This workshop was held at the 2019 Equal Justice Conference in Louisville, Kentucky.

Title:

Practical Implications & Best Practices: Balancing Affirmative Litigation

Presenters:

Victoria Esposito, Legal Aid Society of Northeastern NY, Albany, NY
Elisha Gomez, Lakeshore Legal Aid, Detroit, MI
Erica Ludwick, Legal Aid Society of Northeastern NY, Amsterdam, NY

This session will examine best practices and practical implications of balancing affirmative litigation with an already demanding caseload in an effort to discuss the importance of affirmative litigation as a tool to further advance client rights and improve outcomes. Panel includes perspectives from an advocacy coordinator, managing attorney, and staff attorney. This includes practical skills in time management, caseload handling, and work-life balance necessary to take on affirmative litigation while handling a regular caseload.
PRACTICAL IMPLICATIONS & BEST PRACTICES: BALANCING AFFIRMATIVE LITIGATION
HELLO!

Elisa Gomez
Staff Attorney
Lakeshore Legal Aid
(Michigan)

Erica Ludwick
Managing Attorney
Legal Aid Society of
Northeastern New York

Victoria Esposito
Advocacy Coordinator
Legal Aid Society of
Northeastern New York
"WHAT IF YOUR CURRENT CHALLENGE IS A CALL TO ACTION, A RALLYING CRY THAT WILL PREPARE YOU FOR THE NEXT PHASE."

- ANONYMOUS
1. PRELIMINARY INFORMATION
Let’s start with some live polling
Website: PollEv.com/cozygeyser267

Text Messaging: COZYGEYSER267 to 22333
<table>
<thead>
<tr>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff Attorney</td>
</tr>
<tr>
<td>Supervisor</td>
</tr>
<tr>
<td>Litigation Director/Advocacy Coordinator</td>
</tr>
<tr>
<td>Executive Director/Deputy Director</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Experience Level</td>
</tr>
<tr>
<td>------------------</td>
</tr>
<tr>
<td>0-2 years</td>
</tr>
<tr>
<td>3-5 years</td>
</tr>
<tr>
<td>5-10 years</td>
</tr>
<tr>
<td>11-15 years</td>
</tr>
<tr>
<td>15+ years</td>
</tr>
</tbody>
</table>
How do you feel about balancing affirmative litigation with a demanding caseload?
Small changes can make a big, positive impact or prevent forward progress all together.
Staff Attorney Perspectives

- Program-level priorities
- Office decision to prioritize quiet title actions
- Office culture
**MANAGING ATTORNEY PERSPECTIVES**

- Extended service case expectations
- CBA caseload “limitations”
- Not everyone can or wants to do this work
- “Administrative” tasks
ADVOCACY COORDINATOR PERSPECTIVES

- Specific grants
- Appropriate and adequate skills training
- Reinforcing relationships
It takes as much energy to wish as it does to plan.

~Eleanor Roosevelt
STAFF ATTORNEY PERSPECTIVES

- Caseload handling & Time Management
  - Outlook Calendar – Tasks Function
  - Address Label Document
  - Cover Letters?
  - Case Information Labels
  - Unreported Cases

- Client Preparation and Management
MANAGING ATTORNEY PERSPECTIVES

× Structuring case assignments/intake
× Case supervision and planning
× Technology to the rescue
ADVOCACY COORDINATOR PERSPECTIVES

- Legal Project Management – Kanban
- Mutually Agreed Deadlines
- Supervisor Involvement – setting expectations
Somewhere between the bottom of the climb and the summit is the answer to the mystery why we climb.

~ Greg Child
STAFF ATTORNEY PERSPECTIVES

- Alternatives to affirmative litigation
- Community outreach
- Reciprocal community support
- Holistic care
MANAGING ATTORNEY PERSPECTIVES

- Improvement of clunky intake systems to identify appropriate cases
- Find an ally: colleague, pro bono counsel, advocacy coordinator
- LISTEN to your supervisees, clients, community members/organizations
Spectrum of Advocacy

Affirmative litigation and direct representation are not diametrically opposed
I'm afraid you'll have to stay late tonight, I want you to attend this talk on work-life balance.
STAFF ATTORNEY PERSPECTIVES

- Time Management
- Client Management
- Don’t reinvent the wheel
- Recognize, prevent, and address burn out
MANAGING ATTORNEY PERSPECTIVES

× Structure and planning (cases, time)
× Watch for and prevent burn out in myself, and my supervisees
× Know when to say NO
ADVOCACY COORDINATOR PERSPECTIVES

× Taking the “night” off
× Exercise
× Making time to do the activities you enjoy, ex. Reading
The supreme accomplishment is to blend the line between work and play.

~ Arnold J. Toynbee
STAFF ATTORNEY PERSPECTIVES

- Habit of playing defense
- Avoiding boring things (discovery)
- Emergencies, crisis management
MANAGING ATTORNEY PERSPECTIVES

- Procrastination – myself and others
- Changing the tide
- Recreating a community network
Getting everyone on board – supervisors, attorneys, intake staff
Building “impact” team
What to do when something goes wrong
What is the biggest barrier to incorporating more affirmative litigation into your practice/program?
What has made affirmative litigation more feasible for you?
QUESTIONS?
THANKS!

Any questions?
Elisa Gomez – egomez@lakeshorelegalaid.org
Erica Ludwick – eludwick@lasnny.org
Victoria Esposito – vesposito@lasnny.org
Taking action to end poverty

COMING IN SEPTEMBER—OCTOBER 2010
Climate Change and Low-Income Communities—New Advocacy Opportunities

COMMENTS?
We invite you to fill out the comment form at povertylaw.org/reviewsurvey. Thank you. —The Editors

Pleading Standards After Iqbal and Twombly
Low-Income LGBT Clients
Health Care, Housing, and Estate Planning for LGBT Older Adults
Applying the Problem-Solving Practice Model in Legal Services
Assigned Consumer Debts
Right to Counsel in Civil Cases
Affirmatively Furthering Fair Housing
Hello and thank you, and greetings from Chicago to Executive Directors Gregg Lombardi, Doug Kays, Susan Lutton, and Dan Glazier and all of you lawyers, paralegals, and staff members who do this wonderful work here in Missouri. I hope you will indulge me with the telling of some personal history because it sets up what I would like to say about your theme of “Expanding Horizons.”

I went to Valparaiso University School of Law, where I had an outstanding and unique clinical experience and learned a lot about complex litigation. In the early 1970s the school had a clinic entirely devoted to federal litigation. We litigated class actions, Title VII cases, welfare and Medicaid reform issues, prison conditions, and other systemic issues. Alongside that work, the clinic offered a seminar devoted entirely to the difficult legal issues in those cases—Article III concepts, federal practice rules, class action issues, and relief options. It was a wonderful and heady experience (imagine a shaggy young law student deposing the district attorney for a large urban county about his hiring practices). I developed some confidence in my ability to do this work and a mind-set that systemic litigation is a normal and important part of representing poor people. This was the start of reaching a comfort level with being a “player” on behalf of my clients in the systemic issues affecting their lives. This early experience also taught me that it is mundane real-world fact situations found in everyday cases that often produce big legal issues.

I began work at the Legal Assistance Foundation of Chicago (LAF) (now the Legal Assistance Foundation of Metropolitan Chicago) right out of law school in 1975. Immediately it was clear that, while I might know how to write a class action complaint, I had no idea how to practice law. Eviction? What do I do? Where’s the courthouse? What do you mean, go see the clerk? Who is the clerk? And how about that opposing counsel who showed no interest in my fine arguments? And the judge who agrees with that opposing counsel?
Those were the days of being thrown into the fray immediately. We had open intake, with no appointments, and whoever and however many came in on your intake day were all your clients. My first office was in the Uptown neighborhood of Chicago less than a year after the state had been ordered to empty the mental health facilities in Illinois of all involuntarily committed people who had been confined without due process of law. The state dropped busloads of these folks, many of them seriously troubled and bewildered, into Uptown. Our office was in a street-level storefront, and we saw interesting times in our waiting room. I was saved, taught, guarded, and babysat by Connie, our sweetheart Mexican American receptionist, who also ran a ferocious front desk. I was moved to feel what so many young lawyers have learned: God bless the veteran legal workers who get us through it all; they are there when we get there and still there when we leave. They own a full measure of whatever justice we accomplish for our clients.

But it fell into place. The system forced me to learn quickly and to be a generalist. I interviewed thousands of clients and handled almost every kind of case. I was on my feet in court constantly and fairly quickly got a feel for the “stand and scream” type of litigation practiced in the high-volume courtrooms of Cook County.

The Problem-Solving Practice Model

I was fortunate to be at LAF because while I was there LAF’s practice model was based upon a complete notion of problem solving. If a client came to me with a problem, and I could not help her through conventional representation because no remedy or program or public budget was available, I did not necessarily say, “Sorry, I can’t help you.” I learned to think of at least the possibility of a plausible solution for the problem. Perhaps we could create a remedy, or brainstorm a program, or advocate an adequate public budget. If the same violation of law happened over and over again, rather than going through the “groundhog day” repetition of fighting it, I could consider a class action or a test case.

LAF assigned some lawyers primarily to high-volume direct service and other lawyers primarily to the broader-focused strategies. These sets of lawyers were not separated from one another and unequivocally had permission and responsibility to engage in both kinds of work. While handling fifty open direct-service cases, I was part of a team on a law-reform case or comments on regulations or similar broader-focused work in three to five matters.

Ten years into my career, when I became the supervisor of public benefits work at LAF, I focused predominantly on policy and systemic issues yet continued to have responsibility for direct-service cases, including a small caseload of my own. More important, I was available on demand to our frontline staff to train and advise them and cocounsel on their individual cases. This practice kept me from losing touch with ground-level issues of both practice and substance; it kept the flow of fact situations coming to me.

This was an immensely fertile arrangement—the law reform flowed from direct service and was about solving problems presented in the everyday caseload; direct service benefited from a full understanding of and participation in the larger policy and systemic context. LAF was incredibly productive. The productivity was evidenced by the fact that by the mid-1990s the executive director could budget $1 million a year in attorney fees from law-reform cases, while the agency was pounding out 35,000 direct-service client encounters.

This is best understood from the point of view of low-income people and communities in Chicago. They had access not only to great lawyers for their individual problems but also to all of the tools to address those problems. If a person’s problem stemmed from a personal situation, a lawyer could handle that. If the person’s problem stemmed from a wider systemic or societal situation, she also had a chance to have that situation addressed by the lawyers. The agenda was driven by people coming through the door with problems, and the work was to solve those problems.
In the early years of my practice, we applied a somewhat limited toolbox to tackle those problems—almost entirely litigation. However, we gradually expanded our strategies. We developed relationships with community-based groups that kept us informed of issues and helped us increase our own organizing skills. We began to explore media and legislative and administrative advocacy.

Ironically one of the major pushes toward expanding our advocacy toolbox was President Ronald Reagan’s attempt to limit just that kind of expansion in the early 1980s. Among other things, he required agencies funded by the Legal Services Corporation (LSC) to threaten in writing to engage in class-action litigation against government entities prior to actually suing them. This was designed to stop or slow down class-action litigation. It failed to do that, but in my case it turned me into a legislative and administrative policy advocate. At first I would send a threat letter over a welfare issue, for example, and to my surprise I would receive a phone call: “Well, what do you want?” I had not even thought about it. Then, prior to sending the letters we began to formulate the policy and systemic solutions that would prevent us from filing suit. Lo and behold, the state officials began to take those ideas seriously and negotiate and implement changes that solved the clients’ problem and thus prevented litigation. This led to the development of relationships with state officials, even friendships. State officials started to respect our judgment, our view of the law, our ground-level information, and our policy and program ideas. Soon we were simply sending an annual agenda prior to each legislative session, without the threat to sue. We would hear the state’s point of view and concerns. Knowing what the opposing arguments would be, we would negotiate and agree to some issues, back off others, and proceed in the legislature with others. Over time, having developed good skills in this arena, we became regular players in the statehouse.

As veteran litigators, we had learned about the limits of forcing people to do things they do not want to do. You might litigate five or ten years before you win, and then you are usually just getting started securing the relief you sought in the beginning. There is another long slog ahead to enforce compliance. Through policy advocacy experiences, it became clear to us how much more productive it is when officials do something because they want to, because they have been convinced and own the policy and stake their careers on it—even if what they are doing is on paper less comprehensive than what might be contained in a court order. While we did not forsake litigation (since it is sometimes the only option), we became more devoted to developing all of the tools of “talking people into stuff”: influential alliances, media, use of research and powerful anecdotes, productive materials and advice from national organizations, unlikely collaborations with antagonists, coalitions, relationships with officials, and a patient attitude—full appreciation of the insight that there are never defeats, just multiyear initiatives. There is the annual agenda, and there is the ongoing positioning and status as a “player” on our clients’ issues. Ultimately we began to understand how to use many of these tools as parts of a single strategy. That is, we became not just litigators, not just lobbyists, not just advocates, but problem solvers, deploying whatever mix of tactics and tools would help get the solution done.

One helpful development in this process was our crisis in 1996. The Sargent Shriver National Center on Poverty Law at that time was known as the National Clearinghouse for Legal Services. The National Clearinghouse for Legal Services, founded in 1967, served as the communication and strategic planning hub for the federal legal services program. It became part of the Legal Services Corporation (LSC). In 1981 the Clearinghouse split from LSC and became a nonprofit agency that continued to receive LSC funding until 1995, when the Clearinghouse was essentially defunded.


2The National Clearinghouse for Legal Services, founded in 1967, served as the communication and strategic planning hub for the federal legal services program. It became part of the Legal Services Corporation (LSC). In 1981 the Clearinghouse split from LSC and became a nonprofit agency that continued to receive LSC funding until 1995, when the Clearinghouse was essentially defunded.
mous restrictions on class actions, legislative and administrative advocacy, welfare reform advocacy, and other things. My group at LAF specialized in welfare reform, and the restrictions meant that our work could not continue at LAF. We and the Clearinghouse reacted aggressively, and the LAF group joined up with the Clearinghouse. Sargent Shriver allowed us the use of his name, and later we renamed the organization the Sargent Shriver National Center on Poverty Law. What started as a marriage of convenience turned into a powerful merging of assets. The advocacy lawyers learned new communications skills and worked harder on our alliances and organizing. We were forced to expand our toolbox. In spite of significant hardships in the early going, we did not miss a beat on the advocacy and in fact got better at it.

However, we no longer had a direct-service practice under our same roof. We were cut off from the constant flow of community-generated issues embedded in the cases of real people. We wanted to remain loyal to that basic model, though. To do so we intentionally developed relationships with community-based allies with high caseloads, including legal services. We created ways to get information—information loops we call them—where we market ourselves to be the presenters on important policy and program developments to community audiences. We treat these engagements as key listening opportunities. We are involved in many coalitions, working groups, collaborations, and task forces, with these community-based and high-volume providers as partners. This approach has been very productive, gives us credibility, and makes our work very pragmatic.

So, from this stroll down memory lane what are the lessons that are relevant to “expanding horizons”? To me there are three main lessons:

1. Set the Agenda Based on Clients’ Facts. The legal services systemic agenda should come from the problems that present themselves at the community level. The facts are in the cases. The key is to recognize the policy or systemic issues embedded in the everyday cases. When the direct-service attorney runs into brick walls, where he just cannot help the client—no remedy, no program, no budget, repetitive violations of rights—these are the makings of a policy or systemic agenda. The agenda should then consist of solving the problems presented. If a systemic solution is warranted, then that is the one that should be pursued.

2. Expand Strategies and Tactics Toolbox. The toolbox of tactics and strategies to address these problems should be as large as possible and not artificially limited. Your analysis of what the problem requires for its solution should not be limited by the tools you can deploy yourself. Make sure you have as many relationships as possible so that your clients will have access to all of the other tools. That is, if you need a bill passed and you cannot engage in legislative advocacy, then be sure to have relationships with people who can, and work with them to solve the problem. Your clients’ stories are powerful anecdotes that will help win the legislative change.3

3. Build Relationships. Relationship building is as essential a part of the practice as developing other lawyering skills. It is a core component of most community-organizing theories and something lawyers should learn in order to expand their toolboxes to solve problems. Part of the practice should be cultivating relationships with people who can help you and people whom you can help.4

Applying the Problem-Solving Practice Model

Here are some examples of how these lessons have worked in practice and how they might be operationalized in a modern-day legal services practice.

Tenants’ Rights. Shortly before I started practicing law, public interest attorneys saw countless cases where a tenant had not paid rent and got evicted. If the tenant
ant had not paid rent, nothing could be done—a brick wall had been met.

Creating the Warranty of Habitability. For years, it appeared that if the tenant had not paid rent, her eviction was inevitable. Still some lawyers noticed that embedded in many of those cases was a fact—terrible conditions in the apartments probably violated local building codes. The lawyers developed a common-law solution, the warranty of habitability. If the landlord’s property maintenance was significantly out of compliance with the building code, then the landlord had breached the warranty and the tenant was entitled to an abatement of the rent obligation. This took a campaign of litigation over time. In Illinois it culminated with the case of Jack Spring Incorporated v. Little, where the court recognized the implied warranty and the defense.5 Nothing about the creation of the warranty of habitability was work that would now be subject to LSC restrictions.

Enforcing the Warranty of Habitability. As seasoned on-the-ground practitioners know, of course, creating a remedy, while foundational and critical, does not mean that the day-to-day reality will actually change. The remedy must be asserted by those entitled to its protection, and the courts must apply it faithfully. Practitioners in Chicago encountered a flow of cases in which clients trying to assert the warranty of habitability under Jack Spring and other remedies had factually and legally solid claims but were losing their cases. Legal services attorneys developed a strategy to address this problem. They organized a court watch, in conjunction with a local law school. They observed and recorded court proceedings for several weeks. They summarized their findings in a report called Judgment Landlord.6 It was a devastating indictment of the situation in eviction court. The lawyers used the media, which was eager for the story, and it was a page-one phenomenon for several days. Soon the chief judge of Cook County recruited the lawyers to help write a benchbook for eviction court judges; the benchbook detailed the law and the appropriate applications to typical eviction court fact situations. Nothing about this work is among the activities currently restricted by LSC.

Codifying Tenants’ Rights and Remedies in a Chicago Ordinance. As seasoned practitioners also know, common-law remedies are not always effective, especially ones that erode the traditional power arrangements that favor strong interest groups.7 Legal services lawyers continued to experience problems with loopholes and evasions in state laws and common-law remedies providing rights to tenants. Tenants apparently entitled to relief somehow continued to lose their cases. Moreover, many landlords did not change their behavior because these state and common-law remedies were not a credible threat to them. In response, legal services lawyers drafted and successfully advocated the passage of the Chicago Residential Landlord and Tenant Ordinance. This ordinance clearly codified the “repair and deduct” remedy indicated by the implied warranty of habitability, security deposit remedies, and other issues.8 This was an immense gain in the tenants’ ability to assert rights and prevail. The lawyers had the expertise to write the law, but they needed relationships with community-based organizations, legislative advocates, and others to pass the ordinance. The impetus and expertise came from legal services lawyers. Nobody else knew the realities on the ground, which come from facts in

---


7The Judgment Landlord court watch, supra note 6, demonstrated the shortcomings of a common-law remedy that depends upon courts complying with precedent. This can be particularly problematic when the remedy disadvantages an entrenched power such as the real estate industry and when the application of case law to particular situations is (rightly or wrongly) open to interpretation.


---

"Expanding Horizons": Thoughts on Agenda Setting and a Full Advocacy Toolbox for Legal Services
direct-service situations, and nobody else understood what relief was needed and what would be the most pragmatic outcome. Writing up the problem and the ideas for a solution would not currently be considered restricted activity. The parts of the strategy that would be currently restricted were carried out through relationships with other organizations.

Social Security Disability Benefits for Widows. My client Esther Marcus was beset with physical and mental medical issues and quite clearly could not work. When her husband died, I could not win her social security widow’s disability case. The social security system used to have a rule that, to be considered disabled and eligible to receive disability benefits based on the earnings of a deceased spouse, a widow had to prove that she was completely unable to perform any gainful work. This was a more stringent standard than the one that applied to wage earners themselves if they sought disability based on their own earnings. I discovered that the Social Security Administration administered the program to make it even harder to win benefits; a widow had to meet the standard with one medical impairment. Showing that she had multiple impairments that combined to make her unable to work did not meet the standard. Lawyers all over the country were finding this out. Fortunately, the National Senior Citizens Law Center (NSCLC) kept track of these cases and informed all of us practitioners about one another’s cases, the arguments being made, and the problems. Other practitioners saw the cases in Clearinghouse Review. We decided to file a class action in Illinois—by far the most efficient way to handle a situation with thousands of cases all presenting the same legal issue. We developed a full set of arguments showing why the Social Security Administration rules violated the statute. NSCLC and the National Clearinghouse for Legal Services made sure all the lawyers around the country knew what the arguments were and could copy our material. Other class actions were filed. Individual cases brought the arguments to bear, too. We won our case in the district court and in the Seventh Circuit. Just as the government was preparing to take the matter to the Supreme Court, NSCLC was able to use all of the national information drawn from the cases to convince Congress that a stricter standard for widows made no sense at all, and the law was amended to relax the disability standard. I had the deep pleasure of seeing Esther and my class of thousands of Illinois widows receive large retroactive benefits checks—tens of thousands of dollars in most cases.

This was a story of individual lawyers recognizing a problem—clients with meritorious cases meeting a brick wall. They decided to use the full toolbox either themselves or through people with whom they had relationships. The most important parts of our lawyering would not now be restricted activity: reading Clearinghouse Review, relating to NSCLC and its experts and network of advocates, staying current in the arguments and issues, filing individual cases with state-of-the-art arguments, and understanding the wider context for the direct-service work.

Illegal Delays in Disability-Based Assistance. My friends in downstate Illinois at the Land of Lincoln Legal Assistance Foundation conducted a very effective campaign on a crucial issue that nobody but a legal services worker could even understand. When one applies for disability benefits from the Social Security Administration, one usually also applies for disability-based cash assistance and Medicaid from the state. The same disability standard applies to both programs. However, one might have to wait years for the Social Security Administration to make its final determination of disability, with initial denials of the application frequently eventually reversed in the lengthy administrative process. Since the need for Medicaid coverage and cash assistance is much more urgent, the law required the state to make a quicker determination of disability for purposes of the state programs. However, the state made perfunctory decisions, failed to apply federal criteria, and routinely de-

---

"Expanding Horizons": Thoughts on Agenda Setting and a Full Advocacy Toolbox for Legal Services

---

9 Marcus v. Sullivan, 926 F.2d 604 (7th Cir. 1991).
nied these cases. The Land of Lincoln Legal Assistance Foundation lawyers filed in court individual cases appealing these routine denials. Judges ordered the state to apply proper standards. When the next cases came along, the lawyers filed a mandamus action to require the state officials to do their duty. This was a smart use of individual litigation to produce a test case and then follow it up with a mandamus case, thereby effectively securing systemic relief.

A Welfare Recipient’s Right to Notice and a Hearing. Here is one last example. An old homeless guy named Mr. Kelly came into a legal services office with a garden-variety welfare problem. He was being treated unfairly by his caseworker and he was angry. The caseworker had cut off his welfare check, even though he had not done anything wrong, and the caseworker did not tell him why or give him a chance to explain himself or argue about it. He was all out of money. The lawyer inquired about the situation, and the welfare office told him this was nothing unusual and Mr. Kelly could reapply the next month.

The lawyer, however, saw an important set of issues embedded in this routine squabble between a homeless guy and a harried caseworker. The client was faced with destitution; there had to be more process due to him before his means of subsistence could be terminated. This, of course, was the beginning of Goldberg v. Kelly, the landmark Supreme Court case establishing that government benefits are a species of property, and welfare benefits may not be terminated without notice and a prior hearing.

During the case, the state attempted to moot the issue by implementing a brand-new procedure to give written notice and a chance for a meeting about the case after any termination of assistance. Most people would think that to be adequate, but the legal aid lawyer knew better and argued for more. Here is what Justice Brennan said about it:

For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care. Cf. Nash v. Florida Industrial Commission, 389 U.S. 235, 239 (1967). Thus the crucial factor in this context—a factor not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy.

Thus the Constitution demands that in these circumstances, a posttermination hearing is not enough; there must be a pretermination hearing. The ability of Kelly’s lawyers to understand this distinction, care about it, and persuade the justices that the realities require the creation of an important constitutional protection comes from the unique legal services combination of professional expertise and ground-level information. It is a wonderful testament to the power of the marriage of direct-service and systemic work.

The full sense of all of these examples is this: the “expanded horizons” you seek here at your conference are in fact “restored horizons.” They are the horizons that have always been there: to understand our clients’ problems; to represent...
them to the best of our abilities; to detect the systemic problems embedded in the everyday caseload; and to address those problems with the full toolbox.

In conclusion, let us consider this quote about the emerging movement among legal services lawyers to address fully the problems presented by their clients:

> There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders in many cities. But, without disrespect to this important work, we cannot translate our new concern [for the poor] into successful action simply by providing more of the same. There must be new techniques, new services, and new forms of interprofessional cooperation to match our new interest…. There are signs, too, that a new breed of lawyers is emerging, dedicated to using the law as an instrument of orderly and constructive social change.14

Is the speaker talking about all of us here today? Well, this quote is from a 1964 speech by U.S. Attorney General Nicholas Katzenbach at the beginning of the movement for federally funded legal services. But that does not matter; he was referring to people like us. You folks are proving it with this conference and its quest for expanding horizons. I wish you well in your effort to rediscover, restore, and expand horizons. Thank you.


—The Editors

We invite you to fill out the comment form at www.povertylaw.org/reviewsurvey. Thank you.

COMMENTS?
Subscribe to CLEARINGHOUSE REVIEW!

CLEARINGHOUSE REVIEW: JOURNAL OF POVERTY LAW AND POLICY is the advocate’s premier resource for analysis of legal developments, innovative strategies, and best practices in representing low-income clients. Each issue of the Review features in-depth, analytical articles, written by experts in their fields, on topics of interest to poor people’s and public interest lawyers. The Review covers such substantive areas as civil rights, family law, disability, domestic violence, housing, elder law, health, and welfare reform.

Subscribe today!
We offer two ways to subscribe to CLEARINGHOUSE REVIEW.

A site license package includes printed copies of each monthly issue of CLEARINGHOUSE REVIEW and online access to our archive of articles published since 1967. With a site license your organization’s entire staff will enjoy fully searchable access to a wealth of poverty law resources, without having to remember a username or password.

2010 site license package prices vary with your organization size and number of printed copies.

- Legal Services Corporation–funded programs: $170 and up
- Nonprofit organizations: $250 and up
- Law school libraries: $500

A print subscription includes one copy of each of six issues, published bimonthly. Annual rates for the print-only subscription package are as follows:

- Legal Services Corporation–funded programs: $105
- Nonprofit organizations: $250
- Individuals: $400

A print subscription for Legal Services Corporation–funded programs and nonprofit organizations does not include access to the online archive at www.povertylaw.org.

Please fill out the following form to receive more information about subscribing to CLEARINGHOUSE REVIEW.

Name ________________________________

Organization ________________________________

Street address ________________________________ Floor, suite, or unit __________

City ________________________________ State ________ Zip ________________________________

E-mail ________________________________

My organization is:

- ☐ Funded by the Legal Services Corporation
- ☐ A nonprofit
- ☐ A law school library
- ☐ None of the above

What is the size of your organization:

- ☐ 100+ staff members
- ☐ 51–99 staff members
- ☐ 26–50 staff members
- ☐ 1–25 staff members
- ☐ Not applicable

Please e-mail or fax this form to:
Ilze Hirsh
Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
Fax 312.263.3846
ilzehirsh@povertylaw.org
Taking action to end poverty
Website users may download documents. Paper documents cost $10 per case and actual delivery charges. Fill out the order form below; cite the Clearinghouse number, letter, and title of each item you order. Please be aware that orders without a Clearinghouse number may delay delivery.

Many of the articles and case reports that appear in *Clearinghouse Review: Journal of Poverty Law and Policy* come to us from poverty law advocates who wish to share their work with the rest of the community. We strongly urge them to send us all case documents of significance. We also encourage them to submit articles and appropriate photographs, if available, for publication. See the case documents submittal form elsewhere in this issue.

We are interested in your comments and suggestions on and criticisms of all aspects of our work. Please direct them to John Bouman, president, Sargent Shriver National Center on Poverty Law, 50 E. Washington St., Suite 500, Chicago, IL 60602; 312.263.3830 ext. 250; fax 312.263.3846; admin@povertylaw.org.

If you order by phone, please call 312.263.3830 and press 2 for the Poverty Law Library.

Please send the following items (PLEASE BLOCK-PRINT):

- [ ] E-mail delivery

<table>
<thead>
<tr>
<th>REVIEW PAGE NO.</th>
<th>CLEARINGHOUSE NUMBER AND LETTER(S)</th>
<th>NAME OF DOCUMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**RUSH ORDERS:** Orders can go overnight for an additional charge; for more information call 312.263.3830 and press 2 for the Poverty Law Library.

Name: ____________________________________________________

Program name: ____________________________________________________

Address: _____________________________________________________________________

City: ____________________________________________________ State: _________________ Zip: _________________

Telephone: ____________________________________________________

Send no payment now. You will receive a bill for order and delivery costs after delivery.

To charge to Visa or Mastercard (circle one), please type or print clearly:

Card No.: ____________________________________________________ Expiration date: ____________________________

Signature: _____________________________________________________________________

Mail or fax to:
Sargent Shriver National Center on Poverty Law, 50 E. Washington St., Suite 500, Chicago, IL 60602  Fax 312.263.3846
IMPACT PROJECT SELF EVALUATION

Employee Name: ____________________________________________
Brief Description of Project: __________________________________
________________________________________________________________________
________________________________________________________________________
Brief Description of Outcome: ________________________________
________________________________________________________________________
________________________________________________________________________
Date of Outcome/Ending: _____________________________
Date of Evaluation: _____________________________________

1) What did you hope to accomplish through this project?
2) What did you accomplish through this project?
3) If the outcome was not what you hoped, what problems did you encounter? Which if any of those were in your control? What if anything would you do differently?
4) If the outcome was what you hoped, were there particular factors that you think helped you achieve that? What were they?
5) What change have you seen, or do you expect to see, as a result of this project?
6) Did you work with other organizations/agencies as a part of this project? If so, how did you interact and what part(s) did the other organization or organizations play?
7) Do you feel that this project was successful overall? Why or why not?
8) What support or resources did you draw on for this project? Were those helpful? Why or why not? What if any other support and resources would have been helpful?
IMPACT PROJECT PROPOSAL FORM

Date: ________________________________

Client(s): _______________________________________________________________________

___________________________________________________________________________________

Case #(s): _______________________________________________________________________

___________________________________________________________________________________

Case Type: ___________________

Date(s) of decision/issue: ____________________________

Litigation Deadline (if applicable) ____________________________

Does this issue fit within program priorities? _____ Yes _____ No

Required Resources:

/ / Attorney hours # ______ / / Paralegal hours # ______

/ / Support hours # ______ / / Litigation expenses $ ________________

/ / Other (describe): ________________________________

Summary of issue(s): __________________________________________________________________

___________________________________________________________________________________

How is this work impactful (i.e., how could it change a harmful pattern or practice)?

___________________________________________________________________________________

___________________________________________________________________________________

___________________________________________________________________________________

What do you estimate the impact will be? (For example—this decision could benefit all X number of TANF recipients in Y county OR our client could receive $X in treble damages from an illegal lockout OR X number of DSS customers will benefit from a change in policy.)

___________________________________________________________________________________

___________________________________________________________________________________

___________________________________________________________________________________

Summary of determination or issue: ________________________________
Casehandler

Advocacy Coordinator

Supervisor

Executive Director

2/96
### IMPACT PROJECT WORK PLAN

This plan is developed jointly by the Supervisor, Advocacy, Coordinator, and Employee after review and approval of the Employee’s proposal for an impact project.

<table>
<thead>
<tr>
<th>PRODUCT/OUTPUT BY CASEHANDLER</th>
<th>DATE DUE TO AC FOR REVIEW</th>
<th>SUPPORT NEEDED (E.G. RESEARCH, REVIEW, INTAKE RELIEF)</th>
<th>PERSON(S) RESPONSIBLE FOR SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Employee Signature and Date _________________________________

AC Signature and Date _________________________________

Supervisor Signature and Date _______________________________
What is Kanban?

https://www.planview.com/resources/articles/what-is-kanban/
LITIGATION WORK PLAN
Date: ________________

Client Name: __________________________________________________________

Case Number: __________________________________________________________

Case Name: _____________________________________________________________

Index Number: __________________________________________________________

Retainer Agreement:  Y or N  Date: _______  Scope:

Affirmative Litigation:  Y or N  Burton Forms Completed:  Stmt of Facts:

DEADLINES:

FACTS:

ISSUES:

CLIENT GOALS:

LEGAL THEORIES:

APPLICABLE STATUTES & LAWS:

DISCOVERY PLANS:

MOTION PLANS:
**LITIGATION CHART:**

<table>
<thead>
<tr>
<th>Elements of Claims, Defenses, and Counterclaims</th>
<th>Sources of Proof</th>
<th>Informal Fact Investigation</th>
<th>Formal Discovery</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Material Change in Circumstances</td>
<td>Client Family Friend Client’s Therapist Parenting Teacher CPS Worker</td>
<td>Interview Interview Interview Interview Interview</td>
<td>Interrogatories &amp; Deposition of Boyfriend? Subpoenas for Therapist? Parenting Teacher? CPS Worker? Police Report?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Documents: CPS Investigation Summary Police Report (re Client’s Home) Therapist’s Report</td>
<td></td>
</tr>
<tr>
<td>Best Interest Factors</td>
<td>Client Family Friend Client’s Therapist Parenting Teacher CPS Worker</td>
<td>Interview Interview Interview Interview Interview</td>
<td>Interrogatories &amp; Deposition of Boyfriend? Subpoenas for Therapist? Parenting Teacher? CPS Worker? Police Report?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Documents: CPS Investigation Summary Police Report (re Client’s Home) Therapist’s Report</td>
<td></td>
</tr>
</tbody>
</table>

**LITIGATION TIMELINE:**

<table>
<thead>
<tr>
<th>DATE</th>
<th>TASK</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 21</td>
<td>Interview Client</td>
</tr>
<tr>
<td>By September 28</td>
<td>Research Issue on the client-therapist privilege, whether it will be waived and can you limit that waiver</td>
</tr>
<tr>
<td>By September 28</td>
<td>Interview (by phone)?</td>
</tr>
<tr>
<td></td>
<td>• Family Friend</td>
</tr>
<tr>
<td></td>
<td>• Client’s therapist</td>
</tr>
<tr>
<td></td>
<td>• Parenting Teacher</td>
</tr>
<tr>
<td></td>
<td>• CPS Worker</td>
</tr>
<tr>
<td>Date</td>
<td>Task</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>By October 5</td>
<td>File Answer</td>
</tr>
<tr>
<td>By October 27</td>
<td>Get Documents:</td>
</tr>
<tr>
<td></td>
<td>• CPS Investigation Summary</td>
</tr>
<tr>
<td></td>
<td>• Police Report (re Client’s Home)</td>
</tr>
<tr>
<td></td>
<td>• Therapist’s Report</td>
</tr>
<tr>
<td>By Nov 3</td>
<td>Prep Witnesses</td>
</tr>
<tr>
<td>By Nov 5</td>
<td>Prep Client</td>
</tr>
<tr>
<td>November 7</td>
<td>Trial</td>
</tr>
</tbody>
</table>

Date: _____________________  Prepared by: _____________________

Date: _____________________  Reviewed by: _____________________
About This Issue: Affirmative Advocacy  
BY ILZE SPRUDZS HIRSH

Six Steps to Broader Impact  
BY JOHN BOUMAN

High-volume, direct-service legal aid organizations would like to increase their impact. The transition to a practice model that fosters a mix of direct services and high-impact affirmative advocacy has six operational steps. Identifying client problems as subjects of broad-based advocacy is followed by brainstorming about responsible parties and strategies. Any decision to proceed with affirmative advocacy is based on a “research action,” which organizations must recognize as valuable expenditure of time and resources.

Moving Forward Together: Immigration Narrative Partnerships that Work  
BY CHUY SÁNCHEZ, TAMMY BESHERSE, AND DIEGO IÑIGUEZ-LOPEZ

Advocates for immigrants’ equal rights need a clear narrative that speaks to the public and emphasizes the values shared by native-born Americans and immigrants. A narrative is a set of broad themes and values that advocates can adapt to their voice and purpose. The Opportunity Agenda partnered with advocates in South Carolina to develop a narrative to build support in the state for immigrants’ equal rights.

HelpHub: Technology to Build a Community for Affirmative Advocacy  
BY STEPHANIE ALTMAN, STEPHANI BECKER, AND BASEL MUSHARBASH

HelpHub, a crowdsourced website for frontline enrollment specialists in Illinois, offers expertise and feedback on the Patient Protection and Affordable Care Act’s implementation. Experts respond to information requests, elevate cases to government partners, and monitor for policy shortcomings. A forum for state and federal advocacy, HelpHub is a model for affirmative advocacy in the Act’s ongoing implementation.
A King’s Blueprint for Change
BY TODD BELCORE
Martin Luther King Jr.’s fight for freedom and racial justice shows how to advocate change. To eliminate poverty, an American and moral imperative, advocates should follow—as did the civil rights movement—King’s blueprint: Recognize the need to right a wrong and inspire the masses to act. Create a unifying message that resonates with different audiences, and develop a media strategy to move the public and combat negative press.

Don’t Leave Them Behind: Education for Homeless, Immigrant, and Limited-English-Proficient Children
BY LIZ ABDNOUR
Homeless, immigrant, and limited-English-proficient children may be unable to access a public education as public school districts make their residency requirements stricter. Advocates can challenge these policies through civil rights complaints to federal or state agencies or in federal or state court. Advocates should keep in mind the protections of the McKinney-Vento Homeless Education Assistance Improvements Act and its inclusive definition of who is considered homeless.

Ongoing Barriers to Coverage Under the Affordable Care Act
BY CHRISTOPHER E. COLEMAN
Full implementation of the Patient Protection and Affordable Care Act must overcome these barriers: delays in income verification; conflicting information about how to note marital status on applications from domestic violence victims; unprocessed appeals of eligibility determinations; a “glitch” that prevents families who cannot afford employer-sponsored insurance from receiving premium tax credits; and preserving eligibility for a “special enrollment period” for individuals coming out of the Medicaid “coverage gap.”
Six Steps to Broader Impact

BY JOHN BOUMAN

Frontline legal services programs are grappling with the challenges of how to have greater impact and how to act affirmatively to solve problems that cause or perpetuate poverty or injustice. This is happening in all kinds of legal aid organizations, including those with limitations on permissible activities, such as organizations funded by the Legal Services Corporation (LSC) as well as organizations with similar limitations accompanying state funds.

How to have greater impact and act affirmatively is particularly significant in organizations that focus mostly on direct service and are subject to success metrics that call for maximizing client case encounters and dispositions. The funders that want the organizations to accomplish these success metrics, however, are also looking for “impact.” The organizations and their lawyers want this, too. They have the will to increase their impact while maintaining their volume of service. How is this managed? How does an organization operationalize turning “what comes through the door” into affirmative problem-solving action with broader impact?

Here I suggest ways to answer that operational question. For the most part, these ideas emerged in the course of two tours of duty on a consulting team for the National Legal Aid and Defender Association’s Strategic Advocacy for Lasting Results (SALR) project, one in a privately funded unrestricted setting in Chicago, and the other in an LSC-funded setting in New Mexico.2 The two SALR engagements have a mission to perform it to answer these operational questions.

I worked for 21 years in an LSC-funded program in the era before the restrictions imposed in 1996. It was a program where direct service and broader advocacy both were successfully operationalized into the practice model. Recognizing potential impact issues in the flow of direct-service cases and turning them into higher-impact projects was a part of the culture; I was never challenged to think about how that came to be or what made it work.

It became clear that “recognizing potential impact issues in the flow of direct-service cases and turning them into higher-impact projects” is easier said than done and, in fact, can seem daunting, especially for an organization that has not yet institutionalized impact work. How does a garden variety welfare case turn magically into Goldberg v. Kelly?3 In fact, this transition from intake to impact can be broken down into manageable steps that are compatible with most direct-service practice models.

This transition from intake to impact can be broken down into manageable steps that are compatible with most direct-service practice models.

1 E.g., see generally Legal Services Corporation, Performance Criteria (2007). See id., at 20 (Performance Area Three, Criterion 3(c): “the program maximizes the use of its resources and achieves in its representation and work the greatest possible benefits and systemic solutions for other low-income people who may face similar legal problems, and for the eligible population as a whole”). See also American Bar Association, Standards for the Provision of Civil Legal Aid, passim (2006).

2 See National Legal Aid and Defender Association, Strategic Advocacy for Lasting Results (SALR) (2014) (“SALR provides confidential, peer-based assistance to legal services programs to help them develop or expand their capacity to achieve broad-based results and, in particular, to achieve lasting, systemic change for clients and low-income communities.”). The SALR project had two rounds of consulting in 2012 and 2013, and further work is being considered.

3 Goldberg v. Kelly, 397 U.S. 254 (1970). Kelly had complained at intake that his caseworker had arbitrarily cut off his welfare payment, a situation confronted in thousands of intake interviews every day in legal services.
around the country. My suggestions, broken down into six steps, follow.

1. Identify Problems that Are Presented by Clients and Have Potential for Broad-Based Solutions

“Well, that’s obvious!” you might say, and you would be right. This article is meant to help organize conceptually obvious ideas into operational steps, not to project lightning bolts of new ideas! More important, the point of spelling out this step is to make sure it is not taken for granted as obvious or self-evident but is done as a conscious task in case-acceptance meetings.

What happens when situations such as the following ones emerge in case acceptance or other intake contexts?

• A string of clients struggling with domestic violence are cut off public benefits for failure to attend job-search meetings.

• Client after client with a decent technical defense to an eviction assert it pro se in court—nevertheless all receive eviction orders from the court.

• During an economic downturn clients come to the office with a variety of problems caused by their long-term unemployment, ones they would not have if they could qualify for extended unemployment insurance benefits.

• Clients fail in the workforce because their employability is blocked by health issues caused by their inability to get care for those health concerns.

• Clients have difficult health conditions, and all of them live in the immediate surroundings of a coal-burning power plant (or other environmental problem).

If not done so already, questions about broader impact should be asked consistently, even routinely. In this way the attorneys get into the habit of seeing the flow of cases through that lens.

• Is this a problem that a lot of people seem to have?

• Do we or the clients feel this is an important problem?

• Is there a way to address it comprehensively?

• Why is there no remedy for this kind of thing—can we create one?

• What would a remedy look like?

• Could this be a lawsuit? What would be our cause of action?

• Is there another clear path to a broad resolution?

• Who else might be seeing this in our area, and have we heard other people strategizing about it?

The problems that are potentially the subjects of broad-based advocacy are not always the problems for which the clients initially seek representation. Sometimes the problem, as presented by the client, finds itself within one practice silo or specialty but may best be dealt with by another specialty or across specialties. Direct-service practitioners, particularly working as a group in case-acceptance meetings, can detect patterns and can assess the caseload against the background of current events in the community (e.g., headlines about the coal-burning power plant’s environmental impact) and from the perspective of multiple specialties.

Case-acceptance meetings are not the only way to identify impact issues. This also occurs through work with community-based leaders and organizers. Representing community-based organizations can be very helpful in recognizing and establishing an agenda of broader-impact work. The organizations will—they want to—bring the attorneys the issues they

---

4 See, e.g., all of the articles in the Spring 2011 issue of the Management Information Exchange’s MIE Journal (vol. 25, no. 1).

5 Working with community-based groups can also be uniquely impactful, beyond what attorneys can do on their own. See my The Power of Working with Community Organizations: The Illinois FamilyCare Campaign—Effective Results Through Collaboration, 38 CLEARINGHOUSE REVIEW 583 (Jan.–Feb. 2005).

6 The Sargent Shriver National Center on Poverty Law’s Community Lawyering training program is an excellent resource for the information and skills needed for community lawyering.
low-income clients. These relationships should include people and entities that have high-volume interactions with clients, such as health care providers, social workers, clergy, schools, and various types of business associations.

An office can also narrow the issues down by using client-needs surveys. Based on such a survey together with relevant data, an office might decide to narrow its intake to certain types of cases in a subject area where the office decides to make its biggest impact. For example, a legal services organization might decide to focus its intake appointments on access to jobs and workplace cases. This increases the impact of the high-volume direct-service work merely by the increased frequency of engagement by the lawyers. Broader-impact issues within that subject area will also surface when this six-step process is applied to the direct-service caseload that emerges from the preselected intake.

Another way to assess where to focus an office’s work to generate higher impact would involve mining the organization’s intake data for the frequency and intensity of issues.

2. Brainstorm About Who Is Responsible and What Are Possible Approaches

Next, move toward a decision about whether to explore tackling a potential impact project. Take the example of a series of cases in which tenants with good technical defenses have lost their eviction cases and ask the same questions listed above:

- Is this a problem that a lot of people seem to have?
- Do we or the clients feel this is an important problem?
- Is there a way to address it comprehensively?
- Why is there no remedy for this kind of thing—can we create one?
- What would a remedy look like?
- Could this be a lawsuit? What would be our cause of action?
- Is there another clear path to a broad resolution?
- Who else might be seeing this in our area and have we heard other people strategizing about it?

If the first two questions are answered “yes,” then carve out time in the case-acceptance meeting for an initial brainstorm about the rest of the questions. A managing attorney might start the conversation along these lines:

We sure have been seeing a lot of these cases where people have perfectly good eviction defenses and still lose their cases. We have at least three where we gave pro se advice and the clients lost. We have posttrial motions in all three and several in recent weeks where the client came to us too late for a posttrial motion. People are wrongly being deprived of their housing, which is of critical importance. Is there some way we can address this so that it stops happening to so many people?

That amounts to a “yes” on the first two questions. The initial brainstorm that follows as to the other questions should center on two areas: a brief power analysis of the issue and a teasing out of possibilities for applicable strategies that warrant further research.

A “power analysis” involves assessing who or what is causing the problem to occur, and then examining who or what has control. This is a highly practical and action-oriented analysis; it is not philosophical or ideological. Who can solve the problem? What will cause them to exercise their power to fix the issue? A hierarchy may be involved. In the instance of the eviction court ignoring governing law, the trial court itself is causing the problem and has the power to stop making these mistakes. The
entities with power over the judge, should he prove intractable, clearly include the appellate court. If it is a large urban system, a chief judge of the trial court might also be an avenue of influence over the trial judge. Further, a little deeper analysis, particularly where judges are elected, might reveal ways to exert media pressure on both the trial judge and the judge’s superiors.

The power analysis leads naturally to a discussion about how the office might be able to cause the person with power to exercise it to solve the problem. Several alternatives at least worthy of further research may emerge in the discussion. These will certainly involve standard legal research into the substantive issues and the procedural options. Other possibilities might also be involved and should be explored.

In the eviction example, the brainstorm might begin to specify that research will be needed on eviction law, with statutory citations, case law, local rules, and any known courtroom procedures. Issues of procedure may call for attention, such as motions to reconsider, ways to set up trial court proceedings to build a good record for appeal, appellate procedure, stays pending appeal, and the possibility of mandamus. The brainstorm should also identify other possible areas of inquiry: possible approaches to the chief judge, potential allies, successful advocacy examples from other jurisdictions or states, deeper refinement of the assumptions made in the initial power analysis, possibilities for a court watch, and media approaches.

3. “Research Action”: Decide Whether to Conduct One

After a reasonable period for the brainstorm, which should not unreasonably prolong case-acceptance meetings, decide whether to proceed, not with the project itself but with a “research action.”

A “research action” is a term from community organizing; the term recognizes and values the research necessary to inform and empower later decisions and actions.

A “research action” is a term from community organizing; the term recognizes and values the research necessary to inform and empower later decisions and actions.9 Calling it an “action” gives it the same stand-alone stature and value as other forms of action, such as a demonstration or a meeting with a public official or a lawsuit. In the legal aid context, recognizing a “research action” as a valuable expenditure of time and resources is key to making broad-impact work operational. Since the research action will take time away from direct case handling, the research action needs to be recognized and credited, preferably in the organizational software and formal outcome reporting, as well as in performance reviews.

In light of the research action, sometimes the right outcome will be a decision not to do anything further. This outcome does not mean that the research action was a waste of resources. Recognizing this possible outcome of research actions is an essential part of committing organizational resources to a realistic practice model that values broader impact. The temptation, and perhaps the current practice in some organizations, is to “count” only research work that preceded advocacy initiatives that were launched, not those that in the end were not launched. To incent properly the essential groundwork needed to develop a high-impact practice, the research action should be accorded its own stature in work plans and organizational accountability data.10

The decision whether to proceed includes considering whether one or more staff members are willing to volunteer or are appropriate to be assigned to conduct the research action. This, too, will vary with staffing and the size of an organization, but a team is preferable to an individual. Such a team may be drawn from more than one office location or from more than one legal aid organization.

Decide whether to proceed with the research action. Then set a deadline for the team to report back. Include the research action as a legitimate part of the team’s caseloads (which means that the organization recognizes that taking the time for the research action will mean taking less time for something else).

3(a). “Research Action”: Gather the Information

In the research action the task is to assemble the information necessary to decide whether and how to proceed with an impact project. The “information needed” consists of a much broader notion than traditional legal research, although the information surely includes that. This is because the goal is much more than nailing down the law.

---

9 See generally EDWARD T. CHAMBERS, ROOTS FOR RADICALS 80–90 (2003). Chambers was the successor to Saul Alinsky in leading the Industrial Areas Foundation, a pioneering community organizing leader and training provider.

10 The frequency with which research actions fail to lead to actual high-impact initiatives is not irrelevant. It should be used in evaluating the case-acceptance “brainstorm” and whether the brainstorm can be improved. This is one of the functions of the commitment to evaluation and constant improvement that I suggest in Step 6 of this process.
Some of the required tasks follow.

**FLESH OUT OR MORE FULLY UNDERSTAND THE PROBLEM**

In all of the examples of likely issues that could be identified in the flow of intake in Step 1, it may be necessary to landscape fully the problem that the clients’ cases exemplify but may not fully portray. For example, what are the dimensions of domestic violence among women receiving public benefits? How huge is the daily calendar of eviction cases that the judge faces each day and what kind of pressures are there to speed through the calendar?

**COMPLETE OR CONFIRM THE POWER ANALYSIS**

Who can fix the problem? How can they be reached, pressured, influenced, persuaded, or forced to fix the problem?

**IDENTIFY THE BEST PRACTICES OR SOLUTIONS**

Research may reveal best practices or solutions implemented elsewhere.

**LEARN ABOUT NONLEGAL STRATEGIES AND TACTICS USED AROUND THE COUNTRY**

Solutions or best practices may not always be built around litigation. Nonlegal strategies include creating alliances or coalitions, policy advocacy, media, messaging, and exerting economic pressure.

**OF COURSE, DO THE LEGAL RESEARCH**

Research the legal framework, procedural issues, avenues of possible attack, and possibilities for success in the courts. If there is potential affirmative litigation, then there is a menu of issues to address, including parties, cause of action, jurisdiction, venue, and initial discovery concerns.11

**ASSESS THE COSTS**

Determine or estimate the costs associated with various strategic approaches.

---

11 This is laid out systematically in the Shriver Center’s Affirmative Litigation Training and accompanying materials.
IDENTIFY POSSIBLE PARTNERS OR COCOUNSEL
On a preliminary basis, identify possible partners or cocounsel, particularly pro bono cocounsel in potential major litigation.12 Because major litigation almost always requires significant help from allies, this should be a routine consideration in a research action.

IN RESTRICTED CONTEXTS, IDENTIFY THE APPROACHES THAT ARE PERMISSIBLE
In restricted settings, determine which approaches the organization itself can undertake, which it may not undertake, and which allow for a partial role. I list this as one of the last tasks. In order to have a fully operational system for broader impact, an organization should be fully engaged in analyzing problems and solutions—not shunning them prior to the analysis because the first apparent solution might involve restricted work. If the result is to refer cases to another organization that is allowed to engage in the strategy to win the solution, that is a valuable expenditure of time and a good outcome.

The research then involves more than “going to the library” (computer-assisted or traditional). A lot can be accomplished by a meeting or phone call or e-mail exchange with veteran advocates within the organization, in allied groups, or in national backup centers. This is a major reason for cultivating relationships with leaders in the field, at backup centers and in other organizations. These leaders will be quick resources to jump-start this kind of research. An Internet search and literature review should be done. Some field work—interviews, investigations, title searches, picture taking, as well as meeting with community activists—could be very helpful. And don’t forget

3(b). “Research Action”: Break the Problem Down into Actionable Issues
Community organizers talk about “problems” and “issues.” Problems are global; they are the broad matters that irritate, engage, challenge or otherwise motivate people to take action. “Affordable housing,” the “foreclosure crisis,” and “racially disparate health outcomes” are examples of problems.

An important goal of the research action is to break the problem down into actionable “issues” (in organizer-speak).13 What are the actions that can be taken that are doable, winnable? The intent is not to stifle ambitious undertakings but to anchor the upcoming work in goals that can be accomplished (even ones that are quite ambitious and somewhat against the odds). The research on the “foreclosure crisis,” for example, will show a huge problem that is unlikely to yield in any comprehensive way to the efforts of lawyers in one legal aid office. However, the research may reveal a chance to partner with a local community organization to put together a deal with banks and public officials to rehabilitate and return to the market hundreds of currently boarded-up homes in the local neighborhood. That is a highly ambitious, yet actionable issue. It does not solve the big “problem,” but it makes worthy progress and benefits many clients.

In the context of legal services case acceptance, the problems identified for broader-impact work are often already expressed as actionable issues. An example is the eviction judge who does not follow the law. The solutions to that

LEGAL AID ORGANIZATIONS NEED TO UNDERSTAND THAT THE BIG PROBLEMS ARE NOT OFF LIMITS.

Legal aid organizations need to understand that the big problems are not off limits. It may become abundantly clear to an office that its clients are beset by one of these big problems, such as “racially disparate health outcomes.” That issue is not too big for a local legal services program if the problem is broken down into actionable issues (such as winning a new neighborhood clinic, fixing procedural problems with Medicaid enrollment, and improving public health outreach) that will have a broader impact than trying to solve the problem case by case.14

3(c). “Research Action”: Prepare the Approval Memo
The team doing the research action should prepare a memo to the supervisor or litigation director; the memo summarizes the research about the problem and the actionable issue(s). As to each of the initiatives or lines of work that the team proposes or suggests, the memo should specify as follows:

DESIRED OUTCOMES OF THE INITIATIVE
Examples of desired outcomes are “win appeals of eviction decisions,” “conduct

---

13 Chambers, supra note 9, at 83–84.
court watch and publicize results,” and “win passage of statute clarifying tenants’ rights.” If passage of a statute on tenants’ rights is the only feasible solution to the problem and an organization has funding-related practice restrictions, then the organization may conclude that it will not proceed further and instead will make appropriate referrals.

THE IMPACT, IF SUCCESSFUL, ON THE RIGHTS AND CONDITIONS OF CLIENTS
This is a way to measure, in advance of a project, whether it will produce, if successful, sufficient impact to justify the investment of time and resources. It is also a way to measure and account for the success of a project after the project is concluded. In the eviction court example, the expected impact of filing appeals of eviction decisions might be not only winning the individual cases but also establishing strong stare decisis on the issues and causing the trial judge (and all trial judges in the jurisdiction) to stop making the mistakes, thereby resulting in dozens (hundreds?) fewer evictions every year. Or helping win the establishment of a new community clinic is expected to result in access to good primary care for thousands of neighborhood residents, and this in turn will improve their health outcomes, quality of life, and opportunity for upward mobility.

AN ASSESSMENT OF THE CHANCES FOR SUCCESS
An assessment of the chances for success should be a realistic take on the chances for winning in whole or in part. Most projects have their risks and chances for coming up short, but those projects may be worth undertaking if the chances for success are not frivolous and the potential outcome is worth the expenditure of staff and other resources. In the case of the eviction appeals, the chances for success can probably be weighed by an analysis of the law and precedents and perhaps the reputation of the court of appeals for straightforward decision making. In the example of the winning of a new community clinic, the chances for success can be weighed by reference to the experience others have had with similar projects, or to the track record of community-based allies, or to advice from outside experts obtained during the research action.

AN ESTIMATE OF THE RESOURCES NECESSARY, INCLUDING ANY DOLLAR AMOUNTS
This estimate should indicate, for example, the numbers of staff and their level of involvement, filing fees, discovery, and other costs. If the initiative is large scale, such as major litigation, the need for pro bono cocounsel should be identified.

SUGGESTED IN-HOUSE TEAM
The in-house team, especially if different from the team for the research action, should be suggested.

The memo is in the nature of a logic model for the initiative(s); it lays out the desired outcome, its impact if successful, chances for success, and resources to be devoted to the effort. It sets out the elements of a conscious decision to devote resources to a high-impact project.

4. Decide Whether to Give Approval to Proceed
Weighing the factors in the approval memo, the appropriate decision maker should make the decision about whether to proceed and assign staff to the task. This should be done without undue delay not only because of the client interests but also to respect the process and the attorneys involved in it. The approved work may involve a sequence of activities or a set of simultaneous strategies; for example, appeal the erroneous eviction court decisions while seeking a meeting with the chief judge and/or with a local reporter or editorial board. The approval memo should spell out any limits to the team’s authority to proceed without further approval on all fronts. For example, for each new appeal of the same issue or each U.S. Supreme Court petition if an appeal is lost, specify if separate approval is required.

In cases with outside cocounsel, especially pro bono counsel from the private bar, this is also the time for the organization’s management to give input on selecting the cocounsel. For example, this may be an opportunity for coordinating with management’s concerns about board member involvement or about fund-raising priorities (sometimes law firms will not support an organization financially unless they are engaged in pro bono work with the organization). Management may also be helpful in using its relationships with outside counsel to secure their participation and in negotiating cocounseling agreements and the like.

5. Build the Strategy for Each Initiative
With the team in place, build and carry out the strategy for the initiative. That is beyond my scope here. The strategy includes steps such as completing the power analysis, external organizing and building of allies, developing media strategies, conducting research, acquiring client stories (plaintiffs), and gathering model pleadings and briefs. Training staff and allies for individual representation if that’s part of the plan (e.g., to build the right kind of trial record to set up appeals), is necessary. Deciding whether to take appeals, if it is a stare decisis campaign, devising approaches
to defendants or policymakers for agreed resolutions, and more, are involved.\footnote{For federal litigation tips, see \textit{Federal Practice Manual}, ch. 1 (2013) (Preparing for Litigation).}

\section*{6. Evaluate Each Research Action}

One of the things we often fail to do is to take some time to learn from our experience. We should look back at it, react to it, critique it, and especially mine it for lessons and future adaptations. This is particularly crucial when adopting something new. Success is not guaranteed, predictions are not always right, good-faith mistakes happen all the time, and successes are sometimes quite surprising. The important goal is to evaluate and learn. Take a moment to examine what went right, what went wrong, what could be done better, and what other lessons (good or bad) were learned.\footnote{\textit{Chambers}, supra note 9, at 87 ("Evaluations are our school of higher learning. No undigested happenings allowed.... This is where growth goes on and judgments are adjusted.").}

The impact advocacy should of course be evaluated in due time. Here, however, I am talking about evaluating the first four steps of this process, through the decision whether or not to proceed with the advocacy; the decision is based on the research action. As soon as possible after the decision in Step 4, the relevant group (practice group, case-acceptance group, or whatever group originated the process in Step 1) should evaluate the decision. A team leader should ask each participant to summarize feelings about it and reactions to it. Then an honest exchange about what worked and what did not, what could improve and how to fine-tune should follow. This not only helps improve the process and the group’s understanding but also may increase buy-in and a sense of teamwork in developing the process for impact work. Although not a magic cure-all, this is a way for the group to operationalize their work to achieve broader impact for the clients.\footnote{\textit{Id.} ("[Evaluation] generates social knowledge. And it keeps us from believing our own propaganda.").}

\hspace{1cm}

\begin{center}
\textbf{JOHN BOUMAN}
\end{center}

President
Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
312.368.2671
johnbouman@povertylaw.org

\hspace{1cm}

\begin{center}
\textbf{Join an Online Discussion}
\end{center}

Do you have any questions or comments on John Bouman’s article? As a Clearinghouse Review subscriber, you may ask your questions and express your comments in an online discussion to be announced. The author will be our guest. Clearinghouse Review Editor Ilze Hirsh will moderate the discussion. By joining the online discussion, you also avail yourself of the opportunity to connect with advocates nationwide.
Our newly designed and enhanced digital edition delivers timely and engaging information on best practices and cutting-edge approaches to legal advocacy on behalf of people living in poverty.

Don’t miss the chance to take advantage of the many benefits of the new digital Clearinghouse Review, including portability, searchability, and new interactive features.

Experience how the collective wisdom of the best thinkers in the legal aid community can improve your practice. Subscribe to Clearinghouse Review today.

The 2014 subscription rate is only $39 per registered user working in a nonprofit program and $99 for individuals in for-profit programs. That’s a savings of more than 60 percent off our previous annual subscription rate per copy of the print journal, and every registered user receives a 10 percent discount on our highly rated national training programs. To subscribe, fill out the form below or subscribe online at povertylaw.org/subscribe.

<table>
<thead>
<tr>
<th>FIRST NAME</th>
<th>LAST NAME</th>
<th>ORGANIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STREET ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CITY</th>
<th>STATE</th>
<th>ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E-MAIL</th>
<th>PHONE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

☐ Bill me
☐ My check is enclosed
☐ Credit card payment
☐ Visa
☐ MasterCard
☐ American Express

If you are purchasing multiple subscriptions, please provide contact information on your staff members so that we may create subscription accounts for them. You may download and fill out the spreadsheet at http://tinyurl.com/chrssubscription or contact us directly at subscriptions@povertylaw.org.

PLEASE MAIL OR FAX COMPLETED FORM TO:
Subscriptions
Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602
312.263.3846 (fax)
The Sargent Shriver National Center on Poverty Law provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty.