneys would still have to be very familiar with the institutions and establishments within the community. Members of the law firm would be required to meet frequently with community members and non-lawyer participants. Through this frequent interaction, lawyers could anticipate legal problems in other areas of the community or the client's life. If these problems fell outside the scope of the law and ventured into problems concerning social services, health or education, the lawyer could alert the other professional agencies. All referrals to other agencies would have to be made with the client's consent to ensure client confidentiality. Constant communication between all the organizations involved would allow the lawyers to address and understand the most pressing legal needs of the community. Both the client and the community's interests would remain at the heart of all representation, but here, lawyers could make the most of their legal training to assist the poor.

The MDP would also include community education organizations. These participants would serve an important role in keeping both the community and other organizations of the MDP in touch with one another. They could direct the attorneys, social workers, and other professionals to common concerns that continue to emerge in the community. They could also keep members of the community aware of the services offered by the other organizations. The community education organizations' most important role, however, would be to empower the poor by helping them discover the resources and opportunities within their own area.

The joint venture MDP would also require the services of non-legal professionals. These participants would be crucial in filling in the gaps where lawyers' education and capabilities end. Not only would they be a tremendous educational asset for lawyers who must take on complex cases, but more importantly, they could provide the client with other avenues of opportunity. By remaining separate and distinct from the legal portion of the MDP, these professionals could govern themselves with their own rules of conduct and not feel subservient to legal ethical standards.

To ensure the success of this MDP, all of its members would have to be in constant communication with each other and with members of the community. At its inception, each organization should enter into a retainer agreement outlining the project's goals as agreed to by the community, the lawyer, and all other professionals involved.

This retainer should detail a plan for achieving those goals, and ultimately reflect the values of the community.[164]

Roles should be well defined for employees and assigned based on the level of knowledge and skill possessed by different individuals.[165] In the proposed model, each professional organization of the joint MDP would be responsible for assigning these roles within its own organization.

A uniform system of training and record keeping should also be developed. A "library" should be created and maintained with detailed records of every organization's activities and resolutions of major issues. As long as client confidentiality was maintained, these recordings could serve as guidelines for future MDPs and future participants in the current MDP.

The physical location of the MDP should be within the community itself. If the MDP locates itself outside of the community, the physical space alone will create a chasm between the clients and the professionals. By staying inside the community, the MDP is more likely to communicate with a greater number of residents and gain insight into some of the more subtle issues concerning the community. Offices of all the different components do not have to be housed under the same roof, but they should be close enough to provide easy access to both the community and the professionals working within it.

There are potential obstacles that could confront the proposed MDP, but these problems are not insurmountable. In fact, many of the foreseeable problems are the same ones that all public interest law projects have faced at one time or another. Funding and the availability of professionals are two of the issues that will inevitably face the proposed MDP.

LSCs have traditionally had difficulty receiving funding and the proposed MDP would be no different. In an ideal world, the state and federal legislature would supply enough financial support for every impoverished community to start a version of the proposed MDP. Since this is highly unlikely, existing LSCs in poor communities should pool their private resources and come together to form an MDP. While this option may be possible, it is likely that any merger could include bickering over positions of control and arguments over the details of the mission statement. However, the structure of the MDP as a joint venture organization would allow

164. Marshall, *supra* note 79, at 222.
165. Feldman, *supra* note 1, at 1535.

everyone involved to maintain their independence, thereby reducing the amount of quarrelling among professionals.

It may also be difficult to attract professionals to the MDP. Lawyers would not be able to earn as much money as they could in private practice. Those who have the most legal experience would also be the people who are more likely to take high profile positions. Both social services and the medical profession are unable to fill positions within their own institutions, let alone new MDPs. The professionals who would work in the proposed MDP would face an overwhelming demand for their services.

Again, these are not new problems to the world of poverty law and social services. The proposed MDP does not pretend to magically remove these issues. Instead, it offers a more effective and manageable alternative to the legal services currently offered. Thankfully, there are very skilled professionals who have been willing to sacrifice high paying jobs in order to serve the poor. Those who already work in public interest positions would provide a wealth of knowledge and experience to the MDP. The proposed MDP does not seek to create new positions for those who are already active in individual representation and community education. Instead, it seeks to offer an option for reorganizing existing services to maximize their potential benefit.

Even if the MDP received funding and competent professionals, the proposed MDP could come across other obstacles after its implementation. Because lawyers would be part of the proposed MDP, it would not be immune from the legal profession's ethical regulations. Every legal service must refrain from representing clients with conflicts of interest. Rule 1.9 of the Model Rules of Professional Conduct prohibits a lawyer from representing another client in "the same or a substantially related matter" where that person's interests are "materially adverse to the interest of the former client" unless the first client consents after consultation with the attorney.[166] This is one of the most basic ethical rules of the legal profession, but whereas traditional law firms can easily recognize that client A's interest conflicts with client B's interest, the MDP's client is a community with many different members, all of whom have potentially conflicting interests.

In *T.C. Theatre Corp. v. Warner Bros. Pictures, Inc.*, the court articulated a standard for determining which subsequent representation

166. MODEL RULES OF PROF'L CONDUCT R. 1.9 (1983).

was likely to be prohibited because of conflict of interest.[167] They ruled that a representation would be prohibited where there was a substantial relationship between the subject matter of the former and latter representation.[168] The court concluded that if a substantial relationship existed between the representations, the attorney could not accept the second case even if the first client had not disclosed secrets to the lawyer during the course of representation.[169] The court feared that communication between the attorney and client would be stifled if the client were forced to prove that disclosures had been made while the lawyer had been employed.[170]

This standard poses a dilemma for the proposed MDP. Since clients do not have to disclose secrets about other clients for a conflict of interest to exist, the MDP could violate the rules of ethics just by defining its clients as both individuals within the community and the community itself. For example, the MDP would most likely be unable to help a landlord find sources that could help him renovate row houses only to take on another client who wants to sue the landlord for negligent upkeep of the premises.

Although the interest of fostering loyalty and maintaining clients' confidences is paramount to legal ethics, the client also has an important right to select the counsel of his or her choice.[171] When a pro bono attorney sought to represent an adversary of a non-profit organization he had worked for as a law student, the court in *Allen v. Academics of America, Inc.* found that although a former attorney-client relationship had not been formed with the first nonprofit, the attorney was comparable to a director of a corporation who maintains a fiduciary responsibility to the organization.[172] When reaching its decision, the court looked at several key factors. They considered the competing interests of the nonprofits, the right of the client to an attorney of choice, the attorney's interest in representing the client in question, the financial burden on the adversary if the attorney is disqualified, and whether or not the disqualification is sought because of abusive tactical reasons.[173] Ultimately, the court balanced these interests against the idea that fair representation requires an attorney

167. 113 F. Supp. 265, 268 (S.D.N.Y 1953).
168. *Id.*
169. *Id.* at 269.
170. *Id.*
171. Marshall, *supra* note 79, at 199.
172. Allen v. Academic Leagues of America, Inc., 831 F. Supp. 785, 788 (C.D. Cal. 1993).
173. *Id.* at 788-89. (citing In re Lee G., 1 Cal. App. 4th 17, 26 (1991)).

who is independent and conflict-free.[174] Here, the court saw that there would a substantial financial hardship to the first non-profit since the attorney was representing the adversary on a pro-bono basis.[175]

Courts may use the factors discussed in *Allen* to find that the proposed MDP is the only available legal source for many members of the community. However, the argument supporting the client's right of choice of counsel may not be persuasive enough for MDPs to rely on. The proposed joint venture MDP would have to be very careful in deciding which clients to represent. It would also mean that attorneys interested in providing representation would not have represented any other client who could become an adverse party to the community. The MDP could also avoid this problem by receiving consent from former clients to represent new clients who may have conflicts of interest with the previous clients. This approach would require a very clear understanding between the client, the attorney, and the community of what the specific goals of the MDP were and how each case could further those goals. The MDP's best chance of avoiding conflict is to carefully select the clients they will represent.

VI. CONCLUSION

Although many issues have the potential of disrupting the delivery of legal services to the poor, lawyers and other professionals should not abandon the idea of working together to serve those in need. The debate concerning how to regulate MDPs continues, but the legal profession remains supportive of efforts that seek to remedy the blight of poverty. The fifth paragraph of the preamble to the Model Code encourages the theory behind community lawyering:

As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their

174. *Id.*
175. *Id.*

behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in public interest.[176]

While the argument has raged on for decades as to who and what is best suited to assist the poor, the impoverished will always be in need of assistance. Communication and collaboration between professionals can only lead to more innovative ideas that will hopefully lead to real solutions. The ethical standards of all professions involved should not be hastily discarded. Instead, professionals should look for ways to work with these regulations. If these professionals could work together, and keep the needs of the client and his or her community at the center of their work, perhaps poor people will have the chance to help themselves obtain better lives. Individual representation, community education, and multidisciplinary practice each contain necessary elements for making this vision a reality.

176. MODEL RULES OF PROFESSIONAL CONDUCT PREAMBLE (1983).