2000

Community Lawyering: Revisiting the Old Neighborhood

Michael R. Diamond
Georgetown University Law Center, diamondm@law.georgetown.edu

32 Colum. Hum. Rts. L. Rev. 67-131 (2000)

September 2006

Community Lawyering: Revisiting the Old Neighborhood

32 Colum. Hum. Rts. L. Rev. 67-131 (2000)

Michael Diamond
Professor of Law
Georgetown University Law Center
diamondm@law.georgetown.edu

COLUMBIA
HRLR

COLUMBIA HUMAN RIGHTS LAW REVIEW

Community Lawyering: Revisiting the Old Neighborhood

Michael Diamond

This article proposes a way out of the morass. The solution involves the attorney becoming more active in organizing and developing client groups and in developing and implementing strategies that increase the long-term political power of clients. This is not to say that building mutually satisfying lawyer-client relationships should be disregarded, but the relationship should not take precedence over achieving a client's substantive goals.

A. A Community Story

One day in the late fall, three tenants from a building in a very poor part of a large city come to a legal services office in their neighborhood. They each meet with a lawyer and describe the conditions in their building. The litany is familiar: there is no heat or hot water; windows are broken; electric wires protrude from holes in the walls and ceilings; the roof leaks; trash is piling up in the halls; the front door lock is broken and the building is not secure.

The attorney has heard these complaints many times before and is familiar with the available legal remedies. The residents may begin a rent strike. They may petition for a reduction in rent or for damages for breach of the warranty of habitability. Or, they may move to another building, although finding one in the neighborhood with significantly better prospects is unlikely, and leaving the neighborhood may be financially and socially impractical. The lawyer is aware that these problems are chronic and recurring. In fact, the improvement of housing is a major and long-standing goal of many groups in the community.

The attorney seeks additional information about the building and learns that there is no organized residents' association. The three individuals each came in on their own. None has paid rent in months, and the owner has neither been seen nor heard from during that period. The attorney later learns that the owner abandoned the building. He has not paid real estate taxes for years and has allowed the mortgage to go into default. Winter is coming and eighteen families still live in the building.

What are the realistic options that this attorney can present to the residents? The families cannot wait through the winter for lengthy legal remedies that offer only uncertain results. Of course, the lawyer could reject the case as not being susceptible to legal intervention. Another option is for her to suggest pursuing available legal remedies, despite their shortcomings, in the hope of securing some improvement in the residents' condition. Or she may suggest that the residents engage in self-help by taking over the operation of the building until they can move out, find another owner for the building, or take title themselves.

The latter solutions, unlike the others, would require the attorney to participate in activities outside the scope normally associated with legal representation. This might include helping to organize the tenants into a functioning residents' association. It could also involve educating them about paying rent to the association, making repairs, and maintaining the building. It might require her to find short term financing so that the residents could accomplish some of the tasks necessary to operate the building. She might have to convince the city or a non-profit organization to take over the building or to help the residents determine whether it would be feasible for them to obtain legal title to it. If they choose the latter course, the attorney may have to act, at least in the preliminary stages, as a developer. In any case, the choices this attorney must make and the activities that she may have to undertake diverge significantly from those of the traditional lawyer, even the traditional poverty lawyer.[2]

The results of a successful effort to take over the building also would be different from the outcomes typical of traditional legal representation. Legal rights would neither have been created nor vindicated by the efforts. Instead, the result would be an institution, a tenant-owned building, and the formerly powerless residents would have seized a degree of power. Despite divergence from the rights-based norm, these and other legally nontraditional approaches are what I believe to be part of the expansive role of a community lawyer. Much of the recent literature[3] fails to discuss the substantive outcomes a lawyer in a community setting must achieve to be successful. The literature concentrates instead on the process of lawyering and relationship building. For example, scholars have written about ethi-

2. For a discussion of the role of the traditional lawyer in the poverty setting, see *infra* note 10 and accompanying text.

3. In the past several years, there has been a significant body of writing describing various models of lawyer-client relationships. These writings have in common their search for a better way for progressive lawyers to interact with their clients. I allude to many of these articles and books throughout this paper and, in Part II, I discuss several of the prominent writers in more detail and offer a critique of the models they construct.

cal,[4] interpersonal[5] and political[6] issues that arise in lawyers' relationships with disempowered clients. Some authors have considered issues of client autonomy and empowerment in these relationships.[7] Many of the discussions of attorney-client relationships involve an attorney and an individual client. In some cases, the client is a group with an established hierarchical structure, speaking through a legitimate and recognized leader.[8] I will call a group of this sort a "bureaucratic group."[9]

4. *See* Geoffrey C. Hazard, Jr., Ethics in the Practice of Law (1978); David Luban, Lawyers and Justice: An Ethical Study (1988); Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 Yale L.J. 1060 (1976); Bruce A. Green, *Foreword: Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients*, 67 Fordham L. Rev. 1713 (1990); Michelle S. Jacobs, *Legal Professionalism: Do Ethical Rules Require Zealous Representation for Poor People?*, 8 St. Thomas L. Rev. 97 (1995); Ann Southworth, *Collective Representation for the Disadvantaged: Variations in Problems of Accountability*, 67 Fordham L. Rev. 2449 (1999).

5. *See* Douglas E. Rosenthal, Lawyer and Client: Who's in Charge? (1974); Lisa G. Lerman, *Lying to Clients*, 138 U. Pa. L. Rev. 659 (1990); Nancy Morawetz, *Underinclusive Class Actions*, 71 N.Y.U. L. Rev. 402 (1996).

6. *See* William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 Cornell L. Rev. 1447 (1992); Austin Sarat & William L.F. Felstiner, *Law and Social Relations: Vocabularies of Motive in Lawyer/Client Interaction*, 22 Law & Soc'y Rev. 737 (1988).

7. *See* David A. Binder & Susan C. Price, Legal Interviewing and Counseling: A Client-Centered Approach (1977); Gerald P. López, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992); A.B.A. Comm'n on Professionalism, *". . . in the spirit of public service": A Blueprint for the Rekindling of Lawyer Professionalism*, *reprinted in* 112 F.R.D. 243 (1986); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 Ariz. L. Rev. 501 (1990); Stephan Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 Va. L. Rev. 1103 (1992) [hereinafter Ellmann, *Client-Centeredness Multiplied*]; Stephan Ellmann, *Lawyers and Clients*, 34 UCLA L. Rev. 717 (1987) [hereinafter Ellmann, *Lawyers and Clients*]; William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 Md. L. Rev. 213 (1991); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 Buff. L. Rev. 1 (1990).

8. *See* Ellmann, *Client-Centeredness Multiplied*, *supra* note 7; John Leubsdorf, *Pluralizing the Client-Lawyer Relationship*, 77 Cornell L. Rev. 825 (1992); Nancy Morawetz, *Bargaining, Class Representation, and Fairness*, 54 Ohio State L.J. 1 (1993).

9. A bureaucratic group often functions as an individual person and can be analytically considered as such for the purpose of defining and evaluating the lawyer's relationship with it.

The attorney described in much of the recent scholarship is portrayed as one who advises an existing client about legal rights or helps the client resolve a discrete legal problem, often through the medium of litigation.[10] This has been the preeminent model of the attorney-client relationship, even when applied in a poverty setting where power (or the absence thereof) is at least as significant an issue as the legal rights of a client. The attorney is often viewed as, and typically is, an outsider to the client.[11] The perception of the attorney is as a technical expert with the limited role of providing legal advice and drafting documents. When a dispute arises between the client and another party, the attorney is expected to assert the client's rights through established legal means such as negotiation, arbitration, or litigation. In many instances, this model accurately describes the attorney-client relationship and permits the lawyer to fulfill the purposes of the representation. In other settings, however, it does neither. This severely limits the utility of the traditional

10. I call this the "traditional" model of the attorney's role, by which I mean an attorney who provides legal advocacy or counseling services, often for a fee, to an individual or bureaucratic client in a typically well-defined problem area. For early and interesting discussions of the dichotomy between a traditional practice and the needs of an effective practice in a poverty setting, see Steven Wexler, *Practicing Law for Poor People*, 79 Yale L.J. 1049 (1970). For a critique of the traditional model and an argument that it co-opts dissent and reinforces the status quo, see Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA Briefcase 106 (1977); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 Harv. C.R.-C.L. L. Rev. 297 (1996); Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. Rev. L. & Soc. Change 369 (1982–1983). For a recent compilation of readings generally concerning political aspects of law and lawyering, see Cause Lawyering: Political Commitments and Professional Responsibility (Austin Sarat & Stuart A. Scheingold eds., 1998).

11. By this phrase, I mean to describe an attorney who, because of race, class, educational status, place of residence or otherwise, does not share with a client a cultural, geographic, or world view regarding the client's situation and prospects. *See, e.g.*, Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992) (discussing the problems of accurately translating client stories when the attorney is of a different race); Paul Tremblay, *Theoretics of Practice: The Integration of Progressive Thoughts and Action*, 43 Hastings L.J. 717 (1992) (discussing the role of lawyers in relation to clients of different class, race, or gender). *But see* Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 Harv. C.R.-C.L. L. Rev. 443 (1996) (exploring the problems associated with the attorney being an insider).

model as a normative device for lawyers who wish to fight subordination.[12]

While much current literature critiques the traditional model, frequently it myopically focuses on establishing and maintaining a "proper" relationship between the lawyer and the client. Often it also fails to explore the impact of the representation on the client's underlying purpose for seeking a lawyer. The literature tends to assume the client has a traditional rights-based goal, readily pursued through traditional legal strategies and practices, albeit with a more morally and politically cognizant attorney.

The literature also largely ignores representation of ongoing non-bureaucratic, or what I will call 'extemporaneous' groups,[13] such as the one described at the beginning of this article. Extemporaneous groups are an important part of the political, social, and economic life of poor communities. Yet the literature is deficient in drawing out the differences between representing extemporaneous groups and bureaucratic groups or individuals. Instead, prior academic focus has been on counseling individuals and bureaucratic groups about their rights and engaging in rights-based litigation, even though these methods have had little impact on community well-being.[14]

12. Of course, not all clients wish to engage in such a fight. Some simply want relief from an immediate concern. In such cases, the traditional lawyering model may be all that is necessary and nothing more is required to satisfy client needs.

13. By this term, I mean to describe a group that comes together for a particular purpose, often with no long-term agenda. Extemporaneous groups are characterized by a more fluid membership and by a less defined leadership structure than the bureaucratic group from which they should be distinguished.

14. For a discussion of the inadequacy of the "rights" hypothesis, see Stuart A. Scheingold, The Politics of Rights: Lawyers, Public Policy and Political Change (1974). *See also* 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, 690 (1997) (critiquing the efficacy of traditional litigation and seeking alternative political solutions to the problems of homelessness); Matthew Diller, *Law and Equality: Poverty Lawyering in the Golden Age*, 93 Mich. L. Rev. 1401, 1425 (1995) (discussing several critiques of traditional lawyering for the poor); Gabel & Harris, *supra* note 10 (critiquing the traditional model and arguing that it co-opts dissent and reinforces the status quo). For a discussion of the inadequacy of the use of courts and litigation to produce social change, see Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? (1991); but compare Michael W. McCann, Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization (1994) (defending rights-based litigation as part of a strategy to achieve social change).

Attorneys working in a community setting require another model to describe their broader political role. I propose a model in which the attorney takes on tasks that are designed to solve problems and to empower clients. Often these tasks lie beyond the purview of those normally associated with a "poverty" attorney. To fulfill this new role, the attorney should be a participant in the group and its community and not merely a technical adjunct.[15] The role I envision transports the attorney from the community of power inhabited by lawyers as professionals, to a grounded community with the oppressed, whose problems are "legal" only in the most literal sense of the word. The lawyer who represents the oppressed must understand and adapt his or her conduct to this reality.

While the model I propose incorporates many prescriptions about attorneys' roles found in current progressive literature, it goes beyond the traditional model in several ways. First, it contemplates the representation of communities and extemporaneous groups, rather than focusing only on individuals or bureaucratic groups. It also speaks to the issues involved in choosing a client, rather than initiating the discussion at a point after client representation has commenced. Second, the model examines the meaning of "community" and, while acknowledging the vagaries of that term, attempts to develop a functional definition that permits a community lawyer to construct a coherent theory of practice. Third, the model addresses the outcomes of representation rather than merely the processes of creating appropriate relationships with clients. It explores the creation of power and of political institutions and calls on lawyers to participate in a client's activities in more central ways, such as organizing the group and participating in its political actions. The attorney should be permitted (perhaps encouraged) to state his or her views as to the strategies, tactics, and direction of the group. The essence of this model is that lawyers must directly and substantively act on the results of their political analysis of the causes and nature of subordination. The object of the direct action is to construct and use power

15. It is again important to note that not all clients want lawyers to be so heavily involved in their community. Many groups, particularly where there is strong leadership, prefer a lawyer to do their bidding rather than to participate in planning and governance.

against oppression. This contrasts with what I believe is the indirect, introspective approach taken by many of the current commentators.[16]

The differences between my model and recent prescriptions about the attorney's role arise in part from a distinction in the nature of the client (the possibility of fluid community group rather than an individual or a bureaucratic group). It also arises, in part, from the disparity in the views of what a lawyer should do when representing a client from a subordinated community. In their reexamination of a lawyer's role, many scholars have furnished great insight and value in the area of non-hierarchical collaboration between attorneys and clients. They have also attempted to redefine the range of appropriate attorney-client relationships.[17] Nevertheless, they fail to make a clean break with the traditional or, as Gerald López has put it, the "regnant" model of community lawyering.[18]

Most commentators, for example, begin their commentary with a client already in place. They do not discuss the politics of client selection, and their analysis is based on lawyer, rather than client, driven needs. But clients typically come to lawyers for help in resolving problems. Normally clients' concerns lie with the problem, rather than the nature of their relationship with the attorney. The primary focus placed by several commentators on a proper relationship, however, suggests that the substantive possibilities of legal intervention are limited. Thus satisfaction from appropriate lawyer-client relationships may be more crucial to the attorney than to the client.

Finally, the commentators largely ignore the factors that distinguish the role of an attorney who represents extemporaneous community groups from the more traditional model. Even where group clients are discussed, the strain extraneous groups place on the traditional model of attorney-client relationships receives little attention. In the remainder of this article, I hope to fill the interstices left by the prior discussions.[19]

16. By indirect, I mean that much of the commentary has the lawyer's actions directed at the client rather than at the causes of oppression. This position is more fully developed in Part II, *infra*.

17. *See infra* Part II for a discussion of some of this literature.

18. Gerald López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 Geo. L.J. 1603, 1609 (1989).

B. The Community Lawyer

I use the term "community lawyer" to describe a type of practice as well as a type of lawyer. The practice is located in poor, disempowered, and subordinated communities and is dedicated to serving the communities' goals. The community lawyer is one whose commitment to this practice includes collaborative interaction with members of the community.

The community's problems are the only context within which the proper role for such a lawyer can be understood. The foundation for the lawyer-client relationship is to reach satisfactory resolutions to community problems. Since the problems are not solely legal, addressing them usually requires a lawyer to suggest strategies and activities that go well beyond commonly recognized legal solutions or remedies. Too often, though, attorneys who serve poor communities see their function as closely approximating the traditional model: as serving individuals with problems that are readily susceptible to purely legal intervention. In many cases the attorneys attempt to force non-legal or only partially legal problems into a narrow legal format.[20]

There are several possible explanations for this devotion to law. Many attorneys may not recognize the existence of the underlying problems. Others may not recognize that attorneys can, and per-

19. With the demise of legal services, the lawyers who actually function in this area are often associated with law school clinics, with attorneys in organizations that have a specific community development agenda, or with private firms that finance much of their community development activities with a more general, fee-generating practice in the community. For a discussion of the various forms of practice currently enduring in communities, see Louise Trubek, *The Worst of Times . . . And the Best of Times: Lawyering for Poor Clients Today*, 22 Fordham Urb. L.J. 1123 (1995).

20. Some early commentators have argued that the law is designed to reduce larger, more complex problems into smaller, legally cognizable elements. This has the effect of defusing the political nature of the dispute and providing an ordered and limited procedure in which the parties can compete. *See* Scheingold, *supra* note 14. *See also* Michael Diamond, *Law, the Problems of Poverty, and the "Myths of Rights,"* 1980 BYU L. Rev. 785 (critiquing a rights-based approach to lawyering for social change). For an example of an attorney consciously fitting a broader problem into a narrow legal context, see Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role For "Facilitative" Lawyering?*, 1 Clinical L. Rev. 639 (1995).

haps should, assist a client in identifying and confronting these broader problems. Attorneys are usually not trained to deal with the non-legal aspects of social or economic problems or, for that matter, with any form of multi-dimensional problem-solving.[21] Other lawyers who have the necessary insight and training often lack time to address non-legal issues. To be effective in a community setting, however, a lawyer must include the social, political, and economic aspects in analyzing the community's problems and in the development and implementation of strategies to address them.[22]

In discussing this role transcendence, it becomes apparent that the current literature is incomplete. It is too introspective and stresses the lawyer's view of what the client wants. Even when client goals are the focus, little attention is paid to extra-legal problem solving or creating community institutions capable of wielding ongoing political influence.

In this article I address both of these shortcomings: first by examining how an attorney's role differs when the identified problems are chronic, political, and economic, rather than acute and traditionally legal; and second by exploring the range of appropriate re-

21. For a discussion of this gap in legal education and a proposal to remedy it, see Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 L. & Contemp. Probs. 5 (1995). *See also* Janet Reno, *Lawyers as Problem-Solvers: Keynote Address to the AALS*, 49 J. Legal Educ. 5 (1999) (arguing that more problem solving should be taught in law school). The Attorney General stated: "The lawyer must serve the people and solve their problems, rather than just 'winning' their cases if the rule of law is to prevail." *Id.* at 6. *But see* Carrie Menkel-Meadow, *Taking Problem-Solving Pedagogy Seriously: A Response to the Attorney General*, 49 J. Legal Educ. 14 (1999) (suggesting specific ways in which law schools can teach problem solving).

22. On the surface, this position seems similar to that of Gerald López and other collaborative advocates. In fact, it is somewhat different. Compare the use of the law, particularly in the trial context, as political theater. Lawyers such as William Kuntsler, Gerald Lefcourt, and others and many of their clients would often use the forum of a trial to demonstrate the political nature of the law. They used trials to educate and organize the public about political issues of the times. Other lawyers have used their skills to develop power bases among client groups so that the clients could wage effective political struggles against oppression. These examples are quite different from those of lawyers who recognize the political nature of oppression and use the law to create or assert legal rights. *See* David Dellinger, The Tales of Hoffman (1970); J. Anthony Lukas, *Trial of Chicago 7 Goes Into Overtime*, N.Y. Times, Nov. 15, 1969, at 17; J. Anthony Lukas, *Defendant in Trial of Chicago 7 Calls the Judge "Very Unfair"*, N.Y. Times, Dec. 16, 1969, at 40; J. Anthony Lukas, *'Om', Ginsburg's Hindu Chant Fails to Charm a Judge in Chicago*, N.Y. Times, Dec. 13, 1969, at 19.

lationships between an attorney and community clients, including extemporaneous groups.[23]

C. The Alchemy of Legal Roles

The problems an attorney in a poor community is called upon to confront have an obvious legal dimension: a spouse seeking a divorce; a tenant threatened with eviction; a consumer with a credit problem. Attorneys have always dealt with such discrete individual problems through the existing legal apparatus. Doing so is universally recognized as a lawyer's proper function. Consider, however, the presentation of a different sort of problem. Envision a high and chronic unemployment rate,[24] inadequate and overpriced housing,[25] a lack of municipal services,[26] and an ineffective and unresponsive school system.[27] Problems such as these are more likely to be identi-

23. Extemporaneous groups often have regularly shifting constituencies and typically have more of a town meeting aspect than a unified structure. While they may have an enduring existence, they tend to have a fluid identity, which changes rapidly as circumstances and constituents change. On a continuum of group permanence and structure, the array might be something like the following (which derives from a conversation with Professor Carrie Menkel-Meadow).

group arising from class action dispute	group arising from acute but temporary problem	group formed to address chronic problem or set of problems	business corporation

While the business corporation would typically be thought of as a bureaucratic group, the class action situation might not give rise to a true group at all. The acute situation, like the one with which I began this article, would probably give rise to an extemporaneous group while the chronic situation could give rise to either type of group.

24. *See* U.S. Dep't of Housing and Urban Dev., State of the Cities 1999, Third Annual Report (1999); David Holmstrom, *Gambling Ventures Reverse Poverty for Only Some Indians*, Christian Sci. Monitor, July 8, 1994, at 3.

25. *See* Office of Policy Development and Research, U.S. Dep't of Housing and Urban Dev., Rental Housing Assistance—The Crisis Continues, The 1997 Report To Congress on Worst Case Housing Needs 9–12 (1998).

26. *See* Efrain Hernandez, *LAPD Tackles 911 Bilingual Response Time; Safety: The City Directs LAPD to Enhance System as Calls from Non-English Speakers Continue to Rise, Posing More Risks*, L.A. Times, Sept. 4, 1995, at B1.

27. *See Class Action*, Economist, Nov. 30, 1996, at 26; *Education Readiness in the 21st Century: Hearings Before the Senate Health, Education, Labor and Pensions*

fied by the public (and by most lawyers) as political or "the problems of poverty" rather than as "legal." Others see these problems merely as the aggregation of the discrete problems generally thought to be susceptible to legal intervention.[28] Both sets of views misperceive the nature of these problems and the ways in which an attorney can assist a client in addressing them.

Consider the following possibilities concerning the schools in a poor community. An attorney is asked to help a family whose child is in an inadequate public school. A successful result in this situation might be, for example, an administrative or court order moving the child to a more appropriate educational setting. In the alternative, a lawyer might initiate a test case to challenge the disparate quality of education in the local schools from those in more affluent districts. A successful result in that instance might be a court order increasing the funding for the local schools or, perhaps, transporting students from one neighborhood to schools in another. These problems and their remedies are easily recognizable as part of the mainstream lawyer's activities and the lawyer's role is normally clear.

But what is the appropriate role when the client seeks not to improve a particular school or to move a student to a more suitable environment, but rather to take over the local school system?[29] What is the alchemy that transforms problems such as these from "legal," when they are personal and particularized, to "political," when they are community-wide and general?

The primary concern of many community groups that coalesce around such ongoing problems lies not in whether the problems are properly denominated as "legal," but in finding satisfactory solutions.[30] Uncovering such solutions usually requires the lawyer to engage in activities that go beyond the traditional legal conventions of

Commission, 106th Cong. 4 (1999) (statement of Ben Cohen, President, Business Leaders for Sensible Priorities).

28. *See, e.g.*, Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954) (school desegregation); Goldberg v. Kelly, 397 U.S. 254 (1970) (welfare benefits); Shapiro v. Thompson, 394 U.S. 618 (1969) (residency requirement for welfare benefits); Gautreaux v. Chicago Housing Auth., 296 F. Supp. 907 (N.D. Ill. 1969) (public housing).

29. *See* Martin Mayer, *The Full and Sometimes Very Surprising Story of Ocean Hill, the Teacher's Union and the Teacher Strikes of 1968*, N.Y. Times Mag., Feb. 2, 1969, at 18.

30. *See* Ronald Browenstein, *An Idea Grows in Brooklyn*, U.S. News & World Report, July 27, 1998, at 30.

litigation, lobbying and lawyer-to-lawyer negotiation.[31] Even a community group that is organized around narrowly defined and conventional objectives, such as purchasing a building[32] or establishing a day care center,[33] must often undertake social, political, and economic activities to achieve their goals. Non-legal issues[34] are intertwined with the legal issues. Any effective response must account for both.[35] Even where lawyers recognize this confluence, they often undertake the non-legal responses merely as an ancillary piece of a traditional legal rights strategy.[36] In the struggle against subordination, however, this limited role must be re-evaluated.[37]

31. *See* Reno, *supra* note 21.

32. *See* Susan Dentzer, *When Self-Help Deserves a Hand*, U.S. News & World Report, Apr. 17, 1995, at 59; Trish Hall, *A South Bronx Very Different From the Cliché*, N.Y. Times, Feb. 14, 1999, § 1, at 1; Fred Musante, *Returning Life to an Urban Neighborhood*, N.Y. Times, Mar. 28, 1999, § 14, at 1.

33. *See* Nat'l Econ. Dev. & Law Ctr., *Community Economic Development at Work*, 25 Clearinghouse Rev. 1121 (1992).

34. In my use of the term "non-legal," I intend to include such activities as political action, the use of publicity and the media, demonstrations, economic pressure, boycotts, civil disobedience, and physical development.

35. *See* Michael J. Fox, *Some Rules for Community Lawyers*, 14 Clearinghouse Rev. 1, 2 (1980).

36. Consider, for example, the use of media as an element in a desegregation litigation strategy. "One key to effective legal mobilization as a movement-building strategy was the tremendous amount of mainstream media attention generated by dramatic early lawsuits. It bears out the observation of many social scientists that law-reform activity is highly newsworthy and that litigation is one of the most effective ways to win publicity for a cause." McCann, *supra* note 14, at 58.

37. Since the goal of representation might be to attain political power rather than to assert rights, the roles that an attorney may be called upon to fill are likely to be different. Some activities may be familiar, particularly for lawyers who work with groups. For example, many corporate attorneys are involved in their client's long-term planning. When a community lawyer does so, however, he or she is often starting from ground zero in the struggle for political recognition. Also, unlike a corporate attorney, the community lawyer must reconcile the long-term (and potentially divergent) needs of the community as a whole. Thus, he or she must be able to find a consistent political thread through the goals of many clients. Finally, a corporate lawyer would be unlikely to engage or assist in the organizing of his or her client. Many community lawyers, however, must participate in the organizing process in order for a client to have a realistic chance of achieving its goals.

D. The Incongruence of the Traditional Model for the Community Lawyer

To succeed as a community lawyer, an attorney must become involved in many novel and perhaps confusing activities. These activities include traversing the community's racial and class politics, engaging in community organizing, and participating in a variety of economic and financial transactions.[38] For example, community groups regularly confront local agencies, politicians, landlords, hospital administrators, and merchants, as well as banks, labor unions, and similar institutions.[39] In these confrontations, power, rather than law, is often the decisive factor.[40]

Lawyers' dealings in the currency of power do not usually involve direct confrontations, particularly outside of the courtroom or away from the negotiation table.[41] These implicit boundaries of the traditional practice, even the traditional public interest or poverty practice, have limited the ability of attorneys to successfully navigate the minefields associated with representing the poor and subordinated. Indeed, these limitations have become so internalized in the minds of the non-lawyer public that the general perception of what is properly denominated as "legal" is also constrained within these boundaries.

In the traditional model, the rules of confrontation are clearly demarcated.[42] Conflict that takes place outside of these boundaries presents special problems for the attorney.[43] Several issues with relatively clear answers in the traditional context are more problematic in the community setting. For example, how should an attorney advise a client when the attorney believes the most effective client strategy involves stepping outside the legal system or rejecting the law altogether by violating it?[44] How should an attorney respond to the demands of competing factions within a group client? Should an attorney be involved in planning, organizing, or implementing a political, social, or economic activity or strategy to confront an opponent?[45]

38. *See* Fox, *supra* note 35, at 1.

39. *See* Alan Finder, *Marchers Call on Guiliani to Support WorkFare Union*, N.Y. Times, Dec. 11, 1997, at B2; Leon Lazaroff, *Minorities Hammer Construction Unions*, Christian Sci. Monitor, Mar. 9, 1998, at 3.

40. For an analysis of power and related concepts, see Steven Lukes, Power: A Radical View (1974) (discussing three dimensions of power).

41. *See* Fox, *supra* note 35, at 3; Polikoff, *supra* note 11, at 451; William P. Quigley, *Reflections of Community Organizers: Lawyering for the Empowerment of Community Organizations*, 21 Ohio N.U. L. Rev. 455, 462 (1994); *Toronto Rightists Assault Kunstler*, N.Y. Times, June 23, 1970, at A18.

42. For example, see local and federal Rules of Civil and of Criminal Procedure concerning litigation, the Model Rules of Professional Conduct, and local court rules.

43. Quigley, *supra* note 41, at 459.

The following sections address these issues and suggest a divergent model. In Section II, I examine and critique some of the more prominent current thinking about the role of an attorney and the models of attorney-client relations that are suggested. I then propose an alternative model, that of the "activist" lawyer. Section III discusses some of the factors that comprise the relationship between an attorney, the community, and the groups he or she serves. It also presents an expanded conception of the lawyer's role in a community setting.

While the activist alternative has much in common with the models of several writers I discuss, I suggest several differences. These involve the product rather than the process of the representation and allow for a more durable and effective outcome than merely a one-shot victory in litigation or through negotiation. To use Marc Galanter's well-known concept, I advocate the creation of repeat players at the bargaining table with the political resources to influence outcomes on an ongoing basis.[46]

44. The Model Rules give little guidance in addressing these types of situations. *See* Model Rules of Prof'l Conduct R. 1.2(d) cmt. 9 (1983) (permitting the violation of a statute or regulation for the purpose of determining its validity or interpretation); Model Code of Prof'l Responsibility DR 7-102(A)(7) (1981) ("A lawyer shall not . . . counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."). *See also* William H. Simon, *Should Lawyers Obey the Law?*, 38 Wm. & Mary L. Rev. 217 (1996) (discussing the difficulties of a categorical duty of lawyers to obey the law). It should be noted here that there is a body of literature questioning whether, in order to preserve client autonomy, a lawyer should offer any advice to a client. *See* Binder & Price, *supra* note 7. For a good discussion of the issue and a somewhat different approach, see Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 Ariz. L. Rev. 501 (1990). This issue will be further discussed in sections II and III of this article.

45. *See* Martha Minow, *Breaking the Law: Lawyers and Clients in Struggles for Social Change*, 52 U. Pitt. L. Rev. 723, 746–47 (1991); Polikoff, *supra* note 11, at 465–67, 470.

46. *See* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc'y Rev. 95 (1974).

II. LAWYERING MODELS

The 1990s have seen a resurgence of legal scholarship in the field of lawyering and poverty law.[47] This resurgence has included, among other things, a reexamination of the relationship between lawyers and "subordinated" clients. Many scholars, in apparent discomfort over the traditional boundaries of the attorney-client relationship, sought to ascertain a more inclusive one for lawyers representing poor clients.[48] In doing so, they also reevaluated the legitimate scope of a lawyer's work in poor communities.[49] The alternative models of lawyering prescribed by these scholars and the traditional boundaries of the attorney-client relationship that such models challenge are described below.

A. The Collaborative Model of Lawyering

The first approach I will discuss has been called the collaborative model. This model posits that for a community lawyer to be successful, he or she must interact with clients differently from what traditionally has been the norm. Lawyers in the collaborative mode must involve clients to a greater degree in planning strategies and in

47. *See* Lois H. Johnson, *The New Public Interest Law: From Old Theories to a New Agenda*, 1 B.U. Pub. Int. L.J. 169 (1991); López, *supra* note 7; *Symposium, Poverty Law Scholarship*, 48 U. Miami L. Rev. 983 (1994); *Symposium, Theoretics of Practice: The Integration of Progressive Thoughts and Action*, 43 Hastings L.J. 717 (1992); Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. Pub. Int. L.J. 49 (1991). The theories that have developed out of the critique of community lawyering have been called, collectively, "critical lawyering" by several scholars. *See* Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 Geo. L.J. 1529 (1995); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 Mich. L. Rev. 485 (1994); Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 Stan. L. Rev. 213 (1993); Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 Harv. C.R.-C.L. L. Rev. 415, 416 (1996) [hereinafter Trubek, *Embedded Practices*] ("Critical lawyering . . . addresses two major concerns: improving lawyer-client relationships in order more effectively to serve subordinated groups, and rethinking the relationship between legal work and political mobilization.").

48. *See* White, *supra* note 7 (describing some of the systemic and linguistic obstacles to such inclusiveness).

49. *See* López, *supra* note 7; Marsico, *supra* note 20; William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. Miami L. Rev. 1099, 1100–02 (1994); White, *supra* note 7.

carrying out tasks previously carried out only by professionals. The model requires that attorneys understand a client's story in the client's terminology and with the client's sense of meaning and importance rather than automatically translating the story into the technical "legal" jargon so familiar and comfortable to courts and lawyers.[50] It might also require lawyers to become more involved with the communities they serve and to undertake or, at least, to examine strategies and tasks not traditionally thought to be legal. Several scholars have advocated such a model of community lawyering, and I will discuss the ideas of two of the proponents here.[51]

1. Rebellion Against Regnancy

The "rebellious" lawyer described by Gerald López is perhaps the most influential model of the collaborative lawyer to emerge from the resurgence of scholarship in the field of poverty law.[52] López de-

50. For a thought provoking discussion of lawyer as translator, see Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992).

51. *See, e.g.*, Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. Rev. L. & Soc. Change 659 (1987–1988) (hypothesizing that poverty cannot be remedied by traditional legal action but requires political organization and mobilization of the poor); Ruth Buchanan & Louise Trubek, *Resistance and Possibilities: A Critical and Practical Look at Public Practice*, 19 N.Y.U. Rev. L. & Soc. Change 687, 700 (1992) (suggesting a path for lawyers to move from 'traditional' public interest lawyering to 'critical lawyering'); Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 Tenn. L. Rev. 1019 (1997) (examining new ways for lawyers to relate to clients who are abused women); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 Clinical L. Rev. 157 (1994) (examining opportunities for collaborative lawyering on a local level); Christine Zunicruz, *On the Road Back In: Community Lawyering in Indigenous Communities*, 5 Clinical L. Rev. 557 (1999) (discussing lawyers who seek to help without transgressing cultural and intellectual boundaries). *But see* Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 Clinical L. Rev. 217 (1999) (critiquing current practice in collaborative lawyering).

52. López, *supra* note 7. López's model of rebellious lawyering has received considerable attention from his colleagues. *See* Luke Cole, *Commentary: The Crisis and Opportunity in Public Interest Law: A Challenge to Law Students to Be Rebellious Lawyers in the '90s*, 4 B.U. Pub. Int. L.J. 1 (1994); Diller, *supra* note 14; Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 Clinical L. Rev. 433 (1998); Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 Fordham Urb. L.J. 873 (1998); Southworth, *supra* note 47; Paul Tremblay, *Theoretics of Practice; The Integration of Progressive Thought and Action: Rebellious Lawyering, Regnant Lawyer-*

veloped his model as an alternative to what he perceived to be the dominant mode of poverty lawyering, which he characterizes as "the regnant idea of lawyering for the subordinated."[53] López asserts that the regnant ideal, which he believes many poverty lawyers have adopted, often serves the ambitions of lawyers more than the needs of clients.[54] This view of lawyering is inherent, he says, in legal training, "both in law schools and on the job, [and] presupposes a world in which this particular picture of lawyering seems almost 'natural.'"[55] He criticizes the elitist, formalistic and apolitical nature of the regnant model in which all problems are seen as "legal" and subject to intervention by the attorney, a trained technical expert.

The rebellious model, on the other hand, describes a means of reversing the subordination of clients and client interests by changing the method and scope of a poverty lawyer's practice. This is accomplished by attempting to eliminate (or at least to reduce) the distance between the lawyer and the client and by encouraging the lawyer to consider non-legal courses of action in client problems.

ing, and Street-Level Bureaucracy, 43 Hastings L.J. 947 (1992); Anthony Alfieri, *Practicing Community*, 107 Harv. L. Rev. 1747 (1994) (book review); Angelo N. Ancheta, *Community Lawyering*, 81 Cal. L. Rev. 1363 (1993) (book review); Milner S. Ball, *Power From The People*, 92 Mich. L. Rev. 1725 (1994) (book review); Mark Kessler, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, 531 Annals Am. Acad. Pol. & Soc. Sci. 203 (1994) (book review).

53. López, *supra* note 7, at 71. *See also* Southworth, *supra* note 47, at 214.

54. López, *supra* note 7, at 49 ("Even when these strategies work, they either fail to challenge fundamental arrangements or prove more exhilarating for the lawyer than for the client."). As López sees it, the regnant lawyer is characterized as:

> —formally representing clients, primarily through litigation, whether in "service" or "impact" cases
>
> —having a rather negative understanding of community education and organizing
>
> —considering attorneys as the preeminent problem solvers and therefore connecting only loosely to other institutions or groups
>
> —badly understanding the interaction between the community and outside structures, institutions and events and having a negative opinion about subordinated clients being able to help themselves
>
> —seeing the law and attorneys as the means to fighting subordination and not knowing and not trying to learn to what extent, if any, formal legal changes penetrate the lives of subordinated clients.

Id. at 24. *See also* Southworth, *supra* note 47, at 214.

55. López, *supra* note 7, at 25.

Thus, rebellious lawyering entails working directly "in the lives and in the communities of the subordinated themselves."[56] It requires lawyers continually to evaluate

> the likely interaction between legal and 'non-legal' approaches to problems. They must . . . know how to work with others in brainstorming, designing, and executing strategies aimed at responding immediately to particular problems, and, more generally, at fighting social and political subordination. They must understand how to be part of coalitions, as well as how to build them. . . . They must appreciate how all that they do with others requires attention not only to international, national, and regional matters but also to their interplay with seemingly more mundane local affairs. At bottom, the idea of rebellious lawyering demands that lawyers . . . nurture sensibilities and skills compatible with a collective fight for social change.[57]

López portrays this view as that taken by groups in subordinated communities who work with lawyers as part of a broader collaboration in which all participants may express themselves and critique colleagues. Such notions are foreign to lawyers immersed in the regnant idea which

> imposes unjustifiably limited relations between those working against subordination and those strategies available to wage the fight. It does not permit anyone in the fight, whether lay or professional, to experience others as part of a working team. And it almost laughs off anyone who wants to regard others as co-eminent practitioners.[58]

López goes on to suggest that the rebellious lawyer might live in the community where he or she works and organize and educate clients to help themselves. Equally important is the education obtained by the rebellious lawyer from his or her clients that enables the lawyer to understand the clients' inherent worth and the value of their stories and insights.[59]

56. *Id.* at 38.

57. *Id.*

58. *Id.* at 29.

59. *Id.* at 53, 70.

2. Learning and Teaching

In a series of articles, Lucie White explores the interaction between lawyers and subordinated clients. In one of these articles, White examines the attorney-client relationship in a context where legal remedies are largely non-existent or, where present, largely ineffectual.[60] This study examined an attempt by the South African government to relocate to a remote 'homeland' the black residents (including many landowners) of the village of Driefontein, situated in an area designated for whites only. The removal was legal under South African law but the residents of Driefontein nevertheless resisted the move. Two outsiders aided the resistance, one of whom was a white lawyer from Johannesburg. In Professor White's words, "[t]he story of Driefontein shows a group of people—villagers, lawyer and organizer—self consciously trying to construct power where the law gives them no remedies."[61]

White reflects on the relationship between the residents of the village and the outsider lawyer. The results of the collaboration led White to a broader examination of various methods of social change lawyering.[62] She asks, for instance, what made the residents of Driefontein resist government efforts to relocate them when the residents of other similar communities were quiescent in the face of government-ordered displacement? What systemic changes in South African relocation policy or in the villagers themselves were made as a result of their efforts? Did the lawyer further the broader movement against oppression or, in the end, did this effort re-legitimize the government and the power structure?[63]

60. Lucie E. White, *To Learn and To Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wis. L. Rev. 699.

61. *Id.* at 703.

62. The analysis presented in the Driefontein article reappears in a subsequent article by Professor Lucie E. White, *Collaborative Lawyering in the Field?: The Paths from Rhetoric to Practice*, 1 Clinical L. Rev. 157 (1994). In this article Professor White asks "[H]ow do grassroots, community-based initiatives actually work to catalyze progressive social change? . . . [H]ow can professionally trained lawyers best contribute to this justice-oriented work?" *Id.* at 160. She answers by suggesting a scholarly research project to be undertaken by clinical students and their instructors so that the paths from rhetoric to practice might better be discerned and understood. While Professor White's questions are the correct ones, I am not aware that the study she called for has been undertaken. Instead, there are pieces such as this one that attempt to examine in a more abstract way the relationship between law and social change and between lawyers and subordinated clients.

In examining these and other questions, White uses a three-tiered model of political lawyering adapted from political scientist Steven Lukes.[64] While White recognizes that these tiers represent only abstractions of real situations, she describes in each a mechanism of domination and a model of 'change-oriented lawyering' to address it. Her goal is to distill lawyering for the subordinated.[65]

White describes the first tier as a situation in which "groups contest their interests through established channels of political disputing."[66] She assumes people on this tier recognize their interests and grievances and make informed decisions about whether to act on any particular issue.[67] The model of lawyering that corresponds to her description of first tier clients is, she says, "straightforward and familiar."[68] It is that of the public interest litigator. The lawyer translates client grievances into legal theory and terminology and fashions and prosecutes lawsuits to rectify the wrongs.[69]

The second-tier clients also recognize their grievance but, unlike clients in the first tier, are prevented from using the legal or political processes as an arena for struggle. In the second tier, barriers to political access may be overt or more subtle. In South Africa, for example, there were often legal restrictions to judicial and politi-

63. White, *supra* note 60, at 746.

64. *Id.* at 747 (citing Steven Lukes, Power: A Radical View (1974)).

65. *Id.*

66. *Id.* at 747–748.

67. *Id.* at 748.

68 *Id.* at 755.

69. *Id.* at 756. White goes on to argue here that courts are often structurally incapable of fashioning adequate remedies to what are non-legal concerns. She criticizes the litigation model by pointing out that the litigator, as a repeat player in the courtroom setting, has loyalties to the system, the personnel, and the process of litigation in addition to loyalties to the client. Since the first tier lawyer assumes that the law is an adequate arena to resolve client grievances, he or she often pressures clients into formulating their concerns in legal terms, thus forsaking other avenues of potential redress, including social mobilization.

White writes that "[t]hrough the process of voicing grievances in terms to which the courts can respond, social groups risk stunting their own aspiration. Eventually, they may find themselves pleading for permission to conform to the status quo." *Id.* at 757.

cal access by Blacks. In other situations, restrictions are much less perceptible, such as the use of intimidation or threats of retaliation in order to stem resistance.[70]

White describes the second-tier lawyer as also seeing litigation as a viable social change mechanism. In contrast to the first-tier lawyer, however, the second-tier lawyer does not perceive litigation merely as a means to remedy an identified legal wrong. A second-tier lawyer recognizes the political nature of litigation and its role in educating the public about injustice.[71]

The hallmark of those in the third tier of subordination is the absence of a clear consciousness of the injustices done or of the identity of the perpetrators. This may be because subordinated people have become acculturated into the norms, values and practices of the dominant order.[72] They often blame themselves for their plight; constant failure to improve their situation regularly leads to fatalism and apathy.[73]

Nevertheless, White argues that there is a strong thread of resistance and survival among those in the third tier.[74] She poses

70. *Id.* at 748. As an example, during the early 1980s, the author of this article was working with community groups engaged in economic development activities in a rural area of a southern state. While the work was taking place in a county that was approximately 70% black, the county council was predominantly white. In investigating the reasons for this anomalous situation, I was told that many elderly blacks, often former workers, lived for little or no rent on the land of local white landowners. The landowners made clear to the tenants and their relatives that if the voters returned a majority black council, the continued tenure of the elderly tenants would be jeopardized.

71. *Id.* at 758 (citing Joel Handler, Social Movements and the Legal System: A Theory of Law Reform and Social Change (1978)). The difficulty in this tier of lawyering, according to White, is that it presupposes clients who clearly recognize their grievances and are prepared to challenge those who inflict or perpetuate the injuries, regardless of the risks. Second-tier lawyers do not get to see clients who have either not identified the precise nature of their grievance and those who have perpetrated the wrong or who, having identified them, are unable to respond to them effectively. The result of this analysis is that the most subordinated clients are left without effective counsel. *Id.* at 760.

72. *Id.* at 751 (citing Antonio Gramsci, Selections from the Prison Notebooks of Antonio Gramsci (1971)).

73. *Id.* at 752 (citing John Gaventa, Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley (1980)). *See also* Cornell West, Race Matters (1993) (discussing issues of racial identity, crisis, and activism).

74. White, *supra* note 60, at 752.

several essential questions. How does the scholar or activist determine whether the quiescence of the third tier member is a sign of contentment or of oppression? Moreover, how does the scholar or activist justify encouraging the third tier member to rebel and bear the risks of that rebellion? White envisions collaboration as a method of lawyering that could change the processes of subordination rather than merely minister to the injuries that result from oppression.[75] Her discussion of the collaborative process uses terms similar to those used by López.

White offers a consciousness-raising process adopted from Freire that is essentially pedagogic and non-hierarchical.[76] The lawyer, she argues, should "engage with her clients in a conversational process of naming and critiquing their immediate reality."[77] According to this model, the third-tier lawyer then works with the client in an interactive and non-hierarchical manner to challenge the identified patterns of domination. The attorney and other members of the group present their conception of the problems and options to remedy them. Decisions about what action to take will come from the deliberation of the entire group.[78]

López, White, and other advocates of the collaborative lawyering model look toward breaking down the barriers between the "professional" and the client from within subordinated groups. The characteristic of the collaborative model is that attorneys become, as much as possible, a part of the community they serve, and they edu-

75. *Id.* at 754.

76. *Id.* at 761 (citing Paulo Freire, The Pedagogy of the Oppressed (1970)).

77. *Id.* at 762. While in Freire's model, neither the lawyer nor the client would monopolize the teacher's role, White suggests that the lawyer brings special skills to the process. These skills allow the lawyer to convene the conversation and set its tone. She is clear in pointing out, however, that the third-tier lawyer claims no special knowledge about politics or reality. In fact, the lawyer opens up the norms of the legal profession to criticism and seeks to transfer authority from the lawyer to the group. The lawyer becomes more of a participant in the conversation, speaking his or her mind "honestly as a person with a different experience." *Id.* at 763.

78. White asks why this work is considered lawyering when neither a law degree nor legal training is needed to undertake it. She answers by stating that fluency in the law and its norms and rituals increases the flexibility and effectiveness of one engaged in work in the "third dimension." She points out, however, that to be effective, lawyers must collaborate with those in other disciplines as well as with their clients. Only through the ongoing process of learning and teaching can an attorney play a role in progressive systemic change. *Id.* at 765.

cate clients to be able to advocate for themselves. At the same time, clients educate attorneys about how to use their skills more effectively to meet client goals.

B. Client-Centered Lawyering

Client-centered lawyering, at least theoretically, does not conflict with the model of the collaborative lawyer. In fact, the concept permeates much of today's writing about lawyering for the poor. The essence of the model is that the client, rather than the lawyer, must make decisions concerning both the ends to be achieved by legal representation, and the means to be used to achieve them.[79]

Not all progressive scholars, however, are proponents of client-centered lawyering. Some have suggested that there is no real-life analogue to the theoretical client-centered model.[80] Others have argued that a client-centered model is counter-productive[81] and, in its extreme version, negates the model's underlying prescription of client

79. *See* Dinerstein, *supra* note 7. Dinerstein distinguishes this client-centered model from the "traditional" view of legal counseling, where the client should make the decisions about the goals of the representation while the lawyer exercises "a great deal of influence" about how these goals should be reached. *Id.* at 504. He goes on to say that in the traditional view, "clients should be passive and should delegate decision making responsibility to their lawyers." *Id.* at 506.

80. *See* Simon, *supra* note 49; Simon, *supra* note 7. Simon argues that there is an insignificant difference between what he calls the "refined" view of autonomy and a "refined paternalist view." He believes lawyers influence clients in many ways other than merely presenting opinions, such as choosing which information is provided and in what order it is presented. This is true even without the conscious effort of the attorney to manipulate. For a response to Simon, see Mark Spiegel, *The Case of Mrs. Jones Revisited: Paternalism and Autonomy in Lawyer-Client Counseling*, 1997 BYU L. Rev. 307.

81. Tremblay, *supra* note 52, at 951. Tremblay states, "we may have to conclude that increased client-centeredness will lead to more, rather than less conventional lawyering." *Id. See also* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 Golden Gate U.L. Rev. 345 (1997) (arguing that neutral treatment of clients, without recognition of their individual traits and backgrounds worked to their disadvantage); Robert Rubinson, *Constructions of Client Competence and Theories of Practice*, 31 Ariz. St. L.J. 121, 154 (1999) (discussing how stereotypes about elderly clients' decision-making capabilities cause younger lawyers to disserve their clients' interests, underestimate their clients' competence, or act without sympathy to their situation); William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 Stan. L. Rev. 487 (1980) (critiquing what he calls the "Psychological Vision of Lawyering" as being more concerned with lawyer-client relationships than with outcomes).

autonomy and individual dignity.[82] Even among proponents, who argue that client-centeredness is the only way a lawyer can validate a client's autonomy, there are disagreements as to how far a lawyer should be removed from client decision-making. In this section, I describe the contours of several configurations of client-centeredness and discuss their applications.

1. The Origins and Evolution of Client-Centeredness

Among the earliest and most influential writers about client-centered lawyering were David Binder and Susan Price.[83] Their work was significant, in part, because other writers argued only in the abstract while Binder and Price prescribed techniques by which lawyers might achieve a less hierarchical, more fulfilling relationship with their clients. These techniques were designed to empower clients and enhance their autonomy. While several of their methods will be discussed in this section, I am primarily concerned with the theoretical aspects of client-centeredness and, ultimately, with the shortcomings of this model in relation to community group clients.

These shortcomings derive largely from Binder and Price's prescription of attorney reticence in regard to providing advice and opinions to clients. In the community setting, an attorney must be able to converse openly and fully, including ably and willingly to give his or her opinions.[84] This is a cornerstone of the collaborative model,

82. Client-centeredness, in its extreme, requires the attorney to avoid giving the client opinions or advice as to choices. The client is to make choices free from manipulation based on the attorney's views as to what is best. There are several responses to this view: some of them are practical (e.g. the attorney cannot help but to give cues to the client, see Simon, *supra* note 49); others are philosophical (e.g. the refusal to provide one's views directly to the client for fear of unduly influencing his or her judgment indicates a view of the client as incapable of incorporating the attorney's view into the mix of information needed to make an informed choice, see Steven Zeidman, *To Plead or Not To Plead: Effective Assistance and Client-Centered Counseling*, 39 B.C. L. Rev. 841, 908 (1998)). *See infra* Section II D for further discussion of these points.

83. Binder & Price, *supra* note 7. Binder and Price, joined by Paul Bergman, wrote an updated version of this book, Lawyers as Counselors: A Client-Centered Approach (1991) [hereinafter Binder, Price, & Bergman, Lawyers as Counselors], as well as an article, *A Client-Centered Approach*, 25 N.Y.L. Sch. L. Rev. 29 (1990) [hereinafter Binder, Price, & Bergman, *A Client-Centered Approach*], in which they modified some of their earlier views.

84. As we will see, the reluctance to provide advice and opinion in the furtherance of client autonomy is really a negation of that autonomy. It suggests a view of clients as incapable of assimilating the advice of the attorney without bowing uncritically

in which the lawyer actively participates with and learns from as well as teaches his or her client.

Nevertheless, among the most basic aspects of Binder and Price's (and later, Binder, Price, and Bergman's) model is that a lawyer must defer to a client in decision-making situations and not attempt to influence those decisions directly or indirectly. This deference is due in both the legal and the non-legal dimensions of a client's problem. They argued:

> A client-centered conception assumes that most clients are capable of thinking through the complexities of their problems. In particular, it posits that clients are usually more expert than lawyers when it comes to the economic, social and psychological dimensions of problems. [It also] assumes that, because any solution to a problem involves a balancing of legal and non-legal concerns, clients are usually better able than lawyers to choose satisfactory solutions.[85]

Thus, client-centered lawyering emanates from a belief in the autonomy, intelligence, dignity, and basic morality of the individual client.[86]

---

to it. In fact, Binder and Price changed their position on this issue in Lawyers as Counselors, *supra* note 83.

85. Binder, Price, & Bergman, Lawyers as Counselors, *supra* note 83, at 17.

86. *Id.* at 18. The authors go on to list several attributes of their conception of the client-centered lawyer, including:

> —Identifying problems from a client's perspective.
>
> The lawyer must take account of the race, gender, class, experiential and personality differences among clients and between a particular client and the lawyer.
>
> —Actively involving the client in the process of exploring potential solutions.
>
> It is, after all, the client's problem and the client should be encouraged to state preferences in light of his or her specific goals. Moreover, since there are typically several potential solutions to a problem, many of which may be non-legal, the client often will be able to offer solutions that were not considered by the attorney.
>
> —Encouraging the client to make decisions that have a substantial impact on the matter.
>
> The client must be satisfied with the outcome of any representation. Therefore, the client should be able to choose the solution that will most likely gratify his or her unique needs and perspective.
>
> —Providing advice based on the client's values.
>
> —Acknowledging a client's feelings and recognizing their importance.
>
> Clients often have emotional reactions to situations, impacting their client choices and the outcomes. The lawyer must allow the client to express these feelings and must recognize their importance in the counseling and decision making process.
>
> —Conveying your desire to help.
>
> This requires the lawyer to express his or her personal commitment to help the client.

Id. at 19–21.

It is important to note here that the thrust of this prescription suggests the traditional legal setting of an individual client with a discrete problem. It is less pertinent to situations in which a community group has an open-ended and chronic problem.

87. *See* Ellmann, *Lawyers and Clients*, *supra* note 7; Dinerstein, *supra* note 7.

The typical lawyer working in (or writing about) poor communities might be prone to accept this description of clients and, at least to some extent, to accept this vision of how lawyers ought to relate to them. The client-centered model purports to recognize clients as complete and thinking people able to participate in the legal matters that affect them. There are, however, many lawyers, even among those who consider themselves client-centered, who have not wholeheartedly subscribed to the model developed by Binder, Price, and Bergman.[87]

Even Binder and Price reassessed their prescription. After the publication of Legal Interviewing, they, with the addition of Bergman and in the face of a good deal of critical commentary, published a book that indicated a significant change from their earlier position. They accepted the proposition that a client-centered lawyer may (perhaps must) give advice in some circumstances. In fact, they recognized that

> many clients will not feel comfortable making a decision until they hear your advice. . . . However, your advice should generally be based on your understanding of the client's values. Giving advice based on the consequences you

personally think important would impose your values on a client and would be antithetical to client-centeredness.[88]

2. Client-Centeredness, Modified and Multiplied

Stephen Ellmann, a supportive critic of Binder, Price, and Bergman, is one such commentator arguing lawyers at times should advise their clients. He has recast their vision of client-centered lawyering in two significant ways. First, he recognizes that not only may an attorney's manipulation of a client be inevitable, it may be justifiable.[89] Second, Ellmann attempts to reconcile the value of individual autonomy with situations in which a person, in an exercise of autonomy, chooses to create personal connections and cede some autonomy by joining a group and submitting to its decision-making process.[90]

a. Justifiable Manipulation

Given the axiom that clients are competent to run their own lives, many commentators assert that clients should be masters of their lawyers.[91] Ellmann accepts this client-centered model of lawyering. In apparent agreement with Binder and Price, he states that it should be a fundamental goal for lawyers to assist clients in exercising their right to choose.[92] He also recognizes, however, that given the social disparity often existing between lawyer and client and the frequently turbulent conditions under which clients approach lawyers, an attorney can overbear his or her client.[93] Ellmann, however, goes on to make the very un-client-centered argument that such manipulation of clients by attorneys is "frequently justified" and that "in important respects the particular guidelines developed by Binder and Price undercut clients' ability to make their own decisions."[94] In fact, while Ellmann praises Binder and Price's methods for handling interviewing and counseling,[95] he shows how those methods have manipulative elements.[96]

For Ellmann, lawyer manipulation is an "automatic" aspect of the lawyer-client relationship.[97] Recognizing this fact, he argues there must be specific justification for manipulation in client-centered practice.[98] He begins his analysis of justified manipulation

88. Binder, Price, & Bergman, Lawyers as Counselors, *supra* note 83, at 21. This is a major change from the position that Binder and Price took in Legal Interviewing. That position mandated that lawyers should refrain from giving advice to clients about what decision the client should make about a legal matter. They believed that to do so would inappropriately influence clients, particularly those who would be more likely to defer to the attorney than to make their own decisions. In Lawyers as Counselors, Binder, Price, and Bergman stated, "A radical view of the client-centered approach might lead you to reject requests for advice [from clients] in order to avoid influencing decisions. However, that view demeans clients' ability to make independent judgments." *Id.* at 279. Many commentators believe that a lawyer cannot help but make his or her preferences known, if in no other way than in the information he or she chooses to present and its method of presentation. *See* Simon, *supra* note 49; Simon, *supra* note 7.

89. Ellmann, *Lawyers and Clients*, *supra* note 7.

90. Ellmann, *Client-Centeredness Multiplied*, *supra* note 7.

91. Ellmann, *Lawyers and Clients*, *supra* note 7, at 717.

92. *Id.* at 720.

93. *Id.* at 718. In fact, Ellmann writes: "[L]awyers may never listen to their clients well enough to understand their actual needs and concerns. Grasping neither the true nature of their clients' problems, nor the contours of the solutions that would meet their clients' wishes, lawyers may wield a power that benefits no one so much as themselves." *Id.* at 719–20. He then agrees with Binder et al., that one way to remedy this would be for lawyers to "learn to say, or rather to guide, less—for the crucial decisions must be as far as possible the product of the client's own will, rather than the result of the overt instructions or veiled guidance of the attorney." *Id.* at 720.

94. *Id.* at 721. Ellmann defines manipulation as having "two principal elements. First, manipulation is an effort by one person to guide another's thoughts or actions in a direction desired by the person guiding. Second, the manipulator seeks this goal by means that undercut the other person's ability to make a choice that is truly his own." *Id.* at 726. Note that Ellmann was writing prior to Binder and Price's revision of their position in Legal Interviewing, *supra* note 7. Those revisions are set out in Binder, Price, & Bergman, Lawyers as Counselors, *supra* note 82.

95. *Id.* at 733.

96. For instance, Ellmann states that Binder and Price's practice of nonjudgmental, empathetic acceptance may be read by some clients as more than mere acceptance. It may be read as approval which induces the client to say more to the lawyer than he or she otherwise would. *Id.* at 739. He has even more concerns about the manipulation inherent in Binder and Price's suggestions about counseling clients. For example, Ellmann believes the framing of alternatives and describing consequences of each option is fraught with manipulative possibilities. So, too, is the fact that a discussion of moral concerns seems to be left out of Binder and Price's matrix. Another example of the manipulative nature of their model is that the process of client decision-making is apparently selected by the lawyer, rather than the client. *Id.* at 745–53.

97. Ellmann believes that such manipulation is inevitable because of the division of the public into expert-lawyers and lay-clients, as well as the complexity of the legal institutions in which they function. *Id.* at 754.

98. *Id.* at 758.

by establishing the nature of the duty that lawyers owe to their clients. This duty is to "foster the autonomy of their clients within the law."[99] Given this obligation, Ellmann queries whether, and under what conditions, manipulating a client can be justified.[100]

He identifies and examines three circumstances that might justify manipulation: when it is in the lawyer's self-interest; when it is in the client's self-interest; and when it is in the interest of a third party.[101] He concludes by describing a role for lawyers that supports client autonomy, while recognizing that some manipulative conduct by lawyers is inevitable. Ellmann also argues that this manipulation is, in some cases, desirable.[102] Ellmann argues that the proper role for lawyers is to help clients reach their full decision-making capacity by providing them with information, advice and new perspectives. Doing so, however, may increase client autonomy in one respect while damaging it in another. This anomaly is due to the competing elements often confronting an attorney: serving the client's immediate legal needs while maintaining (or enhancing) client autonomy.[103] Thus, Ellmann argues that lawyers should err in favor of client's capacity to make decisions. This, he believes, should result in minimal attorney intervention.[104] However, when the client has "decision-making deficiencies,"[105] competing issues arise that must be resolved by the attorney and the client. On the one hand, there is the goal of client autonomy. On the other is the scarcity of time and resources that would remedy defects in the client's decision-making capacity. This dilemma often militates in favor of manipulating the client to reach his or her "most immediate and obvious interests in the situation."[106] Thus, says Ellmann,

> [w]e have arrived at an uncomfortable destination. Having set out to protect clients' right to make decisions while not altogether abandoning the goal of protecting their best interests . . . we have found that it is ultimately impossible to assist clients' decisionmaking without at the same time jeopardizing it, and that the effort to enable clients to make their own decisions may well entail manipulating them as well.[107]

b. Individual Autonomy and Collective Action

In a subsequent article,[108] Ellmann continues his examination of client autonomy, this time in the context of a group client. He begins by recognizing the importance of collective action in the struggle against subordination. He also acknowledges that group representation can create conflict for a client-centered lawyer. While joining a group is typically a manifestation of individual choice, once a person joins a group, that person is expected to constrain his or her individual will in favor of group decisions.[109] Ellmann attempts to "harmonize" what are, in a group setting, apparently conflicting values: autonomy and connection. He seeks to identify ways in which lawyers who represent group clients can foster both values,[110] even though "the idea of the lawyer as a mobilizer [of groups] seems far

99. Ellmann goes on to state what he considers to be three important elements of client autonomy. These are: the client's right to decide among his or her legal options; the client's capacity to make his or her own decision; and the client's exercise of the capacity for choice. The lawyer is not to compel decision-making, but to facilitate or encourage it. *Id.* at 759–61.

100. *Id.* at 761.

101. After a brief discussion, Ellmann discards the first as indefensible. The second, manipulation in the client's self interest, warrants a longer discussion. Ellmann recognizes several areas where it might serve the client's self-interest to be manipulated: where the client gives consent; where the client lacks relevant information; where the client suffers from an emotional disability; or where the client is ignorant of his or her own interests. He then discusses the interest of a third party as the third circumstance where manipulation might be justified. Clearly, says Ellmann, an attorney's exercise of power in the interest of society is not only permissible but may be required. Thus it is appropriate for an attorney to discuss political and moral issues, even though the intention is to manipulate a client away from certain actions that the lawyer finds objectionable or ill-considered. *Id.* at 761–75.

102. "Perhaps no set of steps that an attorney can take will provide absolute assurance against manipulation. But we have not sought in this exploration . . . to erase the shadow of manipulative motives or effects altogether, and it is possible to suggest the elements of a practice that would seek to support clients' autonomy more fully than the model suggested by Binder and Price . . . ." *Id.* at 777.

103. *Id.*

104. *Id.* at 778.

105. *Id.* at 776.

106 *Id.* at 778.

107. *Id.* at 779.

108. Ellmann, *Client-Centeredness Multiplied*, *supra* note 7.

109. Ellmann cites corporations, unions, and class actions as examples of groups that one might join knowing that he or she might have to abide by group decisions with which he or she does not agree. *Id.* at 1105.

110. *Id.* at 1109.

distant from the careful restraints of client-centered individual practice."[111]

Ellmann identifies four frameworks for group representation[112] and discusses several significant problems that an attorney might face in that representation.[113] He reiterates his definition of individual client-centered lawyering compared with such lawyering in a group practice.[114] Ellmann concludes that the methods of individual client-centeredness are "inconceivable" with every individual member of a group.[115] He therefore seeks to determine the contours of group-client centeredness which, he states, has the goal of helping the group "to make decisions through a careful, deliberate and rational process . . . ."[116]

It should be noted here that, consistent with the position he took in *Lawyers and Clients*, Ellmann believes there is room for some manipulation or paternalism by the lawyer in furtherance of democratic participation.[117] Determining the nature of the baseline democratic process, however, is a critical decision. Most of the responsibility for making it should be placed on the group's leaders.[118] However, Ellmann believes the lawyer must monitor the fairness of the process and intervene on behalf of members who are "victimized" within the group by, among other things, having their own autonomy disregarded.[119] His goal is to preserve each member's individual autonomy throughout the group's process of making a decision. Thus, the lawyer should intervene to preserve the principle of fairness even when the majority wishes the contrary.[120]

111. *Id.* at 1111.

112. *Id.* at 1111–19. These representation frameworks are: individual representation, where the lawyer represents each member of the group in his or her individual capacity; acting as an intermediary, where the lawyer mediates disputes between the members of the group; organizational representation, where the lawyer represents only the organization acting through its duly authorized representatives; and class representation, where the attorney represents, typically in litigation, a class of similarly situated individuals.

113. Many of these will be reprised in Part III.

114. Ellmann, *Client-Centeredness Multiplied*, *supra* note 7, at 1128. Ellmann's definition "rests on the premise that individuals should make their legal decisions for themselves." *Id.* He believes, however that the lawyer plays an active role in helping the client in the decision-making process. The lawyer must win the client's trust and cooperation in order to form a "community of two." *Id.*

115. *Id.* at 1129–30.

116. *Id.* at 1132.

117. *Id.* at 1145.

118. *Id.* at 1151.

Ellmann concludes his analysis by examining the political aspects of mobilization. Again, mobilization is a "crucial goal" in the struggle against subordination.[121] Ellmann questions whether lawyers might contribute more to the process if they "abandoned some of the constraints of client-centeredness" and became more participatory.[122] Ellmann recognizes the inherent difficulties of client-centeredness in a group context. Nevertheless, he remains convinced that the ideals of client-centeredness, even with the undesirable elements of manipulation and paternalism, offer the greatest opportunity to achieve the benefits of collective action while protecting the autonomy of group members.

C. Facilitative Lawyering

Despite the significant body of work calling for lawyers to change their traditional relationship with clients, particularly with clients from subordinated groups, not all commentators have been comfortable with the collaboration suggested by López, White, et al. Nor does the client-centered approach suggested by Binder, Bergman, and Price, Ellmann, and others gain critics' support. One of these writers, Richard Marsico, suggests yet another model for lawyers working for social change. He urges a "facilitative" approach[123] as an alternative to the collaborative and "regnant," as well as to the client-centered models. Although Marsico admits that the facilitative model contains elements of collaborative lawyering,[124] he claims it is "somewhat less self-consciously political" and argues that it "pre-

119. *Id.* at 1152. The intervention might go so far as to attempt to override the group leadership when the lawyer feels the process is failing to meet the baseline democratic standard.

120. *Id.* at 1153. Ellmann goes on to argue that such intervention may be justified by "the enhancement of the group as a whole." *Id.* at 1158.

121. *Id.* at 1170.

122. *Id.* at 1171.

123. Marsico, *supra* note 20.

124. "Facilitative lawyering contains elements of both collaborative and client-centered lawyering." *Id.* at 639.

serve[s] a more clearly defined" and limited role for the poverty lawyer than does the client-centered ideal.[125] Marsico then focuses on the collaborative model,[126] which he characterizes as "blurring, to the point of eliminating, the distinctions between lawyers and lay people and between legal and non-legal tasks."[127] He believes that the collaborative model politicizes the client's efforts and demands "deep and intense involvement in the client's work."[128] The goal of such collaborative lawyering, he says, is to eliminate the differences between the lawyer and the client by encouraging the lawyer to become a part of the client's community.[129]

Marsico notes two problems with this approach. First, some clients may not want a lawyer for anything other than technical legal assistance. For these clients, a collaborative approach would destroy client autonomy by ignoring the client's initial wishes about the limited role envisioned for the attorney.[130] Second, the demands of the collaborative model may exceed the lawyer's own expectations or abilities.[131] Thus, regardless of a client's preferences, a lawyer may simply be incapable of adopting a collaborative approach.

To overcome these problems, Marsico offers his "facilitative" approach, where the lawyer is "more the oiler of the social change machine than its motor."[132] The objective of this model is to provide only the specific legal assistance sought by the client without creating client dependency. By restricting the lawyer's activities to legal and indirect supportive tasks, the facilitative model purports to maintain client autonomy.[133]

D. Lawyering Models in a Community Context

The models of lawyering I have discussed are the result of thoughtful explorations of appropriate roles and activities for attorneys who represent clients from subordinated groups. I agree with much (but not all) of what has emerged from these investigations, particularly from those who subscribe to the collaborative model of lawyering. To the extent that I am apprehensive about these models, my concern is not so much with their content (although I do have some concerns about content) but with their omissions. There are also some fundamental points I want to make about the contrasts between these models.

First, while both the collaborative and client-centered models place an emphasis on elevating client decision-making, they do so in very different ways. The collaborative model envisions a true non-hierarchical interaction between the client and the attorney in arriving at decisions. In contrast, the client-centered model lacks a

125. *Id.* Marsico elaborates upon his criticism of the client-centered model by describing how client-centered representation of a community organization can eventually destroy its independence. He explains that such an approach inevitably threatens client autonomy:

> The most well-intentioned attorney who employs a client-centered approach by actively listening to the client, soliciting information about the client's legal and non-legal concerns, and involving the client in identifying legal and non-legal alternatives and selecting the best solution, cannot help but influence the client's decision in subtle ways. These include making relevancy judgments about how much information to give the client, ordering the information in a way that ultimately influences the client's choice, and choosing the phrasing and styling of alternatives.

Id. at 649. Marsico concludes that this risk to client autonomy is even greater in poverty lawyering because social subordination may easily be replicated in the attorney-client relationship. *Id.* at 640–54.

126. Marsico attributes the collaborative model to Tony Alfieri, Lucie White, and Gerald López, and acknowledges the subtle distinctions in the specific models proposed by these three scholars. Yet he develops a generic collaborative model based on their approaches. *Id.* at 654–55. "Although these works defy easy synthesis, they contain several common threads that form the heart of the model of collaborative lawyering." *Id.* at 654.

127. *Id.*

128. *Id.*

129. "Collaborative lawyering models recognize that lawyers are generally outsiders to client communities and that this status interferes with client autonomy, and suggest that the way to deal with this problem is to eliminate those differences and become an insider." *Id.*

130. *Id.* at 657.

131. "The collaborative model requires an attorney with a high level of skill and even professional training at interpersonal relationships, with great sensitivity and perception, and with lots of time to devote to one client. I had neither the time, training, disposition, nor inclination to be a collaborative lawyer." *Id.* at 657–58.

132. *Id.* at 658.

133. *Id.* at 658–60. This prescription seems to reprise the regnant model described by López. While Marsico speaks in terms of client autonomy, he limits the role of the facilitative lawyer to largely one of technician or, at best, a broker. This may honor a superficial autonomy in a group client, but it negates the insights that a conscientious attorney may provide to a group seeking to achieve a satisfactory result.

collaborative discussion about ends or strategies. The model is implicitly hierarchical, with the client at the higher decision-making level. The attorney merely provides the context for client decision-making. In the facilitative model, on the other hand, client decision-making is not a focal point. The attorney is given a task to accomplish and does so as a technical aid to client action. Second, the collaborative and client-centered models are heavily inward looking, while the facilitative model seems defiantly un-self-conscious.

Neither the collaborative nor the client-centered model devotes significant attention to the ways in which the lawyer can help clients achieve their desired outcomes if those outcomes are not traditionally legal. The consequence of the bi-directional educational process these models suggest often does no more than enhance client rights. The facilitative model seems to leave the lawyer uninvolved and, perhaps, unconcerned about client decisions. All three models, ultimately, focus too heavily on the lawyer's role and fail to pay attention to the causes of subordination. In doing so, the models contradict their asserted goal of combating the political subordination of the poor.

In this section, I will discuss these concerns, first in relation to specific aspects of the models and then in relation to attributes omitted from them.

1. Collaboration

My own experience as a lawyer has shown me that many clients in poor and subordinated communities bring strengths, insights, abilities, and a sense of purpose. The same experience has also shown me that, under appropriate circumstances, my own strengths, insights, and abilities can enhance the strategies and activities of clients from these communities. Thus, I am a believer in the concept of lawyer-client collaboration. I conceive community development to be collaboration of clients, lawyers, and others to create new institutions and bases of power. If this view is tenable, then the distance between clients and lawyers that is inherent in the Binder, Price, and Bergman and Marsico models detracts from the possibilities for development.

Believing in the collaborative approach to lawyering does not negate a belief in client autonomy. The combined goal of collaboration and autonomy poses the risk that the collaboration process will result in a client submerging, voluntarily or involuntarily, the client's

views to those of the lawyer. The advocates of client-centered lawyering see this risk as omnipresent and overwhelming. Thus, it provides the lynchpin of their model. They argue that lawyers must take extreme precautions to avoid overreaching their client.

Consider, though, the implications of client disability and attorney power that are inherent in this view. Clients are given little credit for their ability to insulate themselves from their lawyer's opinions, while lawyers are perceived as having a great deal of power over clients but little sensitivity concerning its use. Such concerns portray an overly vulnerable client and an overly formidable attorney. When one considers further the likelihood of lawyer domination when the client is a group,[134] particularly one with incumbent leadership or with other professionals assisting it, the flaws in the client-centered model's assumptions are more apparent. Ultimately, the more extreme versions of the client-centered approach negate the very values of seeing and treating the client as a whole, autonomous individual that are ostensibly the client-centered core. Not only is the client-centered approach flawed because of the inherently manipulative aspects of its practice,[135] but also because it purports to exclude important information from clients' consideration. In this way, it demeans clients by discounting their ability to discern and segregate elements of manipulation in a lawyer's presentation. Paradoxically, it is the converse of how a client-centered lawyer should act. To be true to the concept of client autonomy, a lawyer must understand the nature of the relationship sought by the client.[136] To the extent the client seeks collaboration, the lawyer must be prepared to exercise, in a self-conscious and cautious manner, the highest degree of participation and creativity that he or she can muster.

---

134. I do not mean to suggest that manipulation and control do not exist in lawyer-client relationships. Many commentators believe these aspects are imbedded in lawyer-client relationships and some of them believe that the impulses are bi-directional. *See* Ellmann, *Client-Centeredness Multiplied*, *supra* note 7; Simon, *supra* note 49.

135. *See* Ellmann, *Client-Centeredness Multiplied*, *supra* note 7.

136. There will be instances when the client does not seek such collaboration and involvement from the lawyer. In such cases, the lawyer should describe the benefits and drawbacks of collaboration, but then must honor the client's wishes. In an appropriate situation, the lawyer remains free to refuse to represent a client who rejects this model.

2. The Path Not Taken

My greatest concern with the theories set out earlier in this section focuses on what they omit. Each of the writers I have discussed (and the models they champion) traverses a path not often traveled by those writing about the lawyer's role. Nevertheless, each ultimately offers a somewhat traditional or, to use López's term, regnant perspective of what lawyers should be doing.

As I have suggested earlier, I have three, occasionally overlapping, areas of hesitancy about these depictions of the community lawyer. First, many of the discussions focus on the process of being a community lawyer. The authors see a lawyer's role as creating an appropriate relationship with a client. They address the nature and creation of this relationship but neglect the results the client sought in first coming to the attorney. Second, there is an implicit (in some cases, explicit) understanding that the model applies to individual clients, typically with discrete, recognizable legal problems. Third, even where group clients are contemplated, the analysis looks to the nature of the relationship and the creation and enforcement of rights. The models do not examine the creation of power. In the remainder of this section, I attempt to illuminate these concerns and offer an alternative conception.

a. Process vs. Product in Community Lawyering

Client-centeredness, as defined by Binder, et al., describes a model of how lawyers should relate to clients. The legal issue in any particular lawyer-client relationship is irrelevant to the application of the model. Instead, the model addresses the way in which the lawyer can help to develop, preserve or enhance client autonomy in the context of the representation.[137] Even Ellmann, who applied client-centeredness to a group setting, was concerned primarily with finding a balance that preserved the autonomy of the individual member while promoting the political values of collectivization and group action.[138]

137. *See* Dinerstein, *supra* note 7, at 512; John K. Morris, *Power and Responsibility Among Lawyers and Clients: Comments on Ellmann's Lawyers and Clients*, 34 UCLA L. Rev. 781, 782, 809 (1999); Robert Rubinson, *Constructions of Client Competence and Theories of Practice*, 31 Ariz. St. L.J. 121, 153–54 (1999).

138. Ellmann, *Client-Centeredness Multiplied*, *supra* note 7.

While there certainly is a need in community lawyering to support and help cultivate client autonomy, autonomy is not the only goal. Several commentators have pointed out that it is often not a goal motivating a client to approach an attorney. In fact, most clients are focused on the outcome and are largely indifferent to their relationship with attorneys.[139] One could argue that the focus on building autonomy, with its emphasis on client decision-making and attorney reticence, actually undermines the legal/political activity that the client might have originally sought from the attorney-client collaboration.[140]

While the collaborative model of lawyering often looks to substantive outcomes, it too is heavily grounded in a philosophy of appropriate lawyer-client relationships and practice techniques designed to reduce the "regnant" hierarchical distinctions between lawyer and client. The goal is to create a true collaboration and a bi-directional process of education.[141] While the stated purpose of López's rebelliousness is to fight oppression and subordination more effectively, of the four main elements of his model, three are process-oriented.[142]

139. *See* Simon, *supra* note 49; Marsico, *supra* note 20. As I have suggested, the failure to recognize already existing autonomy and strength is an indication of the lawyer's own negative view of "subordinated" clients.

140. The client-centered approach might lessen the attorney's willingness to propose unorthodox solutions or activities for fear of unduly influencing or manipulating the client. While a client-centered lawyer may present these solutions in an "objective" manner, the model's major focus is for the attorney not to induce the client to act in the way the attorney wants the client to act. The client-centered approach offers no guidance about how an attorney may present unorthodox options to the client without implicitly signaling that standard remedies are inadequate. Instead, suggesting an alternative proposal risks influencing the client inappropriately about the prospects for success of various options.

141. *See* López, *supra* note 18.

142. The four elements are: a non-hierarchical relationship between lawyer and client; a true collaboration between them in identifying and addressing problems and solutions; a bi-polar educational experience between lawyer and client; and an exploration of non-legal collective action to fight oppression. All but the last of these deals with the nature of the lawyer-client relationship, not with its goals or the activities to be undertaken in pursuit of those goals. *See* López, *supra* note 7, at 37–38.

b. Individuals vs. Groups in Community Lawyering

I have alluded to the critical lawyering commentators' predisposition to address situations involving individual clients. To be sure, several writers discussed group representation, but their discussions usually involve groups that speak with a unified voice, what I have called bureaucratic groups. As such, these groups are the functional equivalent of individual clients.[143] More often, group clients are merely used as props to discuss other issues.[144]

To the extent commentators recognize the need for mobilization and collective action in the fight against subordination, they must examine the role of lawyers in the context of that collective action. Marsico does this as he discusses a group client's struggle against local lenders who refused to extend credit in a poor community.[145] Lucy White also deals with collectivization in her discussion of Driefontein and its residents' fight to avoid being relocated by the government of South Africa.[146] In each of these examples, however, the lawyer is described as performing a role much like that of the regnant lawyer decried by López. In Marsico's case, he opts for the more detached role of a facilitator who performs essentially technical tasks, just as many corporate lawyers would in a typical business setting. In White's case, however, she describes a lawyer who collaborates much more closely with clients about political as well as "legal" action. Nevertheless, the lawyer's tasks described by White differ little from those of López's regnant lawyer or Marsico's facilitative lawyer.[147]

Many community groups resemble those described by Marsico, White, and López, in that they have well-defined goals before commencing the relationship with the attorney. Other groups engage

143. *See* Patrick M. Connors, *Professional Responsibility*, 48 Syracuse L. Rev. 793 (1998); Geoffrey C. Hazard, Jr., *Ethical Dilemmas of Corporate Counsel*, 46 Emory L.J. 1011, 1013 (1997); Jeffrey N. Pennel, *Representations Involving Fiduciary Entities: Who Is the Client?*, 62 Fordham L. Rev. 1319 (1994).

144. *See* Ellmann, *Client-Centeredness Multiplied*, *supra* note 7 (using the group to set out another form of client-centered lawyering); López, Rebellious Lawyering, *supra*, note 7 (using the group as a forum to educate individuals about their rights and about how to enforce them).

145. *See* Marsico, *supra* note 20.

146. *See* White, *supra* note 60.

147. *Id.* at 722–23, 725, 729–30, 732–35.

in impact litigation to create or enforce legal rights for similarly situated individuals. Both of these types of groups, however, are different from the group described in the vignette at the beginning of this article or the one at the beginning of Part III, below. These groups were not pursuing "legal" ends but were seeking to solve a problem that had only tangential legal connections. The clients may have sought the lawyer in those situations to serve an instrumental function but, in fact, the lawyer played a far different role.

The groups that coalesced around those issues did not resemble either the individual client with a particular articulated legal problem or the bureaucratic client speaking through a duly elected governing body or president. The groups I describe were more loosely formed and had members with potentially different understandings of the problems the group faced and the means available to address them. In these cases, the lawyer's participation may have been the catalyst to coalesce the group. He or she might also have been the source of alternative measures for addressing the problems presented by the members.

c. Rights vs. Power in Community Lawyering

This brings me to the heart of my criticism of the models I have discussed. To the extent they address the products of representation, the essence of each is the creation or enforcement of legal rights. It has been my view that the law is not capable of protecting the interests of the poor and subordinated.[148] While the creation of a legal right is an important symbolic victory in the struggle against subordination, it should not be seen as the culmination of the struggle. Poignantly, creating the legal right to a desegregated school system is not the same thing as having an integrated, nondiscriminatory, high-quality school system.[149]

148. *See* Diamond, *supra* note 20; Michael Diamond, *Rehabilitation of Low-Income Housing Through Cooperative Conversion by Tenants*, 25 Am. U. L. Rev. 285 (1976).

149. *See* Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954); Drew S. Days, III, *Brown [Brown v. Board of Education, 74 S.Ct. 686 (1954)] Blues: Rethinking the Integrative Ideal*, 34 Wm. & Mary L. Rev. 53 (1992); Jack W. Londen, *School Desegregation and Tracking: A Dual System Within Schools*, 29 U.S.F. L. Rev. 705 (1995); Marilyn Yarbrough, *Still Separate and Still Unequal*, 36 Wm. & Mary L. Rev. 685 (1995).

A different iteration of this problem exists in the long-standing debate among public interest lawyers and thinkers about whether it is appropriate to forego current assistance to clients in favor of longer term impact activity, typically class action or test case litigation.[150] The quandary is that it takes a considerable amount of time and a great expenditure of resources to secure a right through the legal process. During this period, those resources might otherwise be used to relieve some of the manifest suffering of real people with immediate problems.

While this debate has occupied practitioners and philosophers for decades, to some extent it misses the point. Even by re-allocating all of what I will call the "law reform" resources to direct client service we would not be able to satisfy the perceived need of the poor and the subordinated. In fact, such a re-allocation might even increase the demand for such services.[151] Conversely, law reform litigation has had its share of successes over the years.[152] Notwithstanding these victories, the disparity between the dominant elements of society and the subordinated groups remains as wide as it has ever been, if not wider.[153] What is missing in the debate is the recognition of the political possibilities in what clients and their lawyers confront. The goal for community lawyers should include assisting clients to create power and lasting institutions with the ability to influence the clients' environment, rather than solely the

150. *See* Luban, *supra* note 4; Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 Hastings L.J. 971 (1992); Diller, *supra* note 14; Marie A. Fallinger & Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45 Ohio St. L.J. 1 (1984); Tremblay, *supra* note 52; Wexler, *supra* note 10; Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. Miami L. Rev. 387 (1990–91).

151. Wexler, *supra* note 10, at 1053, 1055.

152. *See* Goldberg v. Kelley, 397 U.S. 254 (1970) (welfare benefits); King v. Smith, 392 U.S. 309 (1968) (eliminating "man in the house" rules); Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954) (public education); Kirkland v. New York State Dep't of Corr. Servs., 374 F. Supp. 1361 (S.D.N.Y. 1974), *aff'd.*, 520 F.2d 420 (2d Cir. 1975) (public employers); Adams v. Richardson, 356 F. Supp. 92 (D.D.C. 1973), *aff'd.*, 480 F.2d 1159 (D.C. Cir. 1973) (federally funded programs); Gautreaux v. Chicago Hous. Auth., 296 F. Supp. 907 (N.D. Ill. 1969) (public housing).

153. *See* U.S. Bureau of the Census, Money Income of Households-Percent Distribution, by Income Level, Race, and Hispanic Origin, in Constant (1996) Dollars: 1970 to 1996, *in* Statistical Abstract of the United States: 1998, at 468 (118th ed.); Persons Below Poverty Level and Below 125 Percent of Poverty Level: 1960 to 1996, *in* Statistical Abstract, *supra*, at 477; Educational Attainment, by Race, Hispanic Origin, and Sex: 1960 to 1997, *in* Statistical Abstract, *supra*, at 167.

creation or enforcement of rights or providing legal remedies to legal wrongs.

E. Another Model: The More Active Activist

As I have argued, the models of lawyering discussed in this article, although offering several alternatives to the traditional legal role, are incomplete. There is substantial agreement among progressive commentators that political, economic, and social factors are inherent in the problems of subordination and so intertwined with the legal issues as to be inseparable from them. Thus, by identifying these problems as discretely "legal," one either condemns the resulting attempts at resolution or provides only piecemeal and temporary respite from their effects.

Nevertheless, each of the models discussed, even those being applied to group clients, focuses on representation concerning traditional, discrete, and often very well delineated legal issues (albeit in somewhat unconventional settings). The lawyers typically were described as relying upon commonly accepted legal strategies to assist their clients, despite the recognition that their problems involved the economic, political, or social issues endemic to the problems of the poor. Such traditionally "legal" strategies are simply insufficient in many community practice situations. The problems faced by community group clients are often less discrete than those discussed by the various commentators. Even when the non-legal factors are recognizable by lawyers, many of them are not readily susceptible to traditional "legal" action.

Thus, I propose another model: the activist lawyer. It includes several aspects of the collaborative and client-centered models but it goes further in describing the role of a community lawyer. The activist lawyer not only interacts with the client on a non-hierarchical basis, but also participates with the client in the planning and implementation of strategies that are designed to build power for the client and allow the client to be a repeat player at the political bargaining table. The activist lawyer views the client's world in broader terms than merely its legal implications. He or she not only considers the political, economic, and social factors of the client's problem, but assists the client in developing and implementing en-

during solutions, legal and non-legal, to these problems and to similar problems that may arise in the future.[154]

It is not enough for lawyers merely to be non-hierarchical professionals who engage with clients on terms of social equality. Nor is it enough for lawyers merely to be technicians correcting the legal defects in the structure of a client's existence. It is not even enough for a lawyer to act aggressively to enforce a client's legal rights or to create new ones. The law, on its own, fails to provide the kind of long term relief that the poor and subordinated client needs. Activist lawyers must recognize this fact and shift their focus from the limited prospect of the law to the greater potential of a truly cross-disciplinary and pro-active political assault on oppression. While the law may be a necessary weapon in that struggle, it is not a sufficient one.

III. THE LAWYER IN COMMUNITY

A developer purchases all of the apartment buildings on one square block of a city. He announces his intention to demolish the buildings and to erect a nursing home on the site, an enterprise that will not serve local residents either in terms of the care it provides nor the jobs it will create. Its development is opposed by much of the community due to the loss of housing and community disruption that will result. The developer seeks to remove residents from the buildings, at first by requesting that they vacate their apartments, but later with ever-escalating intimidation and violence. In response to the developer's demands, the residents establish a "Save Our Homes Committee." It achieves broad membership among the residents and elects an executive board to speak for the Committee. The Committee's goal is to force the developer to change his plans and to preserve the housing on the block.

As the struggle intensifies, the developer resorts to guerrilla tactics in his attempts to remove the tenants. He terminates essential services such as heat and hot water during the winter months. He allows, even encourages, neighborhood teenagers to hold parties that run late into the night in vacant units in the buildings. Rent collections are conducted door to door by employees who display firearms to residents. Finally, the developer makes vacant apartments available

154. *See* Wexler, *supra* note 10; Bellow, *supra* note 10.

to heroin addicts who use them as "shooting galleries," locations in which to inject heroin and then to sleep off its effects.[155]

Conditions on the site deteriorate to devastating proportions. The Save Our Homes Committee continues to fight but residents are more and more concerned about their immediate safety and that of their children. The group and its attorney have taken a number of legal actions and the attorney has been involved in planning several legal and political responses, many of which have been successful and which show promise of further success in the future. Nevertheless, several residents seek out the attorney. They indicate their commitment to the Save Our Homes cause but tell the attorney that they can no longer endure the conditions in which they have been forced to live. They seek her help in getting relocated, perhaps with a financial settlement from the developer.

This story suggests how dissimilar the activist community lawyer's territory is from that of the traditional lawyer. In fact, the territory may even differ from that in which the rebellious lawyer functions. The community setting and representation of grass roots groups raises issues for lawyers absent in these other practices. The conflicts presented in the "Save Our Homes" story are examples of those that commonly arise in communities and within community groups.

There are other challenges that an activist lawyer will face. These include discerning a defensible set of community goals, reconciling these goals with his or her own interests, choosing clients or cases that comport with these interests,[156] recognizing and resolving

155. The presence of the addicts has two major impacts. First, it creates fear among the residents. Second, the risk to the buildings themselves increases. The developer believes that the addicts will light fires to keep warm and will fall asleep after shooting up, leaving the fires unattended. This, he hopes, will result in the burning down of the building.

156. The literature fails to discuss the choice of clients as an important part of a community lawyer's political role. Several writers have described each new choice as an exercise of the lawyer's will, *see, e.g.*, Simon, *supra* note 49, but not as part of an attorney's overall political relationship to the community. López, White, Binder and Price, Ellmann, and Marsico each start their analyses with clients already in place. Furtherance of the community or lawyer's political ends through the client selection process are not discussed. *But cf.* Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470 (1976) (discussing difficulties in reconciling the needs of specific clients with the overarching goal of integration ideals).

tensions surrounding the existence of competing community interests, addressing internal conflicts within client groups, and meeting the need to organize new community groups or build the capacity of emerging ones.

Each of these problems raises questions and presents choices as to the role the community lawyer should play in advancing the interests and welfare of the community. They are among those that invariably will confront the community lawyer. In this section, I address several of these problems including those of identifying who is the client and which of the various matters brought to the attorney should be pursued. I will also identify and discuss the ethical and political conflicts that arise from the activist model of practice that I outline. At the end of the section, I describe possible responses of an activist lawyer to the story in Part I of this article and to the one that began Section III, and I show how they differ from responses that might be expected from other types of community lawyers.

A. What is "the Community"?

One of the most difficult issues facing the community lawyer is determining who or what is the community. The statement that one is a community lawyer, now a highly recognizable catchphrase, masks a series of philosophical problems as well as some very complicated practical ones.[157] In this context the term "community" could mean the residents of a geographic area. It might mean people with a common religion, political persuasion or profession, or people with a shared interest, all without regard to geography. Or it might indicate merely the speaker's subjective perception of the term. Consider also: is a community, once formed, fixed and immutable or fluid and changing; who is authorized to speak for a community; how does a community spokesperson obtain authority to speak; and how does an attorney verify the authority?[158]

As this brief rumination suggests, the concept of "community" is intricate and elusive. In the context of community lawyering, the term almost certainly connotes a specific and limited geographic location. Nevertheless, it cannot be understood without taking account of its social and political aspects.[159] Consider the typical situation where people living in the same geographic area have completely different goals and aspirations for themselves and for their neighborhood.[160] Take, for example, the common issue of physical and economic redevelopment. Some residents might advocate the demolition of dilapidated housing and the gentrification of commercial and economic activity. They would attempt to attract people with higher incomes to the area and would encourage the building of more expensive housing and the concomitant social and commercial amenities. Others might desire to retain the current resident mix in the neighborhood and to improve the stock of existing housing while keeping it affordable. This group would attempt to preserve the flavor of the neighborhood as it exists and would resist any attempt to gentrify it. While these viewpoints are incompatible with each other, each might command substantial support among neighborhood residents. Many of those who oppose each other on this point might be allies on other community matters, such as improving city services for the neighborhood, community control of local schools, or changing the traffic patterns on the main street. Such shifting constituencies demonstrate the complexity of community politics, and underscore the difficulty faced by an attorney in developing a coherent political view and activist philosophy. They also underscore the difficulty in identifying potential spokespersons for a "community," much less authoritative voices.

Despite the inherent difficulties of doing so, the community lawyer must identify the community in which he or she works and discern its overarching goals and aspirations.[161] Since we are ad-

157. Quigley, *supra* note 41, at 463 (citing comments of Barbara Major, community organizer, that lawyers who want to work with communities "must first do some thinking").

158. Some of these questions have been raised in another context in a recent article. *See* Southworth, *supra* note 4.

159. Trubek, *Embedded Practices*, *supra* note 47, at 420 (giving examples of several groups with geographic and sociopolitical aspects, such as the Coalition of Wisconsin Aging Groups).

160. *See* Simon, *supra* note 49, at 1104; Fox, *supra* note 35, at 1–2.

161. For a discussion of the problem of fitting particular clients into an overarching organizational goal, see Bell, *supra* note 156, at 471 (discussing difficulties in reconciling the needs of specific clients with the overarching goal of integration ideals). The suggestion that an overarching view of purpose should guide an attorney's actions may seem strange in light of the requirements found in the Code of Professional Responsibility. *See* Model Rules of Prof'l Conduct R. 1.2 (a) (1983). In fact, there are many modern day and historical examples of attorneys identifying causes as their guiding principles in pursuing their careers. For instance, a lawyer who is committed to the improvement of civil rights for a particular group will make decisions as to what cases and clients to accept based, at least in part, upon whether the cases or clients

dressing "community" as a geographically bounded area with something that is transcendent, even in the face of particular internal disagreements as to objectives and methods, we have to come to grips with the fact that a "community" may speak with several voices and give rise to apparently competing goals. Thus, "community" is greater than any single group within the geographic bounds and longer-lived than any particular manifestation of a perceived problem.

This is an important distinction because a lawyer might view his or her calling as representing "the community" rather than any particular group in it.[162] Yet the lawyer, as an autonomous agent, also has views and principles that deserve recognition and expression. This raises for the community lawyer the thorny problem of representing "community" interests while remaining true to his or her own beliefs.[163] This may not be a problem for a market-driven attorney who normally sells legal services to whomever is willing to pay and who typically invests little energy in analyzing the social benefits of a prospective client's goals.[164] Nor may it be a problem for the salaried attorney who is expected to adopt the views, at least professionally, of his or her employer. The community lawyer, however, needs to ascertain clearly the principles to which he or she will adhere.[165] As we will see, it is the recognition of a defensible set of community goals that will inform the community lawyer in determining which clients to accept and which projects and cases to pursue.

B. Role of the Activist Community Lawyer

The appropriate role for an activist community lawyer is quite different from that of an attorney in a more traditional setting.[166] In this section, I examine several of the issues identified earlier and suggest ways in which the activist lawyer may respond to them while remaining faithful both to his or her sense of community and his or her personal ideals. Each of these problems raises questions and presents choices as to the role the community lawyer may play in advancing the interests and welfare of the community.

1. Discerning a Defensible Set of Community Goals

One's capacity to discern a set of community goals[167] presumes one's capacity to define and to recognize the "community" in its most expansive sense. To do so, a community lawyer must become immersed in the activities and personalities of the neighborhood.[168] This means, as López proposes, getting out of the office, going to community meetings, and talking to and getting to know the people and groups in the neighborhood.[169] It is necessary for one who aspires

enhance the civil rights of the target group. However, since the civil rights movement, like a community, is not monolithic, there will be several views of what would constitute an acceptable level of civil rights, and several strategies to achieve the goal.

162. *See* Bell, *supra* note 156; Polikoff, *supra* note 11.

163. *See* Luban, *supra* note 4.

164. *See* Bell, *supra* note 156.

165. This process is not divorced from the attorney's own value system. *See* Simon, *supra* note 49, at 1102–03 (noting that the internal values of a progressive lawyer will inevitably affect relationships with clients and, presumably, with the choice of clients).

166. Even in-house corporate attorneys have a different relationship with their clients than does a community lawyer. An attorney employed within a corporation has only one client to deal with, although there is the potential for internal dissonance among corporate managers and policy setters. For outside counsel, there are typically unrelated clients, and each is represented without reference to the needs or desires of any other particular client.

167. By the term "community goals," I mean goals that have a substantial body of support in the community and are advanced by recognized and credible spokespersons. Adopting this definition acknowledges that there may be more than one set of goals within the community on any particular issue. It also recognizes that there might be competing community goals.

168. One way for the community lawyer to accomplish this is through observation of community interactions. The observing attorney may then identify the issues that seem important to the community and the individuals who appear to be legitimate spokespersons for those issues. By examining their positions on issues and by distilling them, the community lawyer can detect a legitimate and defensible set of community goals. *See* White, *supra* note 60, at 760–64 (describing the process of identifying common goals of a community group). *See also* Quigley, *supra* note 41, at 462 (relaying the comments of community organizer Barbara Major, who speaks to the importance of a lawyer being willing to "journey with the community"). This journey has to involve the community really getting a sense of who they are, in the sense of beginning to understand their own power. *Id.*

169. Fox, *supra* note 35, at 2. Fox writes that "unless you understand the organizational priorities of the group and have some appreciation for its dynamics, you cannot hope to evaluate and analyze the legal questions facing the group from a 'client's perspective.'" *Id.*

to be a community lawyer to understand the issues confronting the community and the goals and aspirations of its residents.[170]

This is not an easy task, particularly for an outsider. One way to overcome this difficulty is for a new attorney to have a "guide" to introduce him or her to the community. Choosing an appropriate guide is, itself, a difficult task because merely choosing has political ramifications. The guide chosen will influence the attorney's view of the community's structure, its problems and activities. Moreover, the choice might alienate some in the community by suggesting the attorney already has a partisan view of community issues.[171]

Once an attorney has identified goals in a community, he or she should carefully examine his or her own goals as a lawyer and as an activist. An activist lawyer must recognize his or her self-motivation and what values make the occupation attractive. For the lawyer to be effective, there must be a confluence of the goals of the community and of the lawyer. For a lawyer merely to accept whatever goals are adhered to by the community not only deprives the attorney of his or her voice and autonomy[172] but also suggests the same uncritical acceptance of clients that is the hallmark of the attorney

170. *See id.*

171. To minimize these risks, a community lawyer must engage in a degree of research even before choosing a guide. This can be initiated by talking to other lawyers in the area and to generally recognized community leaders with the goal of obtaining information about who is doing what in the neighborhood. He or she must also learn about the frictions and conflicts between groups and segments in the community. The goal is to identify someone who has broad respect in the community and who is willing to assist the attorney in navigating the difficult political and interpersonal community landscape. The guide should then introduce the attorney to other community leaders and provide a view of community activities and personalities that is perceived as less factional. The process of the attorney's watching, talking, and listening is critical to giving him or her a sense of the needs, goals, and conflicts in the community while giving the community a sense of the attorney's bona fide commitment.

172. I recognize that some may argue that the attorney's choice to submit to the community will may be an exercise of autonomy. There are at least two major reasons to reject such a contention. The first is that a decision to subordinate one's will or decision-making capacity to another over an extended period of time and over a broad array of choices is hardly worthy of the designation of autonomy. In this regard, see Simon, *supra* note 7, at 216. The second involves the absence of a monolithic "community" voice. As we have seen, communities are often divided about major issues that confront them. Different people or groups can claim to be legitimate spokespersons for a community position. Therefore, an attorney with a "community" interest must make choices concerning who to represent and what goals to pursue.

for hire, who is likely to accept any paying client whose cause is not morally repugnant.

2. Choosing Among Competing Goals Within a Community

As I have suggested, the members of a community are not likely to be homogeneous in their goals and aspirations. Since several competing goals might stake a legitimate claim to being "community" goals, the lawyer may have to choose among conflicting possibilities. These may compete not only as to their substance but also as to the allocation of scarce representational resources. In the latter situation, an attorney's choice of one set of goals may be seen as a political statement of the attorney's own view of community benefit.[173] Once an attorney articulates to which goals he or she will adhere, the attorney can evaluate each potential client or matter in relation to these goals and determine whether any new client or matter has the potential for furthering them.[174] This involves choices by the attorney about the goals themselves and the clients espousing those goals.

Consider a community lawyer with a long-term commitment to community improvement. Assume the attorney sees his or her purpose as assisting local community groups to achieve some element of independence and control over the community's environment, to enhance community "empowerment."[175] When representatives of a local group seek the attorney's assistance for a project, with what issues will the community lawyer have to be concerned in order to decide whether to take on the project? These are likely to include a fundamental assessment of whether there is merit in the group's claim. But the attorney must also ask who in the community supports the goals being pursued. Does the project further the goals the attorney has identified as the "community's" and adopted as his or

173. It should be kept in mind here that the lawyer is not imposing his or her view of community but rather identifying and adopting an already existing and defensible position of the community.

174. *See* Bell, *supra* note 156.

175. *See* Quigley, *supra* note 41, at 464. Quigley seeks to identify themes in community empowerment lawyering. He notes that "[t]he primary goal is building up the community." *Id.*

her own?[176] Will representation in this project conflict with the attorney's ability to represent wider community interests in the future?

These seemingly straightforward and basic questions are, in fact, deceptive and fraught with danger. In making a decision without information about broader issues in the community and the participants, the attorney risks political calamity.[177] The resulting political situation may affect the attorney's credibility with neighborhood residents and groups well into the future.[178] In the community setting, certain groups and their members may be repeat players who constantly re-evaluate the attorney's political bona fides. In fact, each decision to accept a new project or client has an impact on the attorney's ability to represent a coherent set of community interests in the future.

3. Choosing Among Competing Interests Within a Group

Community groups often have within them several competing factions. Power competitions often draw the group's attorney into the fray. At that point, issues arise as to which of the competing factions should have the attorney's support. Sometimes the answer is relatively straight forward. For instance, as a matter of legal ethics, the attorney who represents a group may not take on another client whose interests are in actual conflict with those of the group.[179] Therefore, the attorney owes his or her allegiance to the group, and

176. Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology L.Q. 619, 653 (1992) ("Poverty lawyers have . . . struggled with the tension between their vision of the 'public interest' and the clients' interests.").

177. *See id.* at 664. Cole asserts that through accurate group representation, a lawyer may be sure that he or she is not representing a "narrow, unique, or selfish individual interest." *Id.*

178. *But see id.* at 663–67 (outlining the importance of working within the general community will).

179. *See* Model Rules of Prof'l Conduct R. 1.7(a) (1983).

not a competing faction.[180] If the management is comprised of one of the factions or supports one of the factions, the attorney's obligation normally is to follow the validly selected management or, in an appropriate case, to withdraw from the representation.[181]

In other situations, the answer is less obvious. For example, how should an attorney act when the management of a client group is no longer recognizable? Or consider what the attorney should do when a functioning management changes a group's purpose to such an extent that it deviates from the defensible community goals that were to guide the attorney's actions. Here, the attorney's position is more difficult and perilous, regardless of whether he or she agrees with a particular faction. In fact, a particularly insidious aspect of this problem involves the attorney who does not take sides. If the lawyer remains neutral, can he or she maintain sufficient credibility to be effective once the internal disputes are resolved? Will there be repercussions within the larger community because of the attorney's apparent lack of resolve?

There is no universal answer to these questions, but one might hazard some general observations.

a. The Silence of the Lambs

While I will offer a different view, advocates of both the traditional and the client-centered models would suggest that when the internal disagreement revolves around fundamental issues of the group's purpose, the lawyer generally should defer to the members to resolve the dispute.[182] Proponents of these models would argue that while a lawyer might have personal opinions on the issue, there are

180. *See* District of Columbia Rules of Prof'l Conduct R. 1.13 (1990). *See also* Fox, *supra* note 35, at 6.

> [T]he lawyer's vulnerability to factionalism will be high unless all members of the group understand that the lawyer will follow the directions of the group as a whole, rather than one faction.

Id.

181. *Id.* at 3 (discussing the importance of clarity of instructions from the group leadership, as well as the leadership's understanding that the lawyer will do what the leadership wants him or her to do). *See* Model Rules of Prof'l Conduct R. 1.16(b) (regarding terminating representation).

182. Of course, when the client is an extemporaneous group, determining to whom the attorney should defer is a significant task.

at least two significant reasons why that opinion may be better left unexpressed. The first concerns the attorney's inherent competence to render such opinions. They would argue that, as an outsider, the attorney's knowledge and understanding of the issues are likely to be derivative and less sophisticated than that of the members.[183] Moreover, the attorney's involvement was probably sought primarily to provide professional and strategic guidance and advice.[184]

The second reason presented by advocates for reticence involves principles of client autonomy.[185] When the lawyer intrudes on this area of member prerogative and competence, he or she risks alienating the group's membership.[186] In a strong group, such alienation might manifest itself in a dismissal of the attorney or, at least,

183. White, *supra* note 60, at 762.

> [T]he outsider with professional skills does have a distinct role to play in the mutual learning practice . . . . In contrast to the conventional professional, however, the outsider . . . does not claim to possess privileged knowledge about politics or reality.

Id. But cf. Polikoff, *supra* note 11 (exploring the problems associated with the attorney being a group member).

184. *See* White, *supra* note 60, at 762.

185. This is a particularly difficult problem for any attorney. Client autonomy and empowerment should be among the core principles of the community lawyer's philosophy. Yet, an attorney may affect, whether consciously or not, a group's decision-making process. As William Simon suggests, this is sometimes accomplished by creating "legal" reasons for acting one way instead of another. *See* Simon, *supra* note 49. In other situations, an attorney who feels connected to the group client may actively seek to insert his or her personal views into the group's political discussions. In either case, the basic principles of client autonomy and empowerment are sacrificed either to illusions of short-term successes or usurpation by an overzealous attorney. *Id.* at 5. *But see* Eve Spangler, Lawyers for Hire: Salaried Professionals at Work 166–70 (1986) (reporting this quote from a practitioner: "We're people who have a lot of our clients die on us. There are all these questions and choices they have to make and they're just crying during the whole time that you talk to them and they just say, 'Will you please do what you think is best? You're the lawyer. I don't want to have to do this. You do it.' So you take your cue from them."); Southworth, *supra* note 47 (asserting that some clients may want to be alienated from decision-making and execution).

186. Fox, *supra* note 35, at 6.

> Although the lawyer very likely will prefer one faction over another, it is important to avoid becoming overly identified with one particular faction; otherwise, his or her use to the organization as a whole will suffer.

Id.

relegation to a marginal role.[187] In a weaker group, the alienation may lead the membership to abdicate to the attorney its legitimate role in decision-making and execution.[188]

The situation is even more troubling when the lawyer's opinion is sought not to resolve an internal debate, but rather to be used by one faction in its battle against another.[189] Traditional, client-centered lawyers argue that a lawyer taking such an action would usurp a group function and intrude into the group's internal dynamics. The inexperienced or politically naive lawyer is particularly susceptible to manipulation by members seeking to further personal ends. On the other hand, a calculating lawyer may manipulate a conflict to achieve his or her own sense of the proper direction for the group. Both situations result in a breach of the professional relationship. As a result, the lawyer's effectiveness, and perhaps that of the group, will be compromised.[190]

b. The Voice of the Activist Lawyer

Even when the attorney adequately understands the political setting in a community and has accepted a client, he or she must deal with the traditional view of the attorney as "other" and manipulator. I have already examined the conflict between those who see the lawyer as participant and proponents of client-centeredness,[191] the essence of which involves the clash between the wishes of clients and the views of attorneys. The controversies associated with this dissonance are both philosophic and practical. From a philosophic point of view, many in society see the lawyer as a neutral technician who should not attempt to influence client decision-making concerning

187. "Lawyers who have kept a little distance from different factions within a group will best survive the inevitable factional disputes." *Id.*

188. This raises a tangential problem. The relationship between the lawyer and the leadership of a group or a faction could influence the nature of the advice provided by the lawyer. In addition to the technical, economic, social, and political issues involved in community lawyering, the intensity of the relationships often fosters deep sentiments among the participants. These emotional realities cannot be disregarded.

189. "Often, one faction will attempt to use the lawyer as a pawn: 'Our lawyer Joe thinks we ought to go after the school board, and not the superintendent. So you guys are wrong.'" Fox, *supra* note 35, at 6.

190. "Factionalism has been the death of many community groups." *Id.*

191. *See* discussion *supra* in section II.

the objectives of the representation.[192] Unlike the situation and struggles described by Polikoff,[193] the community lawyer is rarely associated with the community group other than through his or her representation of it. Thus, as an outsider, the dichotomy between the lawyer's role as "professional" and his or her role as "participant" may well be academic.

This debate, however, establishes a false dichotomy. There surely is a need for client autonomy. Community lawyers should foster and maintain it. There is also a need, however, for professional intervention by the community lawyer, particularly where the lawyer is an ongoing collaborator rather than merely a technical adjunct in the group's activities. In this participatory role, the lawyer has information and, perhaps, a perspective that would benefit the client. Therefore, if the lawyer is to participate in client activities, then he or she has a right, if not a duty, to express his or her views about client goals and strategies.[194]

Consider once more the story with which I began this article. Tenants of a building seek the help of an attorney in what is most likely a legally hopeless situation. Certainly no standard legal remedy will meet the needs of the tenants. They may win a legal battle with the owner but the victory is unlikely to bring improvements in the conditions of the building. The lawyer knows this, although the client may not.

What, then, is the lawyer's role here? To what extent is presenting the option of tenant ownership, or at least of tenant appropriation of the building, an improper attempt to influence the tenants to accept the lawyer's position? The line between presenting options and advocating for a particular outcome is minutely thin. But failing to present this option will, as a practical matter, leave the tenants without a remedy. Yet by introducing this highly unusual concept,

192. *See* Model Rules of Prof'l Conduct R. 1.2 (1983). *See also* Polikoff, *supra* note 11 (discussing the ethical issues faced by attorneys who are group members). *But see* Luban, *supra* note 4, at 326–40 (discussing the lawyer's role as a neutral advocate).

193. Polikoff, *supra* note 11.

194. There will be times when the lawyer proposes action beyond what the client is prepared to undertake. The activist model accommodates such a situation in that the lawyer is to participate with ideas, strategies, and suggestions. This furthers the educational function of the community lawyer. The client, however, is entitled to choose the path with which she is most comfortable.

the attorney appears to endorse it. As such, the attorney pushes the tenants toward a conclusion they did not seek.

An activist lawyer must present options such as these.[195] If one or more of them is adopted by the client, the activist lawyer takes on the tasks necessary to assist the group in achieving its aims. These may include activities such as assisting in organizing the residents, locating and packaging financing, and helping to obtain services for the buildings and for the residents. All of these tasks are outside the purview of the traditional lawyer.

4. Contemplating the Activist Attorney as Organizer

Client autonomy and empowerment and the attorney's proper role are issues that arise both in working with established groups, as discussed above, and with new or loosely organized groups. New groups often need organizational support to enable them to undertake programmatic missions.[196] Community organizers often provide this kind of support to new or nascent groups.[197]

An organizer's first job is to assist individuals to come together as a group. The organizer then assists the group in developing its structure and decision-making capacity.[198] A professional organizer may perform these tasks; alternatively the organizer could be a lay resident of the area who commands the respect of residents and possesses skills to augment the organizational effort. It is even possible that an attorney can play this role.

Incorporating an organizing function into the attorney's role may produce some tangible benefits, but it also involves some intrin-

195. It is conceivable that client-centered and collaborative lawyers would present these options as well. However, it might be a stretch for a client-centered lawyer. The stretch for the collaborative lawyer described in this article might be in relation to the activities that he or she would undertake. Again, I want to make clear that the activist lawyer is client-centered and collaborative. The activist lawyer, however, pursues different goals and takes on different tasks from the lawyers described in the earlier literature.

196. Cole, *supra* note 176, at 665–67.

197. *See* Quigley, *supra* note 41, at 456 ("In fact, if an organization could only have one advocate and had to choose between the most accomplished traditional lawyer and a good community organizer, it had better, for its own survival, choose the organizer."). *See also* Wexler, *supra* note 10.

198. For a seminal discussion of the role of an organizer, see Saul D. Alinsky, Reveille for Radicals (1969).

sic difficulties. Among the obvious disadvantages is that an attorney typically lacks training and experience to adopt the organizer role.[199] Even if an attorney has some training or experience, he or she may lack time to fulfill both capacities.

A more subtle difficulty involves concentrating power and visibility in one person. This latter difficulty is not easily overcome. In many situations, members of a group view attorneys with respect.[200] The members often see the attorney as a person who brings access to solutions for many problems confronting the group.[201] Too often, however, lawyers are unaware of how they are perceived, misapprehend the importance of this perception, or disregard it. Nevertheless, an attorney is in a position—wittingly or unwittingly—to misuse this prominence to the detriment of the group.[202]

Group members also view the person in the role of organizer as one who can solve problems. As such, organizers also command a degree of respect.[203] Part of an organizer's job, however, is to help develop internal leadership and decision-making capacity within the group.[204] This often puts the organizer in a visible and central position among the members. The organizer is thus in a position to serve as an effective counterpoint to the authority of the lawyer.[205]

When the functions of attorney and organizer are combined in one person, several difficulties may surface. For instance, the group may lose the benefit of the independent perspectives provided by the lawyer and the organizer.[206] Indeed, there may be no other person to provide an effective counterpoint to the lawyer/organizer's positions. Without this counterpoint, the visibility and centrality of a lawyer increases, along with his or her ability to influence group decision-making.

199. Fox, *supra* note 35, at 2.

200. Quigley, *supra* note 41, at 457.

201. *Id.* at 458.

202. *See id.*

203. Fox, *supra* note 35, at 2.

204. Quigley, *supra* note 41, at 471–72.

205. The organizer also may provide a distinct, non-legal perspective of the group's circumstances. This is a benefit lawyers and legal commentators who deal with community group clients often overlook.

206. Quigley, *supra* note 41, at 474–75.

There are also conflicts between the roles of organizer and attorney that could negatively affect both the attorney and the group. Consider, for example, a situation that calls for the group to stage a sit-in or otherwise to violate the law.[207] The lawyer is constrained both by codes of professional responsibility and ethical considerations,[208] which may restrict the lawyer's ability or willingness to advocate such a course.[209] The problem a lawyer could face is compounded when he or she both advises the group of the possibility of such action and also organizes the effort.[210] What role can or should the lawyer play if the group decides to proceed with an activity that would violate the law? The group might reasonably expect the person who advocated and organized the activity to join in carrying out the strategy. A lawyer, however, could face professional disciplinary action for participation in violating the law.[211] While participation is harmonious with the organizer role, any such action would limit the attorney's ability to represent the group as a lawyer, not to mention the risk to his or her future.

On the other hand, being involved in an organizing capacity may put a lawyer in closer touch with the reality of a client's situation, attitudes, and perceptions.[212] It may also permit members of a group to feel more confidence in a lawyer because of this less formal and structured involvement with the group's struggle. Participating

207. Polikoff, *supra* note 11, at 450–51 (describing an event where her clients chained themselves to the White House fence).

208. Model Rules of Prof'l Conduct R. 1.2(d) (1983). *See also* Model Code of Prof'l Responsibility DR 7-102(A)(7) cmt. 6 (Representing a Client Within the Bounds of the Law) (1981).

209. Polikoff, *supra* note 11, at 450–51 (describing an event where her clients chained themselves to the White House fence).

> After dozens of arrests, the remaining group of demonstrators still chained to the fence began chanting, 'We love our lesbian lawyers! We love our lesbian lawyers!' That moment was not easy for me. They were reaching out to me, perhaps oblivious to the chasm I felt between us created by their role as rulebreakers and mine as lawyer.

Id.

210. *See id.*

211. Model Rules of Prof'l Conduct R. 1.2(d) (1983). *See also* Model Code of Prof'l Responsibility DR 7-102(A)(7) cmt. 6 (Representing a Client Within the Bounds of the Law) (1981).

212. *See* López, *supra* note 7.

in an organizing capacity offers flexibility not generally found in the traditional lawyer-client relationship.[213] In addition, it may be that there is nobody else, at least initially, to take on these tasks. In this case, the lawyer must function as an organizer until outside assistance can be obtained or until internal capacity comes to the fore. An organized group is a pre-condition to a successful struggle against subordination and to obtain the power to influence the community's environment. The activist lawyer has an important part to play in the organizing effort.

E. The Activist Lawyer in Context

The question remains as to how the practice of an activist lawyer differs from that of other lawyers in the fight against subordination. I will attempt to answer that question by returning to the stories with which I began this article and began Section III.

1. The Tenant Takeover

Recall the initial story. It took place with winter approaching in the fall of 1971. Three residents of a building in a poor community came to an attorney for help with the lack of services in their building. After some investigation, the attorney determined that the landlord had abandoned the building. Consider the needs of the residents and the options to assist them and their neighbors. If one accepts, as I do, that standard legal remedies are inadequate for the task, one must construct a new role for the attorney if he or she is to be involved. Let me suggest some of the dimensions of this role.

The attorney first must conceive of the possibility of a tenant takeover of the building and present it to the three residents who approached her. This may involve a certain conscious advocacy by the attorney that would violate the basic precepts of client-centered lawyering.[214] Assuming the three residents wish to proceed, they and the attorney then must speak to the other residents.[215] These residents

213. Fox, *supra* note 35, at 6.

214. I have argued that merely presenting the alternative, even without conscious advocacy, is a form of persuasion regardless of the attorney's conscious efforts to manipulate the result.

215. The residents comprise the classic extemporaneous group. There is no organized structure nor is there one voice that speaks for the other residents.

would have to be convinced to move forward with a highly unusual remedy, one that they probably had not contemplated and one for which they may not be ready. Crucial to the lawyer's advocacy would be a significant amount of resident education about the desirability of taking over the building, the process of accomplishing it and the responsibilities and dangers of doing so. Additionally, the attorney will be closely involved in beginning the process of organizing the residents into a body that will be capable of operating the building.

The need to organize is apparent and critical if the project is to have any chance of success. The lawyer is probably the only person in a position to initiate that process. The three most likely scenarios are: first, the attorney will act as an organizer; second, the attorney will help the residents identify an organizer to assist them; or third, the attorney will assist a resident who comes forward to take on that task. In all cases, the lawyer is instrumental in the organizing process. Among the essential short term tasks are raising money, making emergency repairs, purchasing fuel, filling vacant apartments with willing participants from the neighborhood, and making alliances with other groups in the community. The activist attorney would be involved not only in planning these activities, but as a participant and collaborator with the residents. She must make new, or call upon existing, connections to work with the residents. She must approach sources of funds to provide capital to put the building in operating condition.[216] At the same time, she must work with the resident leadership and its allies to plan a permanent change in the building's ownership and for its renovation.

This latter task might involve identifying organizations that would purchase the building either from the owner or from the municipality (after a tax foreclosure, for example). It also might require the attorney, with or without the assistance of a developer, to help the residents begin the re-development process.[217]

216. In this situation, for example, the attorney might approach lumber and hardware suppliers to donate surplus tools and construction materials to a local tax exempt group that would serve as an umbrella organization for funneling money and supplies to the resident group.

217. They must put together a development team and begin pre-development activities. This includes tasks such as obtaining structural surveys, creating preliminary renovation plans, pricing the renovations, and determining the feasibility of going on. They must also raise the funds necessary to pay for these activities. This description is reminiscent of work that might be undertaken by a transactional corporate attorney. They often perform tasks that are necessary to make a deal work. Thus, the model of

While this development strategy is being implemented, the building must be maintained and operated. The residents must have basic necessities such as heat and hot water, functioning electricity and plumbing, and physical security. The residents themselves must ultimately undertake such activities, but at the outset of the effort it is unlikely that they will be prepared to do so. Therefore, the attorney will probably be involved in assisting residents or, in some cases, may actually perform many of these tasks.

The role of the activist attorney, therefore, is to become involved in suggesting, planning, and implementing innovative strategies, of which the law may be only an incidental part. She must be prepared to do things outside the normal purview of lawyer functions and training. The primary goal of the activist lawyer is to help clients achieve their identified ends and to do so in as many ways as she can.

2. The Activist's Dilemma

In the second story, an attorney is asked by a group to assist it in saving the homes of its members from the efforts of a developer to demolish their buildings. The developer's actions in trying to empty the buildings are grotesque but not uncommon in such struggles. An attorney representing this group might suggest strategies and tactics similar to those which other attorneys would suggest in other hard fought disputes: negotiation, litigation, media coverage, and political advocacy with elected officials and local prosecutors. Unfortunately, all of these efforts will take time to play out, and time intensive strategies threaten the cohesion of the group. Buildings are being vacated by terrified and fed-up residents or they are being destroyed by the developer's neglect or willful wrongdoing. Moreover, as

activity that I present is not entirely novel. There are, however, several major differences between the transactional attorney and the activist lawyer. The first is the setting of the work. The transactional attorney is working with people accustomed to deals and who play a major initial role in developing them. Similarly, the people whom the transactional attorney enlists to assist her client are often of the same class and educational background as the client. The client is often well organized and motivated to proceed. The activist lawyer, in contrast, often faces a client with no realistic options, who neither sought nor is prepared for the major changes that the transaction will entail. The client usually lacks a background to proceed, and client groups are often unorganized or only loosely so. Therefore, while the activist's work with outside persons may be similar to that of the transactional lawyer, the setting in which she works and the direct client interaction are considerably different.

conditions continue to deteriorate, serious schisms develop among the group's members. Some want to continue the struggle while others, fearing for themselves and their children, prefer to leave. The lawyer knows, as do many of the group's members, that every resident who leaves brings the developer that much closer to victory.

Part of the attorney's problem is to determine how he or she should deal with the schism in the group. Where the group is extemporaneous, as is the Save Our Homes Committee, identifying an appropriate spokesperson, if one exists, may be a difficult task. Moreover, the lawyer personally may be torn between outrage at the tactics of the developer (and a desire to defeat them) and a deep empathy for the plight of the residents who suffer from those tactics and want to escape (and a desire to help them do that). Another part of the dilemma is the nature of the lawyer's collaboration. Much of this struggle will involve non-legal responses to the developer's efforts.

In this case, the Save Our Homes Committee organized a "sleep in" with two city council members in attendance. One member even spent the night in the buildings with the residents. The group contacted a sympathetic reporter from the local newspaper and got some good press coverage. Various lawsuits were filed seeking injunctive relief and damages. The group also tried to convince the local prosecutor to lodge criminal charges against the developer but succeeded only in having the prosecutor file charges of a violation of the municipal code, the equivalent of a traffic ticket. Something more was needed and the group asked the lawyer for ideas. During the discussion, the suggestion of bringing the struggle directly to the developer's family and neighborhood came up. What if the group demonstrated in front of the developer's home or church or his children's school?

This strategy will raise several legal considerations, but it also raises other issues for the lawyer. Assume that the activities involve no illegality so that the lawyer could participate in the planning and implementation of the strategy without violating the model rules. Should the lawyer assist the group members in doing so? Should the lawyer help find out where the developer lives and who his business associates are? Should the lawyer join the group in carrying out the demonstrations? Doing so might compromise the law-

yer's "professional" standing, but failing to do so might compromise the lawyer's ability to advocate effectively for the group.[218]

In this situation, it is important for the attorney to revisit the defensible set of community goals that informed his or her client selection process.[219] If the preservation of affordable housing was such a goal, and one to which the attorney subscribed, the attorney could be justified in pursuing these tactics.[220] This means engaging in planning and implementing the tasks best suited to accomplishing that goal. This is more than the facilitative lawyer would do, in that it involves the attorney in planning and implementing a strategy, particularly one that is overtly extra-legal. It is also more than the client-centered lawyer would do in that this lawyer might recommend the strategy or assist in organizing the demonstrations. The involvement is clearly more than merely suggesting the pros and cons of a particular client generated proposal. It is more in line with the collaborative role of lawyering but goes well beyond the creation and maintenance of a non-hierarchical lawyer client relationship. In addition, the result of the collaboration is the assertion of political power, not the establishment of legal rights.

D. Collaboration in Action: An Exhortation

I have attempted in this section to identify some of the more difficult issues that confront an activist lawyer. Resolving them, and others that will certainly arise, is critical to creating a model of practice that permits effective collaboration between lawyers, clients and other professionals. The struggle against subordination is an ongoing one, and those lawyers who are allied with subordinated people must understand the nature of their adversary, the weapons it commands, and the arsenal available for their own use in meeting the challenge. The traditional weapons are not the only ones that exist, nor are they the best ones. Lawyers, law teachers, and students must recognize this as they enter the fray.

218. *See* Polikoff, *supra* note 11.

219. Client selection is an issue not addressed by any of the other writers I have discussed.

220. The attorney would also have to consider his or her own values in recommending or assisting in such an activity.

IV. CONCLUSION

The foundation of the activist lawyer model consists of being prepared to take on roles that more closely fit the multifaceted needs of the community. These roles can only be defined by the contexts in which the activist lawyer functions. The paradigm of the rebellious lawyer must expand to accommodate that reality. Certainly the activist lawyer must bring to the table his or her "legal" skills. These skills may be why the client approached the attorney in the first place. But, as we have seen, the chronic problems in low-income communities are not strictly, or even primarily, legal. The need is to create community institutions capable of marshaling and utilizing power. Thus, the activist lawyer must be prepared to participate in project planning, development, and implementation. He or she must be aware of and participate in the social, political, and economic aspects of community action.

While the lawyer has no premium on skills in these areas, his or her involvement and perspective can add depth to the client decision-making process. This kind of involvement also can help to bridge the often-present race and class gap between community and attorney. Even when the attorney has a high degree of awareness of the obstacles at this level of involvement, problems are likely to arise. The best advice to be offered may simply be to become involved in the community. When groups address common problems, the community lawyer should be able to consider and, where appropriate, advise non-legal solutions. The law must be viewed as only one of the weapons against subordination. The lawyer must be equipped to use it as well as other weapons to achieve real victories.