RESPONDING TO THE WAKE-UP CALL: A NEW AGENDA FOR POVERTY LAWYERS

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I.
INTRODUCTION

The legal landscape confronting public interest lawyers for the poor in 1999 is quite different from the landscape of 1969. At that time, a liberal Supreme Court was considered a realistic forum for finding in the Constitution a guarantee of baseline elements of survival,[1] and there was optimism that continued progress toward reducing poverty was forthcoming. We did not know it then, but the deaths of Dr. Martin Luther King and Robert Kennedy and the election of President Richard Nixon were harbingers and agents of change in the political landscape that have been operative ever since.

Four facts frame the world as seen by advocates for the poor in 1999. One, the Constitution is not our friend. If thinking about the rights of the poor means thinking about any constitutional rights the poor have as a particular consequence of their poverty, the short answer is, they do not have any. The Supreme Court saw to that in a series of cases in the early 1970s.[2] Now we know that the Constitution provides no recourse for people who would invoke it to seek a judicial response to their need for income, health, housing, education, or any other element of survival.[3]

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1. *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254 (1970) (holding that welfare benefits are a matter of statutory entitlement for people qualified to receive them and that due process requires a fair hearing prior to termination of welfare benefits); *see also* Shapiro v. Thompson, 394 U.S. 618 (1969) (holding that statutorily denying welfare benefits to applicants residing in the state for less than a year creates an impermissible classification violating equal protection principles).

2. *See* Mathews v. Eldridge, 424 U.S. 319 (1976) (holding that due process does not require an evidentiary hearing prior to the termination of disability benefits); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) (concluding that education is not a fundamental right guaranteed by the Constitution); Ortwein v. Schwab, 410 U.S. 656 (1973) (concluding that a $25 appellate court filing fee does not violate equal protection because wealth is not a suspect class and that the state met the applicable standard of rational basis in mandating payment of the fee).

3. *See supra* note 2. *See also* Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450, 458 (1988) (stating that statutes having different effects on the wealthy and poor should not on that account alone be subject to strict equal protection scrutiny and that education is not a fundamental right); Harris v. McRae, 448 U.S. 297 (1980) (upholding a law that provides subsidization of medical expenses to indigent women who carry their pregnancies to full term but

Second, if we had hoped we could develop a federal statutory safety net for the poor comparable to that of European nations, we can at best claim mixed success, with a particularly sad record in the current decade. Federal law provides far less than a full menu of assistance to people in need. Particularly after the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act of 1996"),[4] the question of whether people can obtain help when they are in need depends more than it has for a long time on where they live.

Third, every state is different. While there are some nationally set income floors for the elderly and for some of the disabled,[5] for people of working age who have children and for people of working age who do not have children, there is little uniformity. To know what the rights of the poor are around the country, we would need to read fifty-one statute books and, given the variations among counties, thousands of pages of implementing regulations and local laws.

Fourth, the assistance we afford the poor in America is at best a patchwork, with gaping holes— a far cry from the social welfare protections afforded by every other industrialized country.[6] The gaps are not only found in the safety net assistance for those who need financial support, but also in the employment opportunities,[7] in the structure of support for the millions

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does not provide subsidization of the comparable expenses of women who undergo abortions); Lindsey v. Normet, 405 U.S. 56 (1972) (holding that appellants are not denied due process by Oregon refusing to recognize the failure of a landlord to maintain the premises as a defense to the possessory FED action. Also concluding that the term of an expired tenancy does not need to be extended while tenants' damage claims against landlords are litigated). *See also* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (to be codified as amended in scattered sections of 42 U.S.C.).

4. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (to be codified as amended in scattered sections of 42 U.S.C.).

5. *See, e.g.*, Social Security Act, 42 U.S.C. §§ 413-415 (1988 & Supp. V 1993) (establishing Social Security Disability ("SSD") income assistance to disabled persons below a specified income level who cannot work); *See, e.g.*, Social Security Act, 42 U.S.C. § 1382 (a)-(h) (1994 & Supp. 1996) (providing Supplemental Security Income ("SSI") support to elderly, blind or disabled persons below a specified income level).

6. *See* Patrick Hugg, *Transnational Convergence: European Union and American Federalism*, 32 CORNELL INT'L L.J. 43, 65 (1998) (noting that European Union member states provide more types and greater amounts of assistance and assistance for longer periods of time than does the United States); Alex Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429, 466 n.121 (1997) (stating that the social safety nets in many European Union states provide "significantly greater benefits" than does the U.S. welfare system); Joel Handler, *Welfare Reform: Is it for Real?*, 3 LOY. POVERTY L.J. 135, 160 n.69 (1997) (noting that the European system remains far more comprehensive and generous than the U.S. system).

7. *See* U.S. Census Bureau, *The Official Statistics*, Statistical Abstract of the United States: 1998, No. 674, 695, 697, 700 (visited Oct. 20, 1999) http://www.census.gov/prod /3/ 98pubs/98statab/sasec13.pdf>.

of people stuck in low-wage jobs,[8] and in the education and preparation we offer to the next generation.[9]

These four briefly stated facts speak volumes to those who would be advocates on behalf of the poor. First, the targets for advocacy efforts have changed radically over the past twenty-five years. Going to court and invoking the Constitution to bring about basic change for the poor is a nonstarter. By now this elementary point should be fully understood, but it still comes as a shock to law students who see *Brown v. Board of Education*[10] as the paradigm to end all paradigms. That a single Supreme Court ruling nine to zero can establish racial or economic justice as the law of the land is a romanticized picture of litigation. *Brown* was the culmination of decades of work, and implementing *Brown* took decades more.[11] *Brown* did not have traction until it was married to the civil rights movement, which in turn, produced a politics that spurred the civil rights legislation of the 1960s.[12] Lawyers played roles throughout this time in and around the debates in Congress and in bailing demonstrators out of jail, as well as in hundreds of follow-up school desegregation suits.[13] Desegregation was never easy, and it never involved litigation standing alone.

Thus, achieving racial and economic justice through the courts is more complicated than it seems in gauzy retrospect, and in any case, that was then and this is now. Basic relief is obtainable from the courts now only when a state constitution presents an opportunity[14]or when Congress or a state goes too far (which would have to be way too far) in actively injuring

8. *See* U.S. Census Bureau, *The Official Statistics*, Statistical Abstract of the United States: 1998, No. 702-04 (visited Oct. 20, 1999) <http://www.census.gov/prod/ 3/98pubs/ 98statabl/sasec13.pdf>.

9. National Center for Education Statistics, *The Condition of Education* (visited Oct. 20, 1999) <http://nces.ed.gov/pubs98/condition98/c98secb.html> (reporting U.S. 12th graders scored below the international average in both math and science assessments).

10. *See* Brown v. Board of Educ., 347 U.S. 483 (1954) (holding that racial segregation in public schools violates the 14th Amendment).

11. *See* MARK TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION 1925-1950 105-138 (1987). *See* Donald E. Lively, *Desegregation and the Supreme Court: The Fatal Attraction of Brown*, 20 HASTINGS CONST. L.Q. 649 (1993) (arguing that the Court since Brown has retreated from a commitment to desegregate schools).

12. *See, e.g.*, Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended at 28 U.S.C. § 1447 (1994); 42 U.S.C. § 1971, 1975(a)-1975(d), 2000(a) to 2000(h)-(6) (1994 & Supp. III 1997)). *See generally* GERALD N. ROSENBERG, THE HOLLOW HOPE 47 (1991).

13. *See, e.g.*, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) (affirming that school desegregation plans must proceed in a proper manner and can include the use of racial proportionality among teachers and students, busing, and changing attendance zones); Milliken v. Bradley, 418 U.S. 717 (1974) (holding that the district court could order a desegregation plan for Detroit's public schools, but not for the surrounding school districts for which there was no proof of unconstitutional racial discrimination).

14. *See* Helen Hershkoff, *Welfare Devolution and State Constitutions*, 67 FORDHAM L. REV. 1403 (Mar. 1999) (arguing that state court interpretation of state constitutional welfare rights could provide a significant source of protection for the poor, as long as state courts develop an independent methodological approach that recognizes the significant differences between state constitutions and the Federal Constitution).

the poor in some way.[15] The numbers of individual poor people who need lawyers to represent them in court far outpaces the number of lawyers currently available to represent them.[16] Yet, when we say to law students that working the legislative process in Congress or in the states or that arguing with welfare bureaucrats is real lawyers' work, to say nothing of working the media or strategizing with organizers, the first reaction is too often incredulity.

Maybe at one time the alternative to the Supreme Court was as simple as just working the other side of the street – literally; cross First Street Northeast and walk over to Congress. After all, Congress enacted the Civil Rights Act of 1964[17] and the Voting Rights Act of 1965.[18] And in the 1960s, federal civil rights legislation had its Congressional counterpart in the field of poverty: the "war on poverty" and a long list of other federal statutes and programs made a difference in the lives of poor people.[19]

II.
IMPLEMENTING THE 1996 WELFARE LAW: NEW ISSUES AND STATEGIES

Although Congress is no longer interested in waging a war on poverty, Congress is far from irrelevant today, as there are still major opportunities to pursue and dangers to avoid in Congress. While Congress and the President cursed the poor with the Act of 1996,[20] they enacted major child health insurance legislation in 1997.[21] But more than at any time since the 1930s, legislative and other governmental action affecting the poor is also

15. *See* Shapiro v. Thompson, 394 U.S. 618 (1968) (declaring that state and District of Columbia statutes that required a one-year residency period before inhabitants could apply for welfare assistance infringed on the constitutional right to interstate travel); Saenz v. Roe, 526 U.S 489 (1999) (finding for welfare recipients in a challenge to California statute that lowered welfare benefits for those who had lived in the state less than twelve months).

16. *See generally,* J. Dwight Yoder, *Justice of Injustice for the Poor?: A Look at the Constitutionality of Congressional Restrictions on Legal Services*, 6 WM. & MARY BILL RTS. J. 827 (Summer, 1988) (excessive caseloads characterize the typical indigent defense system); *see also* David L. Wilson, *Constitutional Law: Making a Case for Preserving the Integrity of Minnesota's Public Defenders System: Kennedy v. Carlson*, 22 WM. MITCHELL L. REV. 1117, 1137 (1996) (increasing numbers of indigent defendants combined with politically-motivated budget cuts for public defender offices have led to an overworked system).

17. Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended at 28 U.S.C. § 1447 (1994); 42 U.S.C. §§ 1971, 1975(a)-1975(d), 2000(a) to 2000(h)-(6) (1994 & Supp. III 1997)).

18. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973(bb-1) (1994)).

19. *See, e.g.*, Food Stamp Act, Pub. L. No. 88-525, 78 Stat. 703 (1964) (codified as amended at 7 U.S.C. §§2011-2025 (1994 & Supp. III 1997)). *See generally*, FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR (2d ed. 1993); MARTHA DAVIS, BRUTAL NEED (1993).

20. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 8 U.S.C.).

21. 42 U.S.C.§ 1397(aa)-(jj) (1997).

occurring in state capitals and locally. The 1996 federal welfare law devolved a vast array of decisions to the states; many states, in turn, left a wide range of decisions to the counties.[22]

Because the Act of 1996 establishes block grants to states, the potential for terrible public policy looms large. The potential for good is also there, and has been realized in some states. However, too many states, including ones with large populations of poor residents, have chosen time limits shorter than five years for a family's eligibility for help, regardless of need.[23] Similarly, the list of states imposing punitive sanctions, including lifetime denial of eligibility, is too long.[24] Longer still is the list of states that provide little or no help for people trying to obtain or keep jobs, especially with respect to child care, which is rarely available or too expensive, or both.[25]

Of course, passage of the Act of 1996 was only the beginning. Especially when the target of legislation is poor people, we must pay careful attention to implementation of legislation. What goes on inside the welfare office should be the subject of intense scrutiny by advocates. Child care that is available on paper may not be available in fact. Laws that look kind or generous can be administered sloppily and the impact of harsh laws often can be ameliorated by the kindness of street-level bureaucrats.

The 1996 welfare law presents a cornucopia of advocacy challenges and opportunities. For example, the 1996 welfare law requires that after five years, only twenty percent of those on the welfare rolls on any given

22. California, Colorado, Maryland, Minnesota, New York, North Carolina, and Ohio give discretion to counties to shape their own cash assistance programs under Temporary Assistance for Needy Families (TANF). *See* L. JEROME GALLAGHER, MEGAN GALLAGHER, KEVIN PERESE, SUSAN SCHREIBER, KEITH WATSON, THE URBAN INSTITUTE, ONE YEAR AFTER FEDERAL WELFARE REFORM: A DESCRIPTION OF STATE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) DECISIONS AS OF OCTOBER 1997, at VII-3-4 tbls.VII.1-2 (May 1998) [hereinafter URBAN INSTITUTE].

23. Florida has a four-year lifetime limit with no exemptions or extensions for any reason. New Mexico has a three-year lifetime limit with limited exemptions and no extensions. Idaho has adopted a lifetime limit of two years with no exemptions and very limited extensions. Arkansas, Connecticut, Nebraska, and Oregon have limits of two years or less, with some exemptions or extensions. Georgia, Ohio, and Utah have three or four year lifetime limits with some exemptions or extensions, and Iowa has individualized time limits. URBAN INSTITUTE at IV-5-12 tbl. IV.1.

24. Arkansas, Florida, Idaho, Kansas, Maryland, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, and Wyoming have policies which reduce benefits by the full amount the first time a participant does not comply with work requirements. Delaware, Georgia, Idaho, Mississippi, Nevada, Pennsylvania, and Wisconsin use lifetime denials of eligibility to sanction participants. URBAN INSTITUTE at V-7-8 tbl. V.3.

25. *See generally* ARLOC SHERMAN, CHERYL AMEY, BARBARA DUFFIELD, NANCY EBB & DEBORAH WEINSTEIN, CHILDREN'S DEFENSE FUND AND NATIONAL COALITION FOR THE HOMELESS, WELFARE TO WHAT: EARLY FINDINGS ON FAMILY HARDSHIP AND WELL-BEING 24-31 (Dec. 1998) (illustrating that barriers to sustained employment, such as low employment skill levels, lack of information about or access to appropriate child care, lack of transportation, health problems, or domestic violence have plagued welfare recipients in Georgia, Illinois, Kansas, Maryland, Michigan, Mississippi, New York, Ohio, Rhode Island, South Carolina, Texas, Utah, and Wisconsin).

day can have been enrolled for more than a cumulative of five years.[26] After five years, will there be enough jobs—which means relevant, geographically accessible jobs? If not, will the state create a real jobs program featuring both genuine transitional jobs and assistance to help people move on to long-term jobs? Do the jobs that people obtain in the private sector pay enough to help a family out of poverty, let alone pay a living wage, which most experts calculate is well above the poverty line?[27] Will the state put in funds to allow some people to receive assistance for more than five years? Experts in job and labor market policy and research will need to develop facts about the job gap and create a job scheme and a living wage campaign (and are doing so even now), but lawyers should play a role in making the case to the appropriate legislative bodies and other government officials at all levels.

Child Care. Are the states or counties doing what is necessary so people can keep jobs once they obtain them? Affordable, decent care is a pressing problem not only for those leaving welfare to go to work, but also for large numbers of people who have never been on welfare. Some states have taken positive steps with respect to child care. For example, Minnesota and Illinois have committed themselves to ending all waiting lists for subsidized child care, including for those parents already working.[28] California has committed itself to provide child care assistance for families earning up to seventy-five percent of the median family income in the state.[29] In most states, however, child care presents a tremendous challenge. Even though states have a sufficiency of welfare block grant dollars

26. *See* 42 U.S.C. § 608 (a)(7) (1996).

27. *See* Chester Hartman, *Racial Equity in the Twenty-First Century*, 21 U. ARK. LITTLE ROCK L. REV. 809, 810 (1999) (stating that "[M]ounting 'living wage' campaigns so that workers can actually afford market-rate housing (which by and large is not possible at income levels just above the poverty line)" as rationale for living wage); Merrill Goozner, *Minimum Wage Debate Reopens the Issue Is About Women, Advocates Will Argue to Congress*, CHI. TRIB., Oct. 12, 1999 ("[A]dvocates for the poor have turned their attention from finding jobs for the hard-to-employ to getting former welfare mothers and other low-wage workers a 'living wage' above the poverty line . . . .").

28. *See* Scott Groginsky & Laurie McConnell, *Subsidizing Success with Child Care*, STATE LEGISLATURES, Apr. 1, 1998, *available at* 1998 WL 12872037 ("Illinois legislators added $100 million in state money to the child care system—$30 million more than the governor proposed – in 1997. With these funds, the state will no longer have a waiting list for child care services."); Jean Hopfensperger, *How Best to Allot Money for Child Care?*, STAR-TRIB., Mar. 17, 1998 ("The [Minnesota] Legislator last year approved $92 million in child-care assistance . . . and the intent was to move all families off the sliding-fee waiting list. The list was cleared last summer, but more than 3,000 children are on it again . . . ."); Jean Hopfensperger, *Child-care Needs Expand Welfare Rolls*, STAR-TRIB., Apr. 19, 1999 (Although the waiting lists for child care services has risen, after being temporarily eliminated, "parents on welfare are guaranteed child-care subsidies when they find jobs . . . because the state has made a commitment to removing barriers to work.").

29. *See* 1999 Cal. Legis. Serv. Ch. 492 (WEST) (AB 855) (3) (defining a "lower income" family for the purposes of providing program priorities as a family with an adjusted monthly income that is at or below 75% of the state median income because existing law provides priority for loan guarantees and direct loans to facilities that serve households with

at the moment, too many have done little or nothing to assist the working poor or the near-poor with child care. Some states have even taken away child care funds from people already working to make funds available to people entering the workforce from welfare. Many states confine their child-care assistance to a year of subsidy from the time the head of the family obtains a job.[30] Few states have taken steps to ensure that child care is available at odd hours, even though a substantial number of jobs for new workers are on swing and night shifts. Similarly, little in the way of infant and toddler care has appeared, even though many states require mothers to work once their youngest child is twelve weeks-old.[31] In 1998, President Clinton proposed over twenty billion dollars in new federal funds to be spent on child care over the next five years, but the proposition went nowhere and was not renewed in 1999.[32] Child care policy experts need to advise on the substantive content of policy proposals, but lawyers have a contribution to make in ensuring that favorable proposals are enacted.

Health Coverage. Child health coverage—indeed, health coverage generally—is important for people as a determinant of whether they will be able to continue working or feel constrained to go back to welfare. People with chronically ill children or chronic health problems of their own are, understandably, quite reluctant to run the risk of incurring a large medical bill while uninsured. A number of states are constructively implementing the 1997 federal child health insurance program ("CHIP")[33] to provide coverage to large chunks of their share of the nation's ten million uninsured children, but too many states do their health coverage the way they do their child care assistance, which expires after a person has been working for a year, as if he or she will somehow be able to afford child care and health coverage at that time. And very few states provide subsidized health

incomes not exceeding 75% of the local median income); Carla Rivera, *Who Will Watch the Kids?*, L.A. TIMES, Mar. 8, 1998 ("With earnings of 75% of the median income, a family no longer qualifies for federal subsidies. But a state-funded program will subsidize care for these families as long as their income is below the state median.").

30. *See generally* Kathleen A. Kost & Frank W. Munger, *Fooling All of the People Some of The Time: 1990's Welfare Reform and The Exploitation of American Values*, 4 VA. J. SOC. POL'Y & L. 3, 81-2 (1996) ("Participants in the JOBS program could receive child care assistance for one year after obtaining employment. After that year they could have been eligible for child care assistance through the At-Risk Child Care Program or the Child Care and Development Block Grant. These transitional benefits are eliminated in the TANF block grant, and most recipients will be unable to replace these services without subsidy.").

31. Arkansas, Florida, Michigan, Nebraska, North Dakota, Washington and Wyoming require mothers to work once their youngest child turns three months old. In New Jersey, Oregon, South Dakota and Wisconsin, mothers must work once their youngest child turns twelve weeks old. *See* URBAN INSTITUTE, *supra* note 22, at V-3-4 tbl. V.1.

32. *See* President William J. Clinton, State of the Union Address, Jan. 27, 1998 (full transcript available at <http://www.whitehouse.gov/WH/SOTU98/address.html>); Laura Meckler, *Clinton to Propose Child Care Aid*, ASSOCIATED PRESS, Dec. 12, 1998 ("Last year, the president asked Congress for nearly $22 billion for child care over five years . . ." but the proposal did not advance far on Capitol Hill. "And there's no guarantee that child care will be Clinton's priority when the [2000] budget is ultimately negotiated.").

33. *See* 42 U.S.C. § 1397(aa)-(jj).

coverage for parents in low-wage jobs who cannot obtain coverage in the private market. Obviously, advocates have a role to play in this area.

Transportation. Transportation is another pressing implementation issue. What steps will be taken to assist people travelling to jobs located far from their homes? Millions of dollars of federal transportation money pours into the states every year. Decisions about its allocation are made invisibly, by groups unrepresentative of central cities, let alone of their least powerful residents. Will those representing the interests of the poor ever gain a seat at the table and a piece of the pie?

Higher Education. What about community college and other education and training? In numerous states people on welfare are being forced out of community colleges because local authorities want to put them somewhere where their daily activity can be counted toward federal work participation requirements.[34] Nothing in federal law requires that welfare recipients not be allowed to attend college. The decision is one of state or local policy. Where are the advocates?

Mental Health and Substance Abuse. What about mental health services and substance abuse treatment? A significant part of the population on welfare suffer from mental health and substance abuse problems.[35] If we are serious about requiring work as a condition of government assistance, we need to be serious about providing the necessary support services. These services should include "coaching" to help people deal with problems that arise on the job and help them obtain and keep a second job if necessary.

The Safety Net. Finally, do we understand the need for a safety net for those who are unable to find a job or are not in a position to work? The progenitors of the Act of 1996 pandered to the mythology that those who stay on welfare for a long time are "loafers" interested only in "cheating the system," when the reality is vastly more complicated. The twenty percent exception to the five-year life-time limit was meant to throw a bone in the direction of reality, but is widely regarded as too small, especially when one remembers that the twenty percent figure applies to caseloads five years after enactment, by which time the total caseload will be much smaller than it was on the day of enactment. Further, the number of long-term recipients who are taking care of disabled children or elderly and infirm relatives is considerable. And the number of grandparents taking care of children whose mothers are not in the picture is significant. And of

34. *See* TUFTS UNIVERSITY CENTER ON HUNGER AND POVERTY, ARE STATES IMPROVING THE LIVES OF POOR FAMILIES?: A SCALE MEASURE OF STATE WELFARE POLICIES 2, 36, app. B (1998); *see also* Jonathan Hicks, *Students at CUNY Complain Work Rule Limits Education*, N.Y. TIMES, Sept. 21, 1995, at B3.

35. *See* KRISTA OLSON & LADONNA PAVETI, URBAN INSTITUTE, PERSONAL & FAMILY CHALLENGES TO SUCCESFUL TRANSITIONING FROM WELFARE TO WORK (May 17, 1996) (citing studies showing that 20-40% of welfare recipients have mental health problems and that up to 37% of recipients have substance abuse problems).

course, so many of those on welfare are victims of domestic violence or suffer from chronic depression, drug or alcohol abuse, learning disabilities, or borderline capacity.[36]

All of that said, my students have taught me that there is a danger of overselling the idea that litigation is now less useful. During the first year in law school they have seen the world through the lens of appellate opinions, so that when they reach my public interest lawyering elective in the spring, I find it appropriate to hit them over the head with the idea that policy work can be lawyering, and that lobbying, administrative advocacy, transactional work, community education, and more all have to be in the collective tool kit of lawyers who plan to help the poor. But by mid-semester it becomes noticeable that I have made my case too successfully, and it is worthwhile to remind them that litigation is still an important tool. The Welfare Law Center and the Legal Aid Society in New York City has done important work, for example, in using the courts to gain protections for people assigned to New York City's workfare program.[37] Still, litigation is now both absolutely and relatively less important as a tool to accomplish systemic change. Instead of being the only main course on the menu, it is now one of a longer list of entrees (besides being less nourishing).

The same kind of menu change has occurred with regard to the role of the federal government, which to some still beckons with all the romance of Camelot. The shores of the Potomac were never where all the action was or should have been, and this is even more true now. But at the same time, one ignores Washington at one's peril. Advocates for the poor must learn their way around legislative bodies and executive branch agencies and officialdom, not only in Washington, but also across America; and at the same time, advocates must connect far better to the communities they serve directly.

The list of subjects to which advocates must pay attention has always been lengthy. In light of the enormous issues posed by the new welfare law, benefits questions have to be the order of the day. However, advocates can significantly reduce poverty in the long run if they pay attention to everything that will prevent people from going on welfare in the first place and maximize the number of people who obtain jobs and escape poverty by becoming self-sufficient. Not only must advocates concentrate their attention across all the branches of government horizontally and vertically at all

36. *Id.*

37. *See, e.g.*, Reynolds v. Giuliani, 43 F. Supp. 2d 492 (S.D.N.Y. 1999) (granting preliminary injunction in class action lawsuit brought by the Legal Aid Society on behalf of welfare beneficiaries alleging that changes in welfare application procedures violated federal rights); Matthews v Barrios-Paoli, 178 Misc. 2d 602, 676 N.Y.S. 2d 757 (N.Y. 1998) (granting preliminary injunctive relief in challenge brought by Welfare Law Center to regulations that forced students to participate in workfare as a condition of their continuing receipt of public assistance, thus requiring students to forgo their education).

levels, but advocates must also be mindful that policies that promise to reduce poverty cuts across numerous fields.

The many meanings of the phrase "child advocate" illustrate the point. Students ask me all the time how they can become advocates for children. The obvious fact is that the term "child advocate" describes a multitude of people who do very different things. Child advocates might be health policy advocates interested in prenatal care, immunization, child health coverage, teen pregnancy prevention, or reproductive rights for teens. Child advocates might be early childhood development advocates, school reform advocates, advocates for the proper education of disabled children, foster care reform advocates, juvenile justice advocates or youth employment and transition to adulthood advocates.

Moreover, in any given field there is specialization. For example, people who work on low-income housing might do the transactional lawyering that enables housing to be built, the lobbying that leads to appropriation of more subsidies or litigation that breaks down barriers of discrimination that implicate issues of race and poverty simultaneously. Child advocates are similarly specialized, not simply by subspecialty, but by whether they operate nationally or locally, represent individual clients or not, lobby or not, or work inside or outside the public sector. In short, the generic child advocate is a myth.

On the other hand, the specialists cannot operate in isolation. The housing advocates, community-development advocates, education advocates, jobs advocates, the health advocates and other types of advocates must connect with one another much more closely than they do now if we are going to make progress for the poor. Especially in neighborhoods and rural areas with a high concentration of poverty, the characteristics of geography interact with the characteristics of the people to compound problems, which cannot be solved if the specialists only operate within their specialties and do not find ways to work synergistically.

III.
COMMUNITY BUILDING: A NEW ROLE FOR LAWYERS

Community-building in neighborhoods of concentrated poverty represents an especially important opportunity for synergism. Concentrated poverty has been growing and intensifying for nearly three decades,[38] so it is a particular area of concern for poverty advocates. It is also an area of

38. *See* William J. Wilson, *Podium: The Growth of the American Ghetto*, INDEP. (London), Aug. 16, 1999, at 4 (noting that since 1970, the growth of concentrated poverty—neighborhoods in which at least 40% of the residents live in poverty—has been alarming; that between 1970 and 1990 the population of high poverty metropolitan neighborhoods increased by 92%; and that now around eight million people inhabit neighborhoods plagued with problems such as eroding job markets, surging crime rates, and rapid disinvestment); Lauren J. Krivo, Ruth D. Peterson, Helen Rizzo, & John R. Reynolds, *Race, Segregation, and the Concentration of Disadvantage: 1980-1990*, 45 SOC. PROBS. 61 (Feb. 1998) (noting

opportunity for new partnerships between full-time public-interest lawyers and private practitioners who are involved on a pro bono basis.

For example, creating jobs through economic and enterprise development in the neighborhood is important, but it is also true that unemployment will not decline significantly unless a majority of people find jobs outside the neighborhood. The basic fact is that there will never be enough jobs in an inner city neighborhood to make it economically viable in a self-contained way. Lawyers have a critical role to play with respect to community-building. Lawyers, especially downtown lawyers with transactional skills, can help connect people and organizations in the neighborhood with financing sources. They can also do the lawyering for those transactions, help with land acquisitions, licensing, and regulatory red tape, and provide continuing connections to technical assistance. Lawyers can help with capacity-building in the neighborhood and in creating the relationships that are needed with a multiplicity of private actors in order to make progress possible. They can also help create the leverage that will be needed to build bridges, transportation channels and other means of access to employers outside the inner-city neighborhood.

Lawyers can break down the isolation of neighborhoods by encouraging mobility of residents—in both directions. People need to be able to travel to jobs outside the neighborhood. Equally important is attracting middle-income people to poor neighborhoods. Regardless of whether a neighborhood is entirely African-American or Latino, a neighborhood with a mixed income composition will have a greater potential for achieving viability as a community. Encouraging mobility is a task to which lawyers can be drawn, and to which they, as natural brokers and connectors, can draw others.

A major obstacle is the lack of institutional community capacity in so many low-income neighborhoods. On the one hand, the concentration of effort in a particular neighborhood offers a community-based place for people to talk across subject-matter lines and spurs strategic planning. The economic development people, housing people, education people, health people, human services people and public safety people all need to be talking with one another. On the other hand, the *capacity* to engage in these dialogues is too often lacking. Capacity means not only institutional capacity but also personal capacity.

We all know the old adage about teaching a man to fish—it is almost as overexposed as the one about taking a village to raise a child. Public-interest lawyers need to learn the lesson of building capacity. This means not only working to build organizational capacity in low-income neighborhoods, but assisting in community education strategies that bring knowledge to individuals about legal rights and how to navigate bureaucracies. It

that increasing concentrations of poverty have been shown to isolate the poor from important resources such as job opportunities and quality education).

also means working to create more roles for what I call "extenders"—non-lawyers who perform representative functions in a variety of circumstances, such as helping people cope with problems about cash assistance or designing education plans for disabled children.

I often ask my class what outcomes public-interest lawyers should be pursuing. While my students begin by saying that public interest lawyers should pursue changes in the law, they work their way through the problem until they are saying that changes in behavior, including economic behavior, are the ultimate desired result, whether brought about through changes in the law or by other means. Any activity or entity that will change relevant behavior is an important tool for advocates. Thus, actors and institutions in the private sector have a responsibility to play a role in reducing poverty and are therefore, appropriate targets for advocacy. To maximize advocacy efforts, lawyers need to find partners in an array of fields, including media, clergy, business and labor leadership, and philanthropy.

Particularly, advocates need to make new alliances and build new relationships with organizers. One of the better developments is the emergence of new organizing initiatives in low-income communities, many of them emanating from or connected to the world of religion. For example, the Association of Community Organizations for Reform Now ("ACORN") and the Industrial Areas Foundation ("IAF"), along with others are organizing in dozens of communities across the country. IAF is closely associated with institutions from the faith community in the places where it works, and ACORN works closely with local unions.

ACORN has made an effort to organize welfare recipients, and in particular, to organize people assigned to workfare programs, which provide little real assistance with the transition to real jobs and often displace existing municipal workers.[39] Both IAF and ACORN have also worked on living wage campaigns, pressing cities and counties to require that workers for firms that contract with the government be paid a living wage, and in some cases, that workers for firms that receive tax abatements for economic development also be paid a living wage.[40]

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39. See Donna Leusner, *Unions Target New Jersey Workfare Recipients*, N.J. STAR-LEDGER, Jan. 5, 1998, at 1 (noting that ACORN has worked with low-income families since 1970 and currently heads the national workfare union movement that by 1998 had organized 31,000 workfare workers in New York City, 10,000 in Los Angeles, and thousands more in San Francisco and Milwaukee). Information about ACORN's workfare unionization campaigns is available on the organization's website at <http://www.acorn.org>.

40. *See* Michael Fletcher, *Religious Leaders Push 'Living Wage' as Issue in Election*, WASHINGTON POST, Oct. 31, 1999, at A10 (noting that IAF organizations in several cities are pressuring leaders to pass living wage ordinances); *see also* Yuki Noguchi, *Working for Living Wage: Jurisdictions Ponder the Question: How Much Pay is Enough*, WASHINGTON POST, Oct. 4, 1999 at F19 (describing ACORN's efforts to lobby for minimum wage ordinances). A living wage is generally defined at a level that is higher than both the minimum wage and poverty line. *See* David L. Gregory, *Br(e)aking the Exploitation of Labor?: Tensions Regarding the Welfare Workforce*, 25 FORDHAM URB. L. J. 1, 37 (1997) (concluding that a minimum wage is no longer considered a living wage since the gross income of a full-

IV.
A NEW MOVEMENT?

Perhaps the Act of 1996 and the "war on the poor" will be the starting point of a new movement. To have any political legs, such a movement would have to be a movement for broader fairness—economic, racial, and social justice—and it would have to inspire and involve the younger people who are always the infantry of any movement. However, this movement will not sustain itself if lower-income people themselves are not significant participants. The new energy currently emanating from both the faith community and the labor unions is welcome and has great potential. Further, grassroots organizing is vital to future advocacy efforts on behalf of the poor, and advocates need to find a way to relate to and assist in that process. Even if the organizing strategy does not use intermediaries or lawyers as spokespeople, lawyers can help organizers and others develop advocacy skills. Litigation can also be helpful in support of organizing in that it may bring media attention to an issue or end egregious agency behavior and simultaneously give people a sense that victories are really possible.

Whatever "rights" low-income people do have become even weaker when we realize the increasing inaccessibility of legal representation. This is of course exacerbated by the war on lawyers for the poor that has been declared by Congress.[41] Obviously, the majority of the transactions and interactions between low-income people and public agencies are not supposed to depend on the presence of a lawyer. The scarcity of legal person-power to police the overall fairness of these interactions invites abuse on the part of welfare administrators. The scarcity of advocates is no accident: if Congress seeks, as it does, to push the poor around, the last thing it wants is a batallion of lawyers available to raise objections. It is imperative that the states and the private bar pick up the slack with funding and pro bono work, not just to protect the poor from bureaucratic overreaching, but to assist in the constructive effort of community-building that is at the heart of fighting poverty.

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time minimum wage worker remains significantly below the federal poverty level for a family of four); Craig L. Briskin & Kimberly A. Thomas, *The Waging of Welfare: All Work and No Pay?*, 33 HARV. C.R.-C.L.L.REV. 559, 589 n.179 (noting that in 1998 living wage ordinances being implemented in a number of American cities required city contractors to pay their employees $7.50 to $8.50 an hour, depending on benefits).

41. *See* Matthew Diller, *Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L. J. 673 (1998) (warning that there may be no poverty lawyers in the future, especially since leaders in Congress have sought to defund the Legal Services Corporation by cutting its budget 30% since 1995 and barring actions such as class action litigation and legislative advocacy).

V.
A PROPOSAL

All of this leads me to a proposal. The foregoing text is rife with implicit proposals, of course, but one proposal that I would urge on every state or city of sufficient size is the establishment of a privately funded center for poverty law, structured by analogy to the Lawyers Committee for Civil Rights. This would be an entity, with a relatively small staff, that would exist to mobilize the private bar to assist in community institution-building, policy advocacy, and litigation, all toward the goal and the aim of reducing poverty. Lawyers, especially the private bar, have disproportionate standing and political power in our communities. They have been effective on civil rights issues, on women's issues, on environmental issues, and a host of other matters.[42] Many lawyers were active in an organized way for nuclear arms control and to oppose the war in Vietnam.[43] The Lawyers Committee has been a great success in mobilizing the private bar for civil rights, nationally and in the six cities with local offices[44] that are the model for my proposal. State or local centers for poverty law could perform a similar function.

The proposed model is far from the only model available to encourage active contribution by the private bar to public-interest lawyering for the poor. For example, law firms can establish satellite offices in low-income communities and staff them with lawyers who serve on an extended rotational basis.[45] When such satellite offices are co-located in a community health clinic or other community-based organization with legitimacy in the

42. Private bars have mobilized around a myriad of civil rights issues. For example, the American Bar Association's Children's SSI Project, based in Chicago, provided substantial pro bono assistance for the December 1997 restoration of disability benefits to thousands of poor children nationwide. The ABA Children's Project supplied a training manual to state and local bar associations and successfully recruited approximately 5,000 attorneys throughout the country to participate in the project. *See* Ruth Singleton, *Disabled Kids Win Back Their SSI Benefits,* NAT'L L. J., Jan. 12, 1998, at B7.

43. *See, e.g.,* Patricia G. Barnes, *A Lawyer Group with a Mission,* 81 A.B.A. J. 23 (1995) (noting that the New-York based National Lawyers Guild actually went so far during the Vietnam War as to open an office in the Phillipines to represent U.S. soldiers who went AWOL); *see also* Justice John A. Dooley, III, *Negotiating with the Russians on Nuclear Arms—Lawyers Making a Difference by John H. Downs,* 22 VT. B. J. & L. DIG. 53, 54 (1996) (book review) (noting that during the nuclear arms crisis, the Lawyers Alliance for Nuclear Arms Control (LANAC) received countless pro bono hours from attorneys determined to solve the public problem of U.S.-Soviet disarmament).

44. The six cities where the Lawyer's Committee for Civil Rights has local officers are: Boston, Chicago, Denver, Los Angeles, Philadelphia and San Francisco. *See* EDITH S.B. TATEL, THE LAWYERS' COMMITTEE: THE FIRST TWENTY-FIVE YEARS (Florence B. Isbell ed., 1988).

45. *See* George H. Hettrick, *Doing Good: How One Law Firm Started a Low-Fee Branch Office to Help Those in Need,* 78 A.B.A. J. 77 (1992) (describing one firm's experience with opening a satellite office in the impoverished section of Richmond, Virginia); *see also* Joseph W. Bellacosa, *The Pro Bono Experience in New York,* N.Y. L. J., Jan. 2, 1991, at 2 (arguing that lawyers' ethical obligation to serve the public is heightened with the increasing lack of funding for legal services).

neighborhood, they can be even more effective. If satellite offices are an established part of the neighborhood, they can play a greater role in economic development, community education, and in the establishment of new community institutions and programs. Law firms can also rotate lawyers through legal services offices and public defenders, and they can fund fellowships for young lawyers who spend a year or two in a public-interest placement.

The centers I propose could be neighborhood-based, but I envision them as city-wide, so that they may broker assistance for all low-income neighborhoods and organizes or participate in city-wide and state-wide advocacy. Any poverty center would have to make difficult decisions from the outset: will it work only on policy and institution-building or is it willing to represent individuals? What substantive areas will the centers address? My own view is that the issues that seem most pressing are the job and economic aspects of community-building and the implementation of the 1996 Act.

These two areas, each of which comprises a considerable number of sub-issues, is a full agenda for a new poverty center in any American city. The community-building agenda is more positive and perhaps has broader appeal to the legal community, since ideas of economic development and personal self-sufficiency have conservative roots as well as liberal ones. The welfare implementation agenda is positive, too, insofar as we are talking about helping people become self-sufficient. At the very least, advocates should be able to sensitize the private bar to the large-scale human tragedy that looms not far down the road if better public understanding of the consequences of the time limits is not achieved, particularly if the arrival of the time limits is coupled with the advent of a recession.

VI.
CONCLUSION

The challenges we face in 1999 are quite different from those of 1969, at least as we understood them then; in some ways, these challenges are more difficult and in other ways, more auspicious. That the doors of the courts are shut to structural reform for the poor may be an opportunity more than a defeat. The elimination of federal entitlements now requires us to focus on alternative and multiple strategies for reducing poverty – a complex agenda that court decrees could not have effectively addressed. Similarly, the war on lawyering for the poor should call forth new initiatives and energy to extend and improve advocacy for the poor. We know much more now than we used to about what it will take to reduce poverty in America. The critical question is whether we can marshal the efforts necessary to do what must be done.