

Revitalizing Public Interest Lawyering in the 1990's: The Story of One Effort to Address the Problem of Homelessness

REBECCA ARBOGAST, ROGER L. BARNETT, RONALD C. SLYE,
LESLIE KIM TREIGER*

You must find your own path to meet the great service obligation of our profession. All that is important is that you meet it. In the privileged world in which even the least prosperous of you will practice or work, the obligation of pro bono service must become a staple. In return for the privileged life your *dégré* affords, public service is an obligation. It is the price of passage on the ship you have boarded today.¹

Despite annual exhortations to graduating law students to accept the responsibilities as well as the benefits of entering the legal profession, the prognosis for public interest law in the 1990's is uncertain. There have been significant decreases in federal and private funding of public interest organizations, sweeping changes in the composition of the federal judiciary, and a decline in the matriculation of public interest lawyers due to the increasing salary gap between the private and public sector. Together these factors raise serious questions about the future effectiveness of the traditional model of the full-time public interest litigator and call for the development of alternative models of public interest lawyering suited to the finan-

* Rebecca Arbogast, Wilmer, Cutler & Pickering; Roger L. Barnett, M.B.A. candidate, Harvard Business School; Ronald C. Slye, Assistant Clinical Professor, Yale Law School; Leslie Kim Treiger, Judicial Clerk, New Jersey District Court. The authors are graduates of Yale Law School, class of 1989.

We express our appreciation to all of the members of the Yale Shelter Project for their collective efforts. Our special thanks to Ron Apter and Nancy Pick for their thoughtful criticism and friendly support in this and other endeavors.

1. Address by Eleanor Holmes Norton, Yale Law School Commencement (May, 1988).

cial, judicial, and personnel constraints of current practice.

We were four students at the Yale Law School who were involved in an innovative clinical program that has sought to revitalize public interest lawyering through an approach which we term "community institution building." Community institution building is a model of social activism which seeks to build coalitions — of individuals, skills, and funds — and to translate these coalitions into permanent community institutions designed to address a targeted community problem. We applied this approach to address the problem of homelessness in New Haven, Connecticut; although its clearest application is in those areas of public interest law that deal with poverty, it might also be successfully applied to other areas of public interest law.²

Public interest lawyers and other social activists have engaged in such efforts in the past. The traditional emphasis of public interest law, however, has been litigation. In light of the obstacles facing public interest litigation because of political and economic changes, we propose that increased energy be focused on community institution building. The public interest bar has begun to foster such efforts, tapping into private firm resources as well as law school clinical programs. And, as our experience demonstrates, law school clinical programs are particularly promising forums for experimentation and development of this paradigm. This new focus not only would respond to the declining effectiveness of litigation, but also would bring lawyers with transactional and other non-litigation skills into public interest work.

Part I of this essay discusses the changing nature of public interest law. Part II describes one approach to public interest lawyering that makes new use of an old model — community institution building. Part III recounts the development of a new clinical program and its experience in applying the community institution building model to the problem of homelessness in New Haven, Connecticut. Finally, Part IV discusses some of the tensions and challenges that working within this framework present to traditional notions of the role of the lawyer.

2. As we discuss "public interest law" throughout this essay, we refer to private firm pro bono practice, the work of public interest organizations, and government action in the public interest.

I. TRENDS IN PUBLIC INTEREST LAWYERING

The practice of public interest law appears to be on the decline. The number of law graduates accepting jobs in public interest organizations has dwindled by 50% since 1978 to a national average of 3.1% in 1988, while the number of graduates entering private practice has increased from 51% in 1975 to 64.3% in 1988.³ Several developments in the legal profession may account for this decline of participation in full-time public interest legal practice. First, new opportunities in public interest law have dwindled as the Reagan and Bush administrations dramatically cut federal funding for public interest programs.⁴ While private foundations continue to fund worthwhile projects, they do not have the capacity to fill this funding vacuum.⁵ Second, graduates are making career choices when the salary gap between public service and private firms has widened beyond what would have been imagined by students entering the profession in the 1970's. At the same time, law students are graduating with

3. National Association for Law School Placement ("NALP"), Employment Report and Salary Survey, Class of 1988 (1990). The decline in the number of law school graduates entering public interest jobs is actually much more severe in some law schools. According to a recent survey, only 2% of the graduates of eight nationally prominent law schools accepted public interest jobs upon graduation. 10 NAT'L L.J. 1 (Aug. 8, 1988). At Yale in particular, the number of graduates going into government or public interest work has decreased from 23% in 1981 to 5% in 1986. At Harvard, the number fell from 17% in 1981 to 5% in 1986. At Columbia, the number of graduates working for a public interest or legal services organization dropped from 5.1% in 1977 to an astonishingly low 0.32% in 1988. The Legal Aid Society (New York), Internal Memorandum (Mar. 1, 1989).

4. Between 1982 and 1986, non-entitlement social spending by the federal government decreased at a compound rate of 14% or \$70 billion. N. ARON, LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980'S AND BEYOND 16 (1989). One notable holdout was the Legal Services Corporation ("LSC"), which Congress established in 1974 to fund civil legal services programs throughout the country. 42 U.S.C. § 2996. While President Reagan sought every year to eliminate the LSC by proposing zero level funding in his budget proposals, Congress resisted his efforts and continued to appropriate money so that the services of this particular program could be continued. See Taylor, *Legal Aid for the Poor: Reagan's Longest Brawl*, N.Y. Times, June 8, 1984, at A16. The LSC has continued to face onslaughts under the current administration. President Bush's newly selected board of directors endorsed a Congressional bill containing many measures put forward by opponents of legal services. That bill would have prohibited legal aid lawyers from representing migrant farm workers and public housing tenants as well as from bringing any challenge to congressional redistricting. Lewis, *Still No End to Turmoil at Legal Services*, New York Times, Dec. 31, 1990, at A10, col. 4.

5. See O'Connor & Epstein, *Rebalancing the Scales of Justice: Assessment of Public Interest Law*, 7 HARV. J. L. & PUB. POL'Y 483 (1984).

increasingly large debt burdens.⁶

This decline in participation can also be attributed to the decreasing effectiveness of traditional litigation-centered public interest work, making such work less attractive to graduates. The decreasing effectiveness is attributable to two main factors. First, government enforcement of laws, particularly in the areas of civil rights and the environment, has dropped over the past ten years, decreasing the power of rights already won through hard battle in the courts.⁷ Second, because of the dramatic shift to the right of the federal judiciary as a result of President Reagan's eight years of staffing the federal courts with so-called opponents of judicial activism,⁸ public interest advocates have recognized the limits of federal court litigation as a strategy for achieving progressive social change.⁹

6. Median law school tuition has increased at more than twice the rate of inflation between 1977 and 1987. While there are no reliable national statistics on debt burdens of graduating law students, information from individual schools indicates that many law students graduate with education debt exceeding \$30,000. The 1986 graduates of Harvard Law School had total debts averaging \$32,000. Wash. Post, Aug. 9, 1987, Bookworld at 10. At Tulane Law School, of those students for whom data was available, 60% had outstanding loans in excess of \$20,000 and about one fifth of those had loans exceeding \$30,000. Address by Kramer, Dean of Tulane University Law School, A.B.A. Conference. See also Legal Aid Society, Internal Memorandum, *supra* note 3; Edwards, *A Lawyer's Duty to Serve the Public Good*, 64 N.Y.U. L. REV. 1148, 1153 (1990) (discussing the difficult choices graduates face today).

7. See, e.g., Address by Frederic P. Sutherland, Director of the Sierra Club Legal Defense Fund, to the Nat'l Aff. & Legis. & Conservation Comm. of the Garden Club of Am. (Oct. 8, 1984) (critiquing government inaction in the field of environmental law). For a general analysis of the effect of decreased regulation in the Reagan years, see Kosterlitz, *Reagan is Leaving His Mark on the Food and Drug Administration*, 17 NAT'L L.J. 1568 (July 5, 1985).

8. President Reagan appointed four sitting Supreme Court Justices and close to half of the 743 federal judges during his two terms in office. N. ARON, *supra* note 4, at 18.

9. The vacuum created by the federal judiciary's increasing reluctance to recognize substantive rights may be filled in part by greater local judicial activity. Some state courts have been increasingly willing to take over the role that the federal judiciary had earlier played, particularly when public interest organizations frame causes of action under state constitutional provisions. See, e.g., *McCain v. Koch*, 70 N.Y.2d 109, 511 N.E.2d 62 (1987), *rev'd in part*, 117 A.2d 198 (1986) (New York courts have equitable power under state constitution to compel cities and states to provide homeless families with emergency shelter that "satisfies minimum standards of sanitation, safety and decency"); *Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151 (1975) (*Mount Laurel I*) (holding a zoning ordinance unconstitutional where it excluded housing for lower income people).

Even so, this shift to state courts might not fully compensate for the prior role of the federal judiciary. Many state constitutions provide a more restricted set of rights than the federal constitution, and not all state courts will choose to develop their state constitutional law

The decline in the participation in and effectiveness of traditional public interest practice has led to the need to privatize public interest law. Such a trend is beginning to develop. Aspects of this "privatization" include: (1) involving private institutions to a greater extent in performing public interest work; (2) more aggressively using private sources of funding for public interest activities; and (3) using private sector techniques to accomplish public interest goals. Whether it represents progress or retrenchment, this unavoidable new emphasis on the "private" requires a reassessment of traditional notions of public interest lawyering.

II. AN ALTERNATIVE MODEL: COMMUNITY INSTITUTION BUILDING

As more lawyers choose to work in the private sector, there is a greater need for private, for-profit legal institutions to become involved in public service activities, not only through the direct funding of projects but also through the provision of structural support and opportunities for their individual attorneys to offer pro bono legal services. Many law firms have a long-standing policy of supporting their own attorneys' involvement in impact litigation and direct legal services to poor individuals. There is a growing movement by lawyers, bar associations, and judiciary advisory committees to enact mandatory pro bono work requirements.¹⁰

A few law firms have responded by experimenting with new ways to provide resources for public service lawyering.¹¹ Despite the

in the direction of recognizing rights. Finally, some state courts are more open to local political pressures than their federal counterparts, in part because they face periodic reelection.

10. See, e.g., Wise, *Wachtler Panel Votes Mandatory Pro Bono; Advisory Committee Proposes Rule for 20 Hours a Year by All Lawyers in State*, 201 N.Y.L.J. 1 (1989); Luban, *Mandatory Pro Bono; A Workable (And Moral) Plan*, 64 MICH. B.J. 280 (1985). However, such calls meet with predictable opposition.

The Supreme Court has ruled that a law dating from 1892 cannot be used to force lawyers to represent the poor in civil cases. *Mallard v. United States District Court for the Southern District of Iowa*, 409 U.S. 296 (1989). However, the Court's opinion, written by Justice Brennan, was very narrow and turned on the fact that the statute used the term "request" and not "require." See 28 U.S.C. § 1915(d) (1990). Given the increasing discussion about mandatory pro bono work and the Supreme Court's very narrow interpretation of a dated statute, there is some likelihood that a mandatory pro bono policy will be imposed on attorneys in the future.

11. The most widely publicized program is Skadden, Arps, Meagher & Flom's sponsor-

fact that more law school graduates are choosing private sector positions, many nonetheless bring a commitment to public service with them and are pushing for, and taking advantage of, well-developed pro bono policies. However, in their pro bono activities, most law firms reflect the litigation-dominated strategy that has pervaded public interest law practice to date.¹² If the litigation-centered model of public interest lawyering continues, only those attorneys with litigation training will find opportunities for creative pro bono work, and there will be few similar opportunities for those with training in transactional or corporate law. There is a pressing need to develop pro bono activity that can include corporate attorneys, with their particular expertise. The community institution building approach involves corporate attorneys in a manner that maximizes their expertise and minimizes any further administrative costs.¹³

Another aspect of "privatization" is the use of private sources of funding to support public interest work. The decrease in federal and state funding makes it virtually impossible to turn to a single source to fund the creation of a new community project; instead, a package of funding must be assembled. Nonprofit community development organizations will often need to combine local and state grant programs with money from private foundations, corporations, banks, and individuals, as well as funds derived from creative use of the tax code.¹⁴ Accumulating this type of financing requires competence in

ship of one-year public interest fellowships. Franklin, *Skadden to Sponsor Public Interest Jobs*, 10 NAT'L L.J. 2 (1988). See also Margolick, *The Law; At The Bar*, N.Y. Times, Apr. 14, 1989, at B5, col. 1 (law firms shift to increased pro bono opportunities in order to attract law students). But see Barr, *The Doers and Talkers*, American Lawyer 51 (July/August 1990) (recent survey concludes that wealthiest and most sophisticated firms provide minimum pro bono services).

12. See, e.g., Cahn & Cahn, *Power to the People or the Profession? — The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970); but see PRACTICING COMMUNITY CORPORATE LAW 889 (Clearinghouse Review, Nov. 1989).

13. In *Mallard*, 409 U.S. 296, discussed *supra*, note 10, the attorney asked to be excused from representing someone in a civil rights case because he was a specialist in bankruptcy and securities law and had little litigation experience or knowledge of civil rights law. Greenhouse, *Justices Narrow a Law on Free Legal Service*, N.Y. Times, May 2, 1989 at A17. If pro bono work becomes mandatory, it is essential to develop a framework in which corporate attorneys can perform effectively using their existing skills.

14. There may be positive effects from this change. Obtaining funds from multiple sources eliminates the skewing effect on a public interest firm's agenda. This effect derives from relying on fees for services, which can result in economic discrimination, and relying on a

what are traditionally considered to be private sector techniques, both financial and legal.

Together these factors suggest both the need and possibility for expanding the definition of public interest lawyering and the forms that it can take; alternative models must emerge to supplement the traditional role of the full-time, publicly funded litigator. This is not to suggest that impact litigation is now obsolete; rather, impact litigation must now be supplemented by community institution building in order to solve many outstanding social problems.¹⁵

Lawyers using the community institution building approach work on behalf of themselves or clients to build coalitions, which in turn create institutions to address a targeted community problem. These coalitions bring together public and nonprofit organizations with private individuals, techniques, and resources. The coalitions fundamentally depend upon the formation of an interdisciplinary team of professionals. For example, a coalition could include individuals with legal, financial, and social service expertise in the particular area to be addressed. Coalitions work to build a more permanent community institution to address a social issue, utilizing private sector techniques and skills and gathering multiple resources, particularly in the packaging of private and public financing.

The model utilizes the skills and techniques of lawyers and other professionals employed in the private sector. Lawyers can be involved through a law school clinical program, as private practice attorneys engaging in pro bono work, or through a public interest firm. The model further avoids the pitfalls of scarce public funding, and is less dependent on an increasingly hostile judiciary. Moreover, while the community institutions operate locally, the model can be replicated in communities across the nation.

One obstacle to implementing this model is the "perceptual set" of the legal profession that tends to identify public interest lawyering

single institution's funds, which can come attached with conditions reflecting the substantive values and agendas of the funding organization. One alternative is the statutory granting of attorney's fees under 42 U.S.C. § 1988 (1990). While obtaining such fees removes the problem of economic discrimination, there are considerable restrictions on their availability. Further, government attorneys are allowed to require statutory attorney's fees to be waived as a condition of settlement. *Evans v. Jeff D.*, 475 U.S. 717 (1986).

15. See *infra* notes 26-30 and accompanying text.

with litigation. Most lawyers believe that public service opportunities for those with corporate and financial skills are limited to incorporating nonprofit organizations. The American Bar Association has begun an effort to counter this limiting perception by creating a special task force designed to tap the unique skills found in corporate law departments and direct them to public service legal programs.¹⁶ The ABA also has encouraged and provided technical assistance to local bar associations which have set up pro bono programs for corporate and tax attorneys.¹⁷ While these efforts are helpful in encouraging those corporate attorneys already interested in public interest law, exposure and encouragement needs to begin earlier — in law school.

With a few exceptions,¹⁸ existing clinical programs at most law schools focus on training in litigation skills, a focus which is limiting in two ways. First, it fails to develop the special skills that may be necessary to transfer financial, corporate, planning, and tax expertise to public service work. Second, it begins the process of excluding those individuals who may enter law school with an interest in public service, but who are preparing for a corporate rather than litigation practice. Since the corporate side of legal education and practice has not been viewed as an area that could accommodate, much less emphasize, a practical commitment to public interest work, these students typically lack role models, perceived options, and a concrete method by which to put their private sector skills to work for the public interest.

16. *ABA Creates Task Force on Corporate Law Department's Public Service Programs*, 112 N.J.L.J. 27 (1983).

17. "A Message From the President," *ABA Journal* 8 (Dec. 1990). One example of this sort of activity is found in Washington, D.C., where a clearinghouse has been established to match corporate attorneys in private practice with nonprofit groups working to address the problem of homelessness and lack of affordable housing. The organization, Legal Resource Center for Nonprofit Housing Sponsors, draws on the pro bono services of private attorneys for such projects as obtaining zoning approval and structuring acquisition money. Unpublished memorandum, Coalition of Concerned Attorneys to Area Bar Associations, Dec. 3, 1990.

18. Some law schools have experimented with innovative non-litigation clinical programs, such as fostering negotiation and arbitration skills (e.g., UCLA and St. Louis), informing neighborhood groups of their legal rights and responsibilities (e.g., the District of Columbia School of Law), and drafting legislation (e.g., Columbia). As far as we know, the clinical program at the University of Pennsylvania was the first to teach transactional skills in the context of providing legal services to small businesses. *ABA Journal* (Sept. 1990). Columbia, Syracuse, and Buffalo have recently begun community development clinics with goals and methods similar to those of the Yale Shelter Project.

III. THE MODEL APPLIED: BUILDING COMMUNITY INSTITUTIONS IN NEW HAVEN

The creation of Housing Operations Management Enterprises, Inc. ("HOME") is the story of bringing together diverse individuals and groups into a coalition that succeeded in building a community institution to address the problem of homelessness in New Haven. HOME was created with the assistance of the Yale Shelter Project, an innovative law school clinical program. Since the success of HOME, the Shelter Project has helped to establish other community institutions. However, HOME, the first creation of its type, provides a detailed illustration of what we propose as an alternative approach to public interest law.

A. *Homelessness in New Haven*

While New Haven, historically, has been the focus of anti-poverty programs at both the local and national level, the large urban renewal projects of the 1960's and 1970's actually eliminated more units of affordable housing than they replaced.¹⁹ In addition, the New Haven Housing Authority, which managed the majority of the public housing built to replace what was lost in urban redevelopment, has a history of poor management. Consequently, many of the units quickly deteriorated and became unusable. Today, ten percent of the approximately 3,750 public housing units in New Haven are vacant because of disrepair. The speculative real estate boom between 1984 and 1989 led to the demolition of affordable housing to make way for middle-income and luxury condominiums or office space. As a result, currently over three thousand people in New Haven have no place to live.²⁰

19. Under the administration of Mayor Richard Lee in the 1950's, New Haven was the first city to pursue aggressively federal funding for municipal development. The city continued to receive a large portion of federal funds for local development in the 1960's and 1970's, when redevelopment sought to eliminate "urban blight" through a process of urban renewal. As a result of these periods of construction, New Haven had the largest number of public housing units per capita in the United States. R. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY (1961). See also H. STONE, WORKBOOK OF AN UNSUCCESSFUL ARCHITECT (1971) (architect's description of problems he experienced with urban renewal in New Haven).

20. In 1987, 3,500 individuals sought and received emergency shelter in New Haven.

In analyzing the shortage of affordable low-income housing in New Haven, the Yale Shelter Project identified the lack of adequate management as one of the prime causes. Incentives to encourage the private sector to create low-income housing have been limited mostly to mortgage subsidies and tax deductions and credits; these up-front subsidies essentially guarantee that developers and investors will receive the bulk of their profit within fifteen years or less, and therefore they do little to encourage capital expenditures and successful subsequent management. In addition, the low revenue generated by a low-income housing project provides a strong incentive to keep operating expenses and management fees to a minimum in order to make a project economically feasible. Poor management leads to disrepair and abandonment.

Taking a close look at the homeless population of New Haven helped us to understand that management of low-income housing is key on the demand side of housing as well. Good management requires not only attending to the physical health of the building, but also addressing the problems faced by the poor through the provision of services such as day-care and job counseling. In addition to addressing these effects of poverty, effective management must also be sensitive to the problems of mental illness and substance abuse.²¹ Therefore, the problem is not only a need for physical shelter but also a need for counseling and care. Addressing these challenges is difficult, particularly when the funds to support management and development are no longer available from traditional sources.

B. *A New Clinical Program: The Shelter Project*

The Yale Shelter Project grew out of a more traditional clinical program where students represent individual clients in a variety of legal matters including landlord/tenant disputes, prisoner parole

CITY OF NEW HAVEN, *BREAKING THE CYCLE OF HOMELESSNESS: THE ROAD TO SELF-SUFFICIENCY* 3 (1988). This figure is quite conservative; it does not include those individuals who have not sought shelter and does not account for those living doubled up in overcrowded apartments.

21. In New Haven, approximately 40% of the homeless population suffers from some form of mental illness. National statistics place substance abuse figures at 44%. A. BERGER, H. CHODOSH, R. SLYE, *HOMES FOR THE HOMELESS: A HANDBOOK FOR ACTION* 7-8 (1990) (technical manual describing work of Shelter Project).

hearings, and entitlements advocacy. While students working in the clinical program had engaged in successful impact litigation which gained new rights for homeless people in Connecticut,²² any long-term solution to the problems of homelessness had to provide for the development of new low-income units sufficient to offer physical shelter for those who could not afford the rent of existing units. Additionally, a new type of shelter was needed that could better integrate low-income people into the larger community by offering social services as an integral part of the housing package. These were solutions that litigation could not provide.

Recognizing that the problem of homelessness cuts across traditional disciplinary lines, a group of students and faculty formed the Yale Shelter Project as a new clinical program to bring together resources from many different disciplines. The Shelter Project drew upon diverse legal fields, including some which normally are not part of clinical education — i.e., sophisticated corporate, partnership, and tax law. Moreover, developing and managing real estate, structuring financing packages, and deciding how best to provide support services for tenants — virtually every aspect of the Project's mission and vision — demands expertise in areas outside of the legal profession. Accordingly, from its inception the Yale Shelter Project sought to bring in faculty and students from Yale's Schools of Organization and Management, Public Health, and Art & Architecture. Such a coalition of professionals is an essential component of the model of community institution building — both where the model is used as a tool for clinical education and where it is adopted by private firms.

C. *Building HOME Into a Community Institution*

The need for a multidisciplinary approach in creating the Shelter Project paralleled the need for a similar approach in the community to address the problem of homelessness. A community-based or-

22. See, e.g., *Hardy v. Griffin*, No. 8903-3097 (Superior Court of Conn., Housing Session of New Haven 1989) (verdict for over \$1 million where landlord was found liable for brain damage suffered by child due to lead paint); *Wright v. Lee*, No. 86-1754 (Superior Court of Conn., Housing Session of New Haven 1988) (settlement was entered establishing that direct payments to landlords must be timely); *White v. Heintz*, No. N86-502 (AHN) (D. Conn. 1987) (state welfare department broadened rules for emergency housing eligibility by redefining "reasonable efforts" requirement to search for new housing).

ganization was essential for building and managing affordable housing by institutionalizing a coalition of diverse members of the local community to create the broadest possible base of support and skills. Crafting a solution to the problem of homelessness requires the work of the traditional advocacy groups that provide social services to the homeless — legal aid attorneys and social workers. Due to the lack of federal and local funds, it is also necessary to tap individuals with private sector skills who are capable of structuring creative financing packages to leverage small amounts of equity into full-fledged housing projects.

Accordingly, members of the New Haven professional, business, and political community were brought together with the poor, their advocates, and the providers of services to the poor communities. This group was institutionalized in the Board of Directors of HOME. The initial HOME Board included private lawyers, private developers, a private management consultant, a city official, a program supervisor for the State Office of Human Resources, a building contractor, a director of a social services agency working with African-American families, a former bank president, a legal aid attorney, a child care consultant, the executive director of a tenant services organization, and a former homeless mother.

Incorporating members of groups that traditionally differ in their support and approach to low-income housing into the HOME structure has resulted in institutional permanence for three reasons. First, HOME became a forum through which traditional adversaries could work out mutually acceptable solutions to a problem that affected each in a different, yet related manner. Second, HOME has been able to preempt potential opposition by including representatives of such sectors (i.e., developers and landowners) as part of its Board. Third, the broad representation of voices and groups within HOME makes it more likely that its decisions will be viewed by the public as the consensus of a broad coalition rather than simply the will of any one particular group. The potentially thorny issue of situating low-income housing can be mitigated more by the participation of a broad-based community coalition than if the government or a social services group acting alone attempts to force its acceptance.

The broad-based coalition that makes up the Board of HOME was also crucial as a source of the different skills and resources of its

diverse members. Two examples of the benefits of this method are the way in which HOME formulated a management plan and obtained financing.

When HOME was created, we established a separate subsidiary called HOME Management, Inc. ("HOME Management"), which is dedicated to "developing nonadversarial alternatives to the traditional landlord-tenant relationship, creating an environment conducive to the empowerment of tenants in decisions affecting them, and fostering a sense of tenant responsibility for their living arrangements."²³ A Shelter Project management committee was created, comprised of four students: two from the Law School, one from the School of Public Health, and one from the School of Organization and Management. These four met with various HOME Board members and, drawing on the broad range of experiences and skills available, developed management policies and procedures. Consequently, HOME Management developed methods for tenant selection, grievance procedures, and tenant participation in building maintenance and management, job training, day care, and counseling.

With regard to funding issues, HOME was quickly faced with the problem of financing the development and management of affordable low-income housing at a time of diminishing government resources. In order to obtain such financing, we needed to tap private sector techniques and create a complex funding package. It rapidly became clear that no single funding source would provide adequate financing to purchase, develop, and manage low-income property. Federal construction subsidies are expiring at alarming rates and can no longer be relied upon exclusively.²⁴ Although state housing programs in Connecticut are well funded, their administrators have had difficulty deciding on and articulating criteria for disbursement. Typical low-income rent rolls support only 80% of the purchase price if the properties are financed at commercial rates. In addition, HOME

23. HOME Management Mission Statement (1988), reprinted in *HOMES FOR THE HOMELESS*, *supra* note 21, at App. A-5.

24. The Federal Section 8 construction program provided subsidies to developers in return for a commitment to preserve the units as low-income housing for the next fifteen years. The fifteen year period is expiring on many of these units, so that the total number of subsidized units has declined precipitously. *STATISTICAL ABSTRACT OF THE UNITED STATES* 337 (1988).

had little equity with which to finance a project. Accordingly, we put together complex combinations of federal, state, bank, and private funds, and used private sector techniques to package them.

The Yale Shelter Project obtained initial equity on behalf of HOME by applying for federal low-income housing tax credits available under the 1986 Tax Reform Act, which we in turn sold to for-profit partners.²⁵ To provide enough income to cover operating and management expenses, we increased the value of the rent rolls by obtaining federal and state rental subsidies for many of the tenants who were eligible. In addition to these public sources of funding, HOME sought out private sector money from a variety of sources. As part of a \$50 million investment pledge to the community of New Haven, Yale University loaned HOME \$1 million for the development and management of low-income housing in New Haven. Under the Community Reinvestment Act, banks must make a certain percentage of loans to low-income communities; the Shelter Project has been using the Community Reinvestment Act to encourage banks to increase the amount of affordable credit available to community nonprofits such as HOME.

These coalitions of individuals and groups, of skills and resources, and of public and private funding sources, have set the stage for effectively addressing the twin problems of shelter and services. HOME currently owns 32 units of housing and is in the process of building four additional units. HOME is refining innovative management techniques that provide social services to the tenants of those units and over 200 units that it manages under contract with others. HOME has also created a track record that will enable it to tap these same coalitions of funding again in the future to acquire different properties. Through grants from the New Haven Foundation and the City of New Haven, HOME has been able to hire an executive director and has sufficient funds to provide for its continued operating expenses.

The Shelter Project and HOME are institutionalized in another sense as well. Politically, they have gained local and national recognition. The New Haven Board of Alders consulted with members of

25. I.R.C. § 42 (1990). Tax credits can be sold through a partnership to private individuals and corporations or to pre-packaged syndications of investors.

the Shelter Project and the Board of HOME in drafting New Haven's first major effort to address the problem of homelessness in a comprehensive manner. In response to a severe shortage of single room occupancy housing in New Haven, the Board of Alders called on HOME to provide the needed units. A broad-based coalition including government officials invited HOME to develop strategies for preserving the largest single room occupancy facility in Connecticut. On a national level, the Senate Finance Committee invited the Shelter Project to present testimony on ways of improving the efficiency of the low-income housing tax credit, and the American Bar Association has consulted with the Shelter Project on ways to increase the involvement of the private bar in addressing the problems raised by homelessness.

While the work of the Shelter Project began with HOME, we have since expanded both the scope of the issues and policies we address as well as the range of institutions and players with whom we interact. We realized that in order to maximize our effectiveness and institutionalize the Shelter Project's role in dealing with homelessness in New Haven, we would need to gain exposure not only to technical legal and financial techniques, but also to the political considerations of neighborhoods, suburbs, and interlocking municipalities.

D. *Other Community Institutions*

Our success in using the community institution building model has not been limited to the creation of HOME. We have replicated our experience with HOME to assist other organizations in becoming community institutions and potent political forces. Prior to 1987, none of the community institutions discussed below existed. Today, these organizations help to frame the debate surrounding the solutions to the problem of homelessness in New Haven. Each of these institutions addresses a different aspect of the problem of homelessness as they attempt to resolve local neighborhood, municipal, or regional resistance to low-income housing development. This process has confirmed the model as a powerful way to mobilize political and economic support in a variety of spheres.

1. *NHCC and the Neighborhoods*

The problem of homelessness is but one concrete example of a growing trend among neighborhoods of the phenomenon of Not in My Back Yard ("NIMBY"). While there is a general consensus that the increasing number of homeless persons is a serious problem, virtually no neighborhood wishes to have homeless shelters or low-income housing situated within its midst. The challenge of persuading neighborhoods to accept a portion of the costs involved in solving the problem requires the difficult, delicate balancing of local sensitivities and city-wide concerns.

The New Haven Communities Coalition ("NHCC") is a coalition of neighborhood groups that have come together to address the effects of increasing gentrification on homelessness and other social ills affecting New Haven. Most of the groups that make up the NHCC were initially organized as anti-development factions, in reaction to the tremendous increase in development of luxury condominiums and large commercial spaces. However, these groups have gone through an evolutionary process and are now predicated on a more positive goal: the search for more constructive approaches to City-wide problems than currently exist. They have found that by forming a coalition amongst themselves, they can achieve a much more prominent role in formulating City policy. Accordingly, they feel more included and more inclined to emphasize City-wide approaches and solutions to problems than in the past.

The Shelter Project has acted as a consultant to NHCC, analyzing various possible corporate forms for the organization and devising alternative ways of internal organizational management. We assisted NHCC in formulating its ideas on neighborhood cooperation and on NHCC's role in addressing the problem of homelessness. By working with NHCC the Shelter Project has helped to alleviate the problem of NIMBY in New Haven. Neighborhood reluctance to accept much needed shelter facilities decreased as the neighborhoods cooperated with each other instead of each acting autonomously in its own self-interest, and as it became clear that other neighborhoods would accept a share of the responsibility and costs.

2. *BRIC and the Suburbs*

Another major problem facing any urban community's efforts to address homelessness is the political division between city and suburb. This division has allowed wealthy suburbs to avoid financial and moral responsibility for the socio-economic problems of the region's poor, while the inner cities have had to bear the brunt of these problems. At a time when the financial cost of addressing the needs of the urban poor has increased, the available tax base has decreased. Not surprisingly, urban communities are increasingly looking to their wealthier suburbs to share the burden of regional problems. While state intervention to override local political processes may be necessary in most cases where the suburbs are unwilling to devote resources, a growing awareness and sensitivity to the problem of homelessness may also spur these communities to act.

The Branford Interfaith Housing Corporation ("BRIC") was formed by a coalition of churches in Branford, one of the wealthy white suburbs of New Haven, in the spring of 1988. BRIC is modeled after HOME. Its purpose is to provide low-income housing for families while emphasizing self-management and the provision of social services to tenants. While HOME institutionalized a coalition of public and private players, BRIC institutionalized a coalition of religious leaders and institutions that are able, through their parishioners, to tap into both private and public interest resources. The Shelter Project provides both legal and planning advice and has acted as staff to BRIC from its inception. BRIC has already received over three million dollars from the State to build housing in Branford that will be rented at less than three hundred dollars a month. Through BRIC the Shelter Project is able to play a part in bridging the gap between suburb and city that has developed in the area of low-income housing.

3. *The Compact and Regional Political Support*

In addition to the problems of obtaining the support of neighborhoods and suburbs, there is a pressing need in a state like Connecticut, which has no regional or county government, to coordinate housing policy and action on a regional level. State and federal funds have to be allocated in some rational way to competing municipali-

ties, and local communities must be persuaded to bear their fair share of commitments to build affordable housing within their domains.

The South Central Connecticut Regional Housing Compact ("the Compact"), based in New Haven, was created in 1987. It is a coalition of individuals from government, clergy, business, labor, and social services whose purpose is to address the housing crisis by providing regional coordination in the areas of legislative advocacy, information gathering and distribution, and education. While BRIC's purpose as a nonprofit development and management organization is to increase concrete suburban participation in addressing homelessness, the Compact seeks to provide a regional source of *political* support and coordination to groups like BRIC and HOME that work in a more localized context. We therefore have worked with the Compact on a plan for the development of the largest undeveloped site in New Haven and on preserving the largest single room occupancy facility in the State of Connecticut.

Through our work with the Compact, the Shelter Project has been able to ally itself with a coalition with a more extensive geographic base than that developed by the local efforts of NHCC, BRIC, and HOME. The Compact is an example of community institution building on the regional level and presents a framework for addressing this third aspect of coordinating housing policy within particular communities.

The stage is set. HOME and these other community institutions have been successful in developing and managing affordable housing because they are in every aspect — formation, composition, action — a coalition of people and resources. The evolution of these institutions has been a conscious attempt to gather and synthesize. The Shelter Project was an essential component in creating HOME, and in ensuring the continued vitality of the other coalition-based organizations. The model of community institution building explicitly depends upon this kind of coalitional support: receiving free legal and business consulting expertise from a law school clinic or lawyers in a private or public interest firm. And it is from this confluence of different groups and sources of expertise that an organization's ability to become a permanent community institution derives.

IV. THE ROLE OF THE LAWYER IN BUILDING COMMUNITY INSTITUTIONS

As the Shelter Project grew and our participation in community projects widened, we began to reflect on the nature of our role. We perceived several tensions that we faced as lawyers adopting the community institution building approach.

First, by accumulating technical expertise and developing relationships with different political groups and funding sources, we in some sense began to act as more than lawyers and strategists. As the Shelter Project itself became institutionalized, we became a player in the local political arena. We embraced an expanded notion of lawyering, acting more in the role of principal than agent.

The most blatant example of our acting as a principal came when we helped to create our own client. In theory, it is the client that dictates policy, and the attorney who advises and facilitates. Although in practice this division often becomes blurred in a traditional attorney-client relationship, the demarcation was shattered with our role in the creation of HOME. We were intimately involved with the initial policy discussions defining HOME's goals, as well as how HOME should be structured and staffed. We acted in a dual role as counsel and staff for over a year until the hiring of an Executive Director. In the early stages, the convergence of our role of principal and agent raised few problems, since the Shelter Project and HOME were created at the same time by many of the same individuals. As HOME matures and becomes independent from us, differences of perspective no doubt will arise.

A second tension that became apparent may be peculiar to the dynamics of New Haven. We realized that most of our clients were predominantly white organizations that had grown out of the dominant political and economic center of New Haven. We had yet to undertake a project with any of the predominantly African-American neighborhood groups.

At the inception of the Shelter Project, we made a preliminary decision not to get involved in the neighborhoods in part because of neighborhood reactions to the siting of homeless shelters in these neighborhoods, and in part because we were not sufficiently knowledgeable about local political conditions to understand the dynamics of what was happening. The result was that we initially concentrated

on clients that were not associated with a particular neighborhood and that would not enmesh us in a political dynamic that we could neither understand nor influence. Restricting ourselves in this way was also partly a function of how we as members of a university community appeared to the larger community and partly a function of who we came into contact with during our day-to-day activities. Because of our affiliation with Yale and our initial clients, the Shelter Project itself had come to be identified as part of the elite, mainstream power structure of the City; few of the minority neighborhood groups actively sought our services. Nor initially did we seek out these contacts, perhaps out of fear of diminishing our credibility with the City's political and economic elite. We have since more actively sought out clients in these neighborhoods, and as the Shelter Project has become more widely known, more groups from throughout the City have approached us for assistance.

Tensions in the client selection process were not limited to race and class issues. We also accepted and rejected clients so as to match our vision of what the Shelter Project should be. We declined to take on a client that was housing low-income teens because of its anti-abortion stance, which did not mesh with the broader social goals of a majority of the members of the Shelter Project. We rejected another client who, on her own and with limited means, was managing to provide housing for homeless individuals. She was using methods that violated certain zoning laws. If we took her on as a client, we could not assist her and allow her to continue these practices, but nor did we wish to stop her from accomplishing her good works. As we become more experienced with the community institution building approach, our awareness of some of the tensions this model presents has helped us manage them more effectively.

CONCLUSION

A new kind of public interest lawyering is taking shape. Changes in the legal environment — an increasingly indifferent or hostile judiciary, anemic enforcement of civil rights law, widening salary gaps, and public funding cuts — have combined to make litigation-centered public interest law less effective, and have required a rethinking of the emphasis of public interest law. Although it is the child of necessity, the new focus for public interest law that we pro-

pose has a promising future.

With community institution building, the role of the lawyer has changed. The lawyer acts as a facilitator, planner, and sometimes initiator. However, "legal" advice is not all that is necessary; business consulting and political activity are part of the job. Most importantly, the model depends upon building coalitions: bringing together people, resources, and skills from the private, public, and nonprofit sectors. Although we worked within the context of an innovative clinical program, we hope that private firms use the model to engage non-litigation attorneys in pro bono work, and nonprofit groups rely on it as a way of reshaping their efforts in the Reagan/Bush era.

In reflecting on the future of public interest lawyering, questions are more abundant than predictions, but it is clear that the relationship between the community institution building model and the more traditional litigation paradigm will be critical in shaping that future. Both approaches are necessary if we are to create stable, lasting, and effective solutions to social problems.

Despite recent critiques of the rhetoric of rights,²⁶ disempowered groups will necessarily continue to rely on the judiciary's declaration of basic rights.²⁷ For instance, the traditional model of civil rights impact litigation will still be useful where the particular problem to be addressed can be solved by attacking a rule of law and achieving a declaration of rights. Community institution building may be useful as a corollary to litigation in enforcing and internalizing the norms established by courts.

Litigation will also play a continued role in trying to shape industry or government policies. Industry and corporate insiders often may wish to cooperate with programs for progressive change, but as a practical political matter cannot unless they can point to some outside pressure, which can be supplied by the threat of a lawsuit. In addition, since the nature of government bureaucrats is to position themselves in the middle of the political range, it is necessary when trying to shape policy to have a more radical force in order to redefine the middle; that force can more easily come through litigation

26. See, e.g., Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363 (1984).

27. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

than from a group trying to forge a broad-based coalition.²⁸

As with impact litigation, the community institution building model allows lawyers to focus on the structural rather than individual level. Unlike impact litigation, however, it allows lawyers to perform in a less adversarial manner and to play a role independent of any particular client. Furthermore, unlike impact litigation, community institution building does not depend on the makeup of the judiciary. The distinctive features of the model we propose make it particularly well-suited to accomplish public interest objectives within the context of the newly derived combination of factors that characterize the Reagan/Bush era. Where needs must be met by services which the courts have not yet recognized as fundamental rights, community institution building may be more appropriate than litigation. With the increasing recognition of the limits of judicial remedies — both in terms of what the courts will order as well as the ability of the judicial machinery to implement those orders — community groups have increasingly seen the need to band together in coalitions to create institutions for effective and lasting change. In fact, litigation can aid community institution building by providing a focal point for activists' attention and energy.²⁹

Both traditional litigation and community institution building continue to be useful in their own spheres and will interact with each other to bolster their independent efforts. Neither approach is necessarily more efficient, cost effective, wide-ranging, or more permanent than the other. Just as both models will continue to be necessary for public interest law, both models face similar drawbacks. Both community institution building and litigation face the constraints of political and economic feasibility. What has been described as the vagaries of litigation — where the lawyer often loses control over both the framing of issues and the timing of claims³⁰ — can similarly plague lawyers involved in community institution building, where funding, political alliances, and social climates can undergo rapid

28. C. ELKINS, *TACTICS: CHOOSING AMONG LITIGATION, REGULATION, LEGISLATION, AND NEGOTIATION AS ENVIRONMENTAL LAW TURNS TWENTY* (1989).

29. Cahn & Cahn, *The War On Poverty: A Civilian Prospective*, 73 *YALE L.J.* 137 (1971).

30. Greenberg, *Litigation for Social Change: Methods, Limits & Role in Democracy*, Thirteenth Annual Benjamin Cardoza Lecture, Ass'n of the Bar of City of New York (1973).

and unpredictable changes. The community institution building paradigm is only more efficacious in circumstances where the attitude of the federal judiciary and executive branch toward litigation is one of apathy or antipathy, as in the current era, or where the problem to be addressed is not one within the courts' competence.

The distinctive feature of the community institution building model — its broad base — may be both its greatest strength and a source of weakness. When a group of diverse individuals with varied backgrounds and disparate agendas chooses to come together to focus on a single problem or project, the absence of a core ideological perspective may give rise to divisiveness which would not exist in a more homogeneous group. At its worst, this tension can be either diluting or diverting. At its best, it can be dynamic and invigorating. It casts the net wider, bringing in law students and professionals who would not otherwise have participated in public interest work. Corporate lawyers, in particular, now have available to them a vehicle to do public interest work that is more engaging than the traditional provision of discrete and limited services such as incorporating a string of nonprofit organizations. By bringing together diverse talented individuals and forging links among community groups, the broad base that community institution building develops can make a greater range of expertise available to tackle a problem. But perhaps even more importantly, it can rejuvenate public interest lawyering.

