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COMMENT

House Counsel for the Poor—An Experiment in Clinical Legal Education

LEROY D. CLARK*
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We are now recovering from the naive and uncriticized assumption that lawyers could or would be allowed to play a crucial role in the correction or amelioration of the poverty syndrome. There is much disquietude about the potential effectiveness of legal service programs; even by those who actively embraced the programs earlier. From the early days of Jean Cahn's aggressive "neighborhood law office" in New Haven, we have progressed to a million dollar program employing over 1600 attorneys, many of whom rushed eagerly from the "sterile" environment of their law school to do battle for the poor. However, the effectiveness of the poverty law programs was challenged by many obstacles. Politicians suddenly became aware of the potency of a few programs and tried vigorously to kill them.1 Economic realities intruded—since there are simply a lot of poor people, with innumerable "legal" problems.2 Dissident local bar groups fought, often by litigation, the funding of legal service programs that appeared to threaten income sources and political predictability. Southern states, consistently the poorest in the nation, are still noted for their absence of programs. Furthermore, the expansion of legal services has been hampered be-

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cause there were no strong efforts, outside of the ABA, for additional federal financing, and central O.E.O. never clearly defined for local programs what was legitimate lobbying. 3

Unsurprisingly, the grossest aspects of poverty remain, and for some sectors of the population have increased. Young lawyers became demoralized by their time-consuming involvement in matters important to the individual client only. Civil rights groups who often provided the "people-muscle" were defunct or not effectively oriented towards tackling the technical aspects of solving the poverty problem.

To respond to this, the Legal Service Program of the Office of Economic Opportunity (O.E.O.) during the Johnson administration sought to reorient all programs towards some law reform effort and, to that end, funded special law reform units. 4 The major problem is, that it is difficult to satisfactorily resolve the tension between the need to service a "live" client desiring a divorce and the extensive time required to construct and formulate "test" litigation.

Additionally, test litigation is limited because it presupposes: (1) that present legislation which restricts the rights of the poor is open to new interpretation or invalidation on constitutional grounds; (2) that once a ruling is secured, it will not be undermined by restricted agency interpretation and mal-administration; and (3) that the basic conditions of poverty can be significantly altered by creating new "rights" under present legislation.

These propositions can be seriously questioned although some test litigation has clearly had substantial impact on a number of the poor. 5 Unfortunately, much test litigation has been simply defensive, such as restoring persons to welfare benefits or attacking some


5. E.g., Litigation initiated in many states to restore budget cuts in welfare and medicare benefits. It was such a successful action by the California Rural Legal Assistance office which became the object of Governor Reagan's wrath.
criteria for eviction from public housing. Restoring a status quo may be very important to an individual client, especially since the poor often experience the vagaries of our unplanned "private economy" more harshly and their lives are unstabilized whenever some "righteous" politician decides to capitalize on the public hostility against all those F.D.C. children who are "free loading." However, litigation conducted primarily within a legislative framework devised without the poor in mind will yield limited results. Pushing for new legislation could be more fruitful, but legal service programs have not actively done this for several reasons: some confusion about what is appropriate lobbying activity (or lawful, where it concerned legal service attorneys), the shortage of staff time, the lack of a "constituency" sufficiently organized so that legislators would respond, and inadequate understanding, among lawyers, of the legislative process.

Some beneficial experiments have been undertaken in response to the heavy case load such as using para-professionals, creating new institutions for the settlement of disputes, and expanding the role and function of lawyers servicing indigents. From this ferment the role of "house counsel" for poverty groups developed and the law school was seen as a good base from which to attack the problem of delivering quality legal service to disadvantaged communities largely because the curricula could be expanded to study legal problems heretofore given scant attention. This article will explore the problems, solutions, and successes in the house counsel role in the context of a clinical program integrated with the academic curriculum in graduate urban law study. The major emphasis will be on the problems which a law school encounters fulfilling its educational goals, while responding to the needs of the indigent community by allowing lawyers to function in a nontraditional fashion.

THE ACADEMIC SIDE

From September, 1968 to June, 1971, O.E.O. Legal Services, VISTA, and N.Y.U. School of Law engaged in a joint, multipurpose program.7 Primary goals included:

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6. For example, the Board of Mediation in New York City funded by the Ford Foundation, intervenes in community disputes and applies collective bargaining techniques to their resolution. See, Mediation and Arbitration, ICCH POVERTY L. REP. § 7425 for a description of O.E.O. funded programs.

7. A similar program was funded at George Washington University, headed by Jean Cahn. It is unfortunate that the plan for a joint article did not come to
(1) development of new law school curriculum in the urban and poverty law area, with the hope that this would stimulate curriculum change at other law schools;  

(2) training of graduate lawyers in a clinical setting to become legal specialists in urban and poverty law matters and constructing a special seminar (The Urban Laboratory) to control the educational input;  

(3) experimentation with the new role of "house counsel" for poverty lawyers;  

(4) provision of representation to community groups in an urban environment;  

(5) experimentation with allocating course credit to law students for fieldwork.

VISTA supplied two staggered cycles of recent law graduates (30 in each cycle) who were enrolled in a masters program.

fruition, because the G.W. program was in many ways more experimental than the N.Y.U. program, in that the client-groups were sometimes drawn nation-wide and students had a larger role in administration.


9. Career development for the participating lawyers was a difficult challenge, and special arrangements should be made to lead the participants to the employment which capitalizes on specialized study, especially since the kind of work they will be suited for is not plentiful or very visible. Most graduates of the program have continued in urban and/or poverty law work, and in private practice continuing to assist the clients they aided while in the program.

10. Most of the VISTA Volunteers joined the program (which paid much less in salary than most other jobs) primarily to secure the occupational draft deferment which VISTA service offered. This was an advantage, for these lawyers shared certain common views on social injustice and the role of the lawyer, which created a catalyst for a strong esprit de corps and sense of purpose. Initial skepticism about commitment because of their draft concerns was dissipated by their enthusiasm for field work, although 'draft crises' did detract time from the program and required the assistance of one supervisor. Only two people left the program when they had "beaten" the draft. In an era of "student power" the VISTA lawyers created important roles for themselves in the governance of this program. First, the Volunteer's personal interest affected where they were assigned. Second, we relied on the VISTA Volunteers to communicate their resource-needs including additional supervising lawyers, office space, and law books. Third, the VISTA Volunteers formed committees to represent them on crucial matters. The first cycle worked with the Project's Director and Law School's placement office to seek job opportunities. The Volunteers also designed a training program for the second cycle which was substantially adopted. (This was in response to their criticism of their own training program which was conducted under a sub-contract to a company that trained most VISTA Volunteers in New York City. It was directed by non-lawyers who seemed to see their primary function as shocking the white middle-class VISTA Volunteers
The program had three specific components—eighteen credits of academic courses and six credits allocated to the clinical fieldwork and the urban laboratory. The unique and distinctive feature was the fieldwork in which the VISTA graduate-student was to operate as house counsel to community groups, concerned primarily with problems that affect entire neighborhoods as opposed to only individual cases. During the first year of the program, the academic schedule interfered with this fieldwork, and the required urban and poverty law courses were often not relevant to the interests of each VISTA member (Volunteers), operating in widely varying community contexts. There was also considerable tension between time spent preparing for and attending the academic courses and the immediate demands of fieldwork. To meet the course load problem, academic work was permitted to be spread over the entire 21-month period, as opposed to the initial plan of requiring that all course work be completed during the first year.

Because the fieldwork component involved a broad variety of activities and subjects, the Volunteers were allowed to select courses related to their fieldwork in other branches of the University, for example public administration, community-action programs, urban transportation, and Spanish.

Whether all the law courses were helpful to the Volunteers in their fieldwork was questionable; sometimes it was worthwhile, sometimes wasteful. What here arises, however, are the difficulties in relating a substantive course to corresponding fieldwork.

First, problems arose because the courses had both law graduates from VISTA and undergraduate non-clinical students. The decision as to which level of curriculum sophistication would be used was dependent upon which group of students were involved. The advantages in having a mix are several. Students engaged in clinical work can bring different perspectives and knowledge to the class, but the professor must be especially prepared and sensitive to take advantage of it all. This necessitates his knowing what the students are doing in their fieldwork and incorporating their expe-
riences in discussions of the broader issues. The problem in so doing, however, is that field experiences rarely coincide in time with the planned course coverage. Students may not in the first year have gained enough from their clinical work to make a significant contribution in class, but they do have this ability after having taken a particular course. This experience suggests using students to participate in or lead discussion even after completing a course.

Second, students engaged in clinical work often become parochial in outlook, eschewing anything that doesn’t relate directly to their fieldwork and demanding “how to do it” courses. Realistically, if law schools permit students to undertake fieldwork, some narrowing of the students’ interest must be expected. However, a continued focus on broader issues can implant the seed of their adjusting outlooks after the urgency of a particular fieldwork problem eases. The instructor should state clearly that the course cannot be limited to resolving day-to-day practice problems. However, it may be advantageous to plan extra classes on particular problems which necessitate “how to do it” considerations, inviting in practitioners with special experience. This should also reduce claims by students that the course is too theory-oriented or “irrelevant.”

Third, VISTA participants coming directly from law school were impatient with the usual classroom approach. In order for the program to succeed, a specialized urban law program for either graduate or third-year students must entail a different approach—in the least, there must be a blending of fieldwork, substantive classes, and independent substantive study, the latter evolving out of the first two ingredients.

**Urban Laboratory**

The urban laboratory was designed to incorporate clinical activity with classroom study by providing a common meeting for Volunteers, professors, and supervising attorneys to consider specific fieldwork problems and to afford all participants a concrete view of diverse urban and poverty law problems in the flesh. The format varied, including (a) guest participants who were specialists in particular urban and poverty law problems, (b) a presentation by VISTA Volunteers of legal issues arising in their fieldwork and soliciting the advice of the lab’s participants for new approaches and,
(c) a forum for consideration of internal problems within the program itself.

During its first year, the lab satisfied basic goals. The group size and range of problems were small enough to engender incisive comment and discussion. When the laboratory expanded to sixty with the second cycle's start, the intimacy dissipated and it became a forum for guest speakers. This approach, while informative and provocative, induced passivity in some Volunteers because it was not geared to problem solving.

As an exposure into a wider range of matters occurred, faculty and student ability to successfully participate in detailed problem analysis diluted. As a solution, small sections of the lab were formed, especially in the area of housing.

The lab's conception was sound, but it required a much greater commitment and agreement on purposes by Volunteers and faculty. The parochialism of most Volunteers who wanted only to concentrate on their individual fieldwork, vitiated any long range hopes that these labs could maintain a focus on the broad issues. In addition, professional approaches to matters being discussed were considered too academic and unresponsive to the need for specific strategic suggestions.

Additionally, the assumption was made that the general interest which the Volunteers possessed would bring into play inter-disciplinary considerations. This did not happen. In retrospect, it appears that the Volunteers were not challenged to present comprehensive analyses of the many economic, political, social, and legal problems which they faced. The urban laboratory, if fully developed, has great potential to avoid these pitfalls.

The Groups Serviced

Client groups were selected according to (a) their need and desire for legal assistance which a VISTA lawyer could provide, and (b) their ability to provide an opportunity for the VISTA lawyer both to learn about and help solve urban and poverty problems which were of community interest.

The relationship between the Law School and the client groups was deliberately circumscribed. The daily work of the Volunteers was prescribed by the agency or community group to which the
Volunteer was assigned. The Volunteers used the Law School as a resource, but the client group, and not the Law School was the initiator and implementor of all actions. When Volunteers felt the need to use the prestige of the Law School to obtain results, they objected to its lack of visibility.

Initially, the expectation that placements would critically evaluate the Volunteers' work for use in grading was not fulfilled, for the placement did not perceive of itself as educator. More importantly, except in the few situations when the placement was totally dissatisfied with its assigned Volunteer, the placement refused criticism. The program's success in fostering the VISTA lawyer-client group relationship as the cornerstone of the Project caused some threat to the continuance of the Volunteers when the supervisory staff sought criticism. Finally, a pass-fail grading system of evaluation was used. The lawyers from VISTA were usually assigned in teams of two (with at least one who was a member of the bar) to allow for support by someone familiar with similar problems. Where they were assigned individually, the work product suffered in quantity and quality.

Sometimes the new VISTAS had to be allowed "to sow their own oats." The educational philosophy of the program dictated that the fieldwork be a form of individual expression and development. Care had to be taken to provide a verdant atmosphere for the growth of young lawyers; thus, a sacrifice of some values such as assignment to "crisis" groups (e.g., housing) to accommodate a Volun-

11. Several original placements were terminated because of one or combinations of the following reasons: (a) instability of group; (b) distance from school; (c) a failure of the supervisory personnel at the placement to define a role for the VISTA Volunteers, which resulted in the VISTA Volunteers having little work to do; (d) dissatisfaction of placement with work of a Volunteer (in two instances); and (e) the placement generated only individual case-work.

When a change in placement was requested by the VISTA lawyer or the client group, the VISTA lawyer could select a new placement in accordance with his interests. At times we adjusted placements so as to maximize our resources on particular issues and to take full advantage of the expertise a VISTA lawyer was developing.

When the issue of placement termination went more to the convenience of the VISTA Volunteers than substantive matters, we thought it was irresponsible to pull out lawyers because a VISTA lawyer found the going tough. To deal with this, we created a series of guidelines to be applied when a Volunteer requested a change of placement. Overall, however, there were only a half-dozen placement terminations in three (3) years.

12. One criteria for admission to the program should have been an intention to take the local bar exam.
teer preference was made. In practice, the Volunteers had a broad range of interests and their client groups had a broad range of needs, consequently at least a dozen different substantive areas emerged. (Some would argue that efforts should have been concentrated on fewer subject areas.) The large number of subjects did indeed tax resources and abilities, especially at the supervisory level. Yet it permitted the accommodation of the different interests with the broadest view of urban problems. (Such variety has positive possibilities if a faculty of diverse interests wishes to draw upon the student experience to expand course materials, to keep in contact with current problems, or to assist with on-going litigation.)

**SUPERVISION**

During the first year, there were three supervisory personnel. The project's director was responsible for overseeing both the Volunteer clinical work and the urban and poverty law curriculum development. The Director of Field Work, who was responsible for guiding the fieldwork activities of the lawyers from VISTA, was assisted by one other person who supervised the urban laboratory.

The urban and poverty law courses were taught by professors whose experience included government service, poverty law, civil liberties, and related areas. No teacher, however, had practiced in a legal services office.

One major missing ingredient during the first year was additional supervisory help with particular experience in litigation. O.E.O. legal services in its second grant provided for two more supervising attorneys with such extensive civil and criminal trial practice.

For the third year, O.E.O. Legal Services financed one more supervising attorney to run a mini-law reform unit to develop litigation arising out of the fieldwork. Unfortunately, this unit was not successful because of difficulties in (1) channelling actions in different parts of the city to one centrally located office, (2) taking lawyers with ongoing fieldwork responsibilities and having them devote considerable time toward litigation to the exclusion of the other interests of their client-group, and (3) resolving the conflict between the interests of the supervising attorney responsible for a law reform focus and the needs of the VISTA Volunteers in the field. An
important secondary factor in the failure was the knowledge that
this program would end in twelve months and that long-term actions
could be developed only in cooperation with an on-going legal services
program.

Supplementing the full-time supervision were faculty members
who were developing the new curriculum. VISTA Volunteers were
to consult with professors in their areas of expertise, both those
teaching urban and poverty law courses and others (e.g., students
sometimes found groups with tax problems, or in one case constitu-
tional problems concerning the one-man, one-vote principle). Dur-
ing the first year, VISTA Volunteers and faculty members sharing
similar substantive areas of interest and expertise, were matched to
assure periodic consultation, but this effort to develop on-going su-
pervision was not successful. The reasons are multiple and interre-
lated.

First, and most important, the Volunteers perceived the pro-
fessors as having a "government" or "establishment" orientation and
being given to explain what could not be done and short on en-
couraging new and risky alternatives. To a certain extent this was
true, but it was also frequently incorrect. The VISTA Volunteers,
under pressure for "quick answers" to some fairly intractable prob-
lems, were impatient with a careful detailing of legal impediments
to their self-constructed means for attacking them. The faculty, for
its part, viewed the Volunteers both with suspicion because of their
propensity to criticize and with some skepticism of the unique legal
roles the VISTA Volunteers were creating. Second, the Volunteers
tended to rely more on the supervisory staff of the Project who had
practiced poverty law, rather than on the faculty. Third, faculty
expertise and Volunteer needs did not neatly coincide. Fourth, fac-
culty aid was initially limited to analyzing particular legal problems
the VISTA Volunteers faced and was not geared to requiring a ma-
jor commitment of time; however, such assistance at times expanded
but only where faculty and Volunteers shared a mutual interest.
This created frustration for both the Volunteers and the faculty.

Nevertheless, individual Volunteers received considerable help
from some professors. Structurally, the faculty should have been
allocated teaching credit for supervision, thereby allowing each pro-
fessor to devote enough time to these responsibilities without being
prematurely drawn to other work. The faculty may not have fully
exploited the opportunity the VISTA Volunteers presented for experimenting with fresh approaches to old problems, but on the other hand, the Volunteers did not fully appreciate that their teachers' basic legal understanding was fundamental to their efforts. While the professors may have viewed the Volunteers as narrow possible sources of material and information for their courses, the Volunteers clearly saw the professors only as resources for their clients. The different needs sometimes prevented both groups from realizing the full potential of each other to broaden their respective personal perspectives.

The extent of necessary supervision was a continuing question. A strong temptation existed to be certain of all the things each Volunteer was individually involved with. We resisted this and accepted the risks inherent in affording considerable latitude to learn, explore, and serve.\(^1\)

The supervising attorney was required to be generally available to the VISTA Volunteers, to hold regular office conferences, to go to court if necessary with a VISTA Volunteer, to assist in the preparation of litigation, to visit placements,\(^1\) to prepare periodic reports on Volunteer activities, and to attend staff conferences of all supervisors. The supervisors, pressed for time as they were, resisted written work and the expectations of supervisors began to be tempered with some realism.

Many significant problems in supervision appeared even though during the second cycle there was a lower level of supervision to Volunteer ratio. Clinical supervisors had difficulty both in sublimating their desire to be the activist lawyer in their students' stead and in perceiving themselves as teachers. Yet, unless this was done, the student was denied the opportunity to develop his own legal skills.

13. L. Clark thought this laissez-faire approach was forced on the program by limitation in supervisor time and the fact that VISTA Volunteers working under pressure resisted cooperation in administrative burdens, such as bringing in legal papers in all their cases. He thought it was desirable to have a closer check to improve the legal product and evaluate the graduate student's work. Often we had the student's papers—but only when he felt he needed assistance.

14. The supervising attorneys visited the placements periodically. The frequency depended on the type of assistance available at that placement, the abilities of the VISTA Volunteers, the absence or presence of problems at that location, and the ease with which the Volunteers defined his role. Where difficulties arose in role-development, the supervising attorney sought to work this out through individual and joint meetings with the VISTA lawyers and agency personnel involved.
Students were often resistant to contacting supervising lawyers. General insecurity and a fear of revealing ignorance caused this problem, especially during the inevitable period of fumbling in order to develop the appropriate house counsel role amongst groups from which the Volunteers differed in class and race. Patience and a minimum number of compulsory conferences usually dissipated this resistance. Some students continued to avoid supervision, partly because of an antipathy toward "authority" figures. When they did seek help, it was usually to "try out" their ideas on the supervisors, for, as they saw it, the project's personnel resources were not crucial to them.

What did the Vista Volunteers do?

Volunteers activities included: (a) an administrative complaint brought with CALS that challenged New York's workable Program based on an absence of relocation facilities and inadequate citizen participation;\(^\text{15}\) (the U.S. Department of Housing and Urban Development (HUD) relied on this complaint to deny the city money for new demolition); (b) representing community groups negotiating with city and state officials in planning redevelopment activities in a Brooklyn community that resulted in agreement on the planning and phasing of construction, displacement, and relocation, with community sponsorship of some new housing; (c) representing the citizen participation councils that were mandated by HUD urban renewal regulations, in negotiations with the city; (d) initiating litigation, with the Legal Aid Society, in challenging rent control legislation (this action was mooted by subsequent decontrol legislation); (e) successfully representing the tenants in five structurally sound apartment buildings to save them from urban renewal demolition; (f) helping tenants with code enforcement problems, harassment actions, and rent strikes (efforts with code enforcement were basically unsuccessful and disillusioning, primarily, the Volunteers believed, because pervasive corruption vitiated the most forceful actions). Although rent strikes were sometimes a tool to reach agreements with landlords, they more often failed than succeeded in achieving better living conditions. Harassment of tenants continued unabated and unless tenants were fortunate enough to be

represented by counsel, there was no way to counteract the landlords; (g) proposing remedial legislation to the City Council and City Housing officials. The VISTA lawyers testified at City Council hearings on matters related to housing and engaged in many futile discussions with City officials to arrest tenant harassment and to obtain a moratorium on the demolition of existing housing resources for low and moderate income families.

Next to housing, most of the project's resources were devoted to problems in the public schools. Coincidental in time with the existence of the VISTA project was the confrontation between the city's Black and Puerto Rican populations and the United Federation of Teachers over decentralization of the powers of the Board of Education. A long teachers strike in 1969, coupled with aggressive lobbying by the union during the 1970 legislative session, left a residue of conflict between the minority communities and the union. Deteriorating physical plants, teachers ill-equipped to confront students with special needs, disruptive older students for whom the educational process has failed, shortages of textbooks and supplies, and an administrative insensitivity to the students' rights characterize New York's public schools.

Activities which the VISTA Volunteers undertook in the education area were (a) counselling parents' associations and community groups on a broad range of legal matters affecting the schools; (b) advising and representing students in school suspension proceedings and in negotiations of grievances with school authorities; (c) developing the facts to support litigation which secured an injunction against the summary suspension of six hundred students, mostly Black and Puerto Rican, from a high school; (d) preparing position papers for community groups in testimony on proposed decentralization laws; (e) advising community groups on the implementation of the decentralization laws passed by the Legislature; (f) successfully challenging the method for election of new school board members (then on the basis of one elected representative per borough) as violative of the one-man, one-vote principle;\(^6\) (g) advising two groups on the legal problems involved in the development of "alternative schools;" (h) assisting in the preparation of the law

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suit which successfully challenged the examination system of the New York City Board of Examiners on the grounds that their exams discriminated against blacks and Puerto Ricans for supervisory positions in the public school system.17

Related to these efforts in education was a tertiary focus on the legal problems of juveniles. Volunteers represented minors in family court proceedings, police-community relations, and assisted in the conduct of a juvenile delinquency clinical program for third-year law students. As a consequence of advising a special project at the University concerned with the problems of minors, one Volunteer, along with a professor at the law school, received a foundation grant to conduct a conference on the rights of minors, emphasizing the health field and the "emancipated minor."

The health and welfare areas in New York are characterized by a severe shortage in the delivery of services to the poor, a backlash against increasing expenditure and an uncontrolled narcotics addiction crisis. The VISTA lawyers worked in a variety of ways on these problems, including (a) representing several of the private narcotics rehabilitation programs which, in fact, include assisting these organizations' patients with their individual legal problems, and negotiating with city officials on behalf of narcotics rehabilitation programs to have methadone maintenance programs expanded; (b) serving as staff for the Health Advocacy Unit at an O.E.O. funded Health Center, (One Volunteer was acting director for a year); (c) being counsel to the citizens' advisory council of an O.E.O.-funded Brooklyn Health Center where community representatives were helped to achieve a position of influence through their proposals for the development and funding of the center; (d) conducting talks for parents' groups on narcotics addiction and the law; (e) advising several community sponsors in applying for and developing day-care centers, including negotiation with the responsible government officials, incorporation, and real estate transactions.

Under the broad heading of "economic development" the VISTA lawyers: (a) secured food franchises for minority group members (this was not successful largely because the personnel were untrained in the intricacies of running a business, with the result that the two franchises are no longer owned by the groups advised);

(b) advised non-union workers of their legal rights and prepared an executive order signed by the Mayor which revitalized the Mayor's Committee on Exploitation of Labor; (c) assisted in development of a program for training legal para-professionals; (d) assisted in a clinical seminar in which deceptive consumer practices were challenged. Finally, the Volunteers were involved in civil actions rooted in criminal situations, (e.g., litigation to assist prisoners being punished as a consequence of riots in city jails), and one Volunteer served as house counsel to the Fortune Society, an organization which helps ex-convicts. Also, some strategy evolved to challenge civil disabilities attached to convicted persons; however counsel always received a satisfactory offer to settle.

The statutory limitation barring criminal representation was a serious problem. The client doesn't understand the distinction between civil vis-a-vis criminal and it was impossible for Volunteers to secure acceptance of such an artificial separation. This prohibition was therefore not strictly observed, but was controlled by making sure that the Volunteers perceived the criminal matter as integral to the group's goals or cohesiveness. Thus, Volunteers sometimes defended clients of narcotic rehabilitation centers to assure their return to the program. On one occasion the leader of a group was arrested in a demonstration concerning school problems and her release was important to the group's momentum. In short, the VISTA lawyers were exposed to a potpourri of activities.18

THE ROLE OF HOUSE COUNSEL

An explicit goal of the program was to develop, for low income clientele who were organized (or more often semi-organized) a new way for the lawyer to service them, in a manner which differed sharply from the usual approach of Legal Service programs. The early naive conception of the program was that groups of the poor could benefit from the continuing, preventive advice of counsel in

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18. In addition to the activities specifically mentioned, the Volunteers also: initiated and developed litigation that challenged the procedures of the New York City Board of Standards and Appeals responsible for zoning matters and which resulted in standing for tenants and community groups to testify whereas only property owners did so previously (after this decision, the city counsel passed implementing legislation); filed an administrative action seeking suspension of a local school board for failure to fulfill its responsibilities (this action failed by one vote at the Board of Education); and proposed new regulations, eventually adopted, to strengthen New York City's laws regarding lead paint poisoning.
the same fashion as middle and upper income persons in their group contexts—e.g., corporations, partnerships, and associations. At its theoretical best, planning a more "political" role was envisioned for the lawyer\textsuperscript{19} functioning as an integral part of the group and giving it the technical resource of professional assistance in confronting government bureaucrats. Avoiding the formal attachment of VISTA Volunteers to legal service offices would aid a more thoughtful and programmatic attack on large problems than would be possible if they merely serviced walk-in trade. The pure law-reform unit also seemed less effective than the house counsel role, which structurally allowed a rapid and continuous response to local problems, not as defined by the lawyer but by the clientele. This would be the best way to catch the test case, since the lawyer would be on the scene helping the group to identify a problem as having a possible legal resolution.

So much for the theory. What was learned with respect to this unique and largely undeveloped role of House Counsel to the Poor?\textsuperscript{20} The first lesson learned was that individual cases, though requiring control, became an integral part of the program, despite the initial desire to handle only cases that were "big" in terms of group's goals. The individual case approach was necessary because of the personal desires of the Volunteer, the need to satisfy such requests in order to gain a client-group's confidence, and the fact that large-scale actions often ripen out of individual grievances. Also, certain subject matter did not lend itself to group action, yet and still, the average legal service office was not versed enough to handle the cases. The individual labor law cases on behalf of unorganized low-income workers were of this type.

The house counsel found his responsibilities shaped by the fact that most groups had limited finances and personnel; consequently, Volunteers filled the vacuum by performing many tasks which could

\textsuperscript{19} The authors do not mean "political" in narrow electoral terms, but rather in the sense that the lawyer would not be limited to discrete, well-defined "cases," but would become a part of the whole process of strengthening an interest group in its jockeying for greater control over its environment. This entails a view that the problems of the poor are only in a subsidiary way the enforcement of "legal rights," and are more pertinently one of access to institutional power. \textit{See}, argument in L. Clark, \textit{supra} note 2, especially p. 809-816 "Poverty as a Political Problem."

\textsuperscript{20} In Chicago, there was the beginning of an experiment with the community counsel concept, and L. Clark made a visit to talk with persons who were running the program to anticipate the difficulties we might have.
have been undertaken by laymen, but for which their legal talents were often suited: e.g., holding of escrow monies collected during rent strikes, preparing correspondence with governmental agencies, submitting housing and welfare problems to the appropriate public bodies, negotiating foundation grants, handling the media, and legislative contacts. Thus, VISTA Volunteers spent much time attending evening meetings, to learn about the problems and feelings of the neighborhood. Two views of this activity emerged, especially at the supervisory level. One supervisor, who was more litigation minded, felt that the house counsel role required discipline to prevent the client group from co-opting all his talents into non-lawyer tasks. He felt that the Volunteer should mold the prime interest of the group into the more classic channel of litigation. Other supervisors saw litigation as a subsidiary tool and thought that the prime contribution of the Volunteer was to bring a lawyer-like skill to general problem solving. Nevertheless, all supervisors agreed that the sensitizing impact of regular community contact was positive. The VISTA lawyer had to develop a sense of what it was to be an organizer and to use his skill in isolating issues towards rational problem-solving. After he and his group became well acquainted, a Volunteer did not perceive the group as a "client" and would often speak about what "we" were going to do. The need for professional distance to achieve respect for any advice rendered became irrelevant as this on-going relationship stressed more the weaknesses and strengths of one person vis-a-vis another.

As a consequence the Volunteer was drawn into the group's decision-making policy and strategies. Because few persons worked with the groups with the status and professional credentials that VISTA Volunteers possessed, they were cautioned about the possibilities of dominating the group. Lawyers, unlike other professionals, are seen as having advice to offer on most matters since the law touches so many aspects of group action—thus an unwarranted leverage could be exercised even about non-legal strategies. Frankly, it was not the cautions which achieved the care needed but primarily the sensitivities of the Volunteers which, in general, envisioned that any overt attempt to assume leadership would be strenuously resisted by the politically conscious Black and Puerto Rican communities in which they were working. On occasion, however, Volunteers were forced into leadership roles, primarily in a fledgling
group, or where the "Power-to-the-people" motif had not taken hold. To their credit, most VISTA Volunteers resisted the temptation, usually because they wanted to make a distinctly professional contribution. However, identification problems did develop from the closeness between the Volunteer and the group. Should the Volunteer be arrested with the group in a demonstration? Or should he simply perform the traditional lawyer function of assisting with bail problems, etc.? Does the VISTA Volunteer violate the canon of ethics if he is part of discussions about a technical violation of the law, such as the traditional sit-in demonstration? Who is the lawyer's client: the group, individuals in the group, or the surrounding community on whose behalf the group claims to function? Even if one assumes the "group" is the client, the groups with whom the lawyers worked were rarely "democratic" in the traditional sense of that term, like perhaps most citizen-volunteer groups. There was usually a leadership "elite," consisting of those with some community charisma or those most energetic on group tasks. These persons set the policy for the group and it was often their decisions that the lawyer executed. What if the lawyer in the main agreed with the group's goals, but on occasion found that a particular decision might redound to the detriment of the surrounding community? Example: a 15-year old girl comes to a health center to receive treatment for venereal disease, but guidelines of that institution, with some support in state law, require parental consent in non-emergency cases. However, this requirement may mean that the girl will not seek medical help, and possibly could infect others in the surrounding community thereby intensifying the community health problem. Here the group must function within certain strictures which the lawyer advised them about, but which would work against the preventive health needs of the community. Other problems arose for lawyers functioning in this house counsel role: a client in a narcotics rehabilitation center informs the laygroup therapist that he has committed a serious felony. The center must be advised as to whether it is required to report the felony, and in turn the center must contemplate the consequences of being seen as "informers" by the therapeutic group. 21 If the lawyer's client is the individual in the thera-

21. The Center might have difficulty invoking the physician-patient or psychiatrist-patient privilege because it is in the main, run by ex-addicts who are lay group therapists.
purtic group, perhaps he has no ethical obligation to report the matter
to the police, but what if he hears the matter through a client group
and has no attorney-client relationship with the individual—what is
his responsibility?

These are not hypotheticals; they were actual problems con-
fronted. The traditional response a lawyer could make to a discreet
legal problem presented by a client or a group were too simplistic,
since the lawyers were now so heavily enmeshed in the attainment
of the group’s goals. In the main, the lawyers guided their deci-
sions about how they would function on the basis of loyalty to the
group and the desire to keep it cohesive and on-going.

Another serious problem for the House Counsel was how to ad-
vise as to whether litigation ought to be undertaken on a given mat-
ter. Such advice could not be given in the abstract, namely the
merits or demerits of the litigation. The lawyer had to consider
the length of even possibly successful litigation, because a favorable
judgment ending two years later would be an empty victory for
groups that were usually faced with immediate crises. The lawyer
had to keep the group aware of the strictures in the legal process
and in its capacity to resolve the group’s problems. On the other
hand, the lawyer’s credibility suffered if his advice too often was
that legal action was of no use to the group. Further, he had to
realize that litigation might displace the group’s energy with respect
to a particular problem—he had to continually convince the group
that supplementary activity was necessary in addition to any on-
going litigation. One lawyer, for example, thought he might suc-
cessfully attack some aspects of an objectionable school decentraliza-
tion bill that was under consideration by the legislature, but he was
concerned that reliance by the group on his attack might slacken
their lobbying efforts to prevent passage.

The Volunteers were not naive or inexperienced about slum
problems, but they had never been the only professional resource for
a group; nor had they been regularly inundated for long periods of
time with the myriad individual and group legal difficulties of persons
they had gotten to know well. Some fought individual cases involving
blatant injustice, but soon found that they were trying to move
mountains of sand with a thimble. Often when they tried to mount
attacks on the root of a problem, they met inadequate resources and
insurmountable governmental bureaucracy. Some would lag temporarily in their efforts, at which point supervisory personnel had to assist more actively, offering alternatives and hooking them into a coalition faculty assistance coalition and other attorneys. If this was not done, or done poorly, the student-lawyer became cynical, angry and felt his efforts were for nought.

House counsel, even working in pairs, and developing an expertise on some legal problems found they needed ready access to attorneys expert in these matters for which they had no background. As a practical response to this reality, the initial disengagement from the Legal Services program was reconsidered. The VISTA attorneys developed viable relationships with local legal service programs: two of them assigned to help a Brooklyn group with educational problems arranged to work out of a legal service office. They referred individual cases for which they had no expertise to Legal Service attorneys and in turn provided that office with the capacity to service the local area on education problems at a time when the condition of ghetto public schools was a crucial issue. Because of the Project's need for research coupled with some Volunteers' desire not to deal with street groups, many engaged in back-up written work. Also, five VISTA Volunteers were assigned to organizations focussing on test-case litigation. Interestingly enough they gained client contact as their suits developed, gaining confidence in relating to individuals, while satisfying their interest in “real” legal work. Having chosen a traditional setting for their fieldwork, they would probably have been quite troubled initially by the problems inherent in developing an appropriate House Counsel role.

The House Counsel lawyer must have tolerance for slow and uneven development because test cases do not shape themselves in a week, negotiations sometimes go on over periods of months, and groups have varying strength and staying power. Likewise, lower income groups have special disabilities in maintaining cohesiveness over time. With less capacity to generate financial resources, they also have to expend energy fighting for refunding; they frequently experience the loss of key persons because poverty communities are more subject to mobility because of urban renewal and slum clearance programs. Also, poor persons obviously have less capacity to engage in volunteer work.
Organizing legal services on the basis of specialization is an obvious suggestion. Once a Volunteer had developed an expertise which became known to the grass-roots grapevine, he was asked to help many groups in different parts of the city. To a limited extent, lawyers gained a reputation as welfare, housing, or consumer experts and were sources of advice for other attorneys. Thus individual, or teams of experts, could service client groups around their specialty and over a broad geographical area.

Overall, the house counsel role, while highly risky, was successful. The Volunteer saw the full history of how a problem develops for an indigent community, what tactics the group adopts in response, and what the problem means in practical life-terms for affected members. He did not get merely the truncated end-problem that the office-bound lawyer sees (eviction, suspension from school, etc.) and thus had a greater identification with and understanding of the client population. Also the house counsel role seems the most effective mechanism for taking a poverty group off the defensive, aiding it to secure broad and affirmative changes, and prevents the local legal service office from being flooded with individual cases. Individual cases of school suspensions can perhaps be diminished by assisting a parents' group to become an integral part of the policy formation structure of that school and advising them to push for procedural controls on the suspension process.

The intimidating quality of a complicated bureaucratic structure was lessened for a group that could rely on a professional to assist it in the proper lodging of grievances or the strategy of negotiation, and to reassure it that the assertion of rights was not to be feared on the grounds that they could only lead to "trouble."22

Location of the neighborhood law office in poverty areas increases the visibility of this service to the community, but some self-selection factors operate to impose only certain kinds of problems on that type of office. It will attract only the more assertive client, the client in extremis, or those with problems they identify as "legal" (e.g., this latter probably explains the prevalence of divorce and non-support actions in legal service programs). The house counsel role thrusts legal services closer to the local indigent community thus

22. This may also be a problem for the middle and low-middle classes—which suggests that restructuring of the delivery of Legal Services is necessary there too.
enhancing the possibility that the lawyer can identify legal solutions in instances when clients might ordinarily have thought nothing could be done. Group leaders often sent persons to the VISTA lawyer even when they were not members of the group. An important feature of the house counsel role was the educational value of having persons from largely middle-class backgrounds in daily contact with persons from a different class level and not dispensing a discreet legal product from a distant and "superior" position. Although we prefer to think of ourselves as a mobile and "classless" society, a true comprehension of the conditions of lower class life is not ordinarily accessible to those who have run the middle-class gamut into law school. The empathic qualities of the VISTA Volunteers were strengthened, thus stimulating the quantum of intellectual energy they brought to bear on a problem. They, probably more than the average lawyer servicing indigents, had their consciousness of the poverty plight vivified, often expressing anger at conditions that their clients faced. One Volunteer put in this way after spending a particularly tiring week trying to locate and get some action from an official in the Code Enforcement Section of a city agency: "The poor aren't lazy, they're just exhausted."

CONCLUSION

How does the changing nature of American society affect concepts of individual and group representation? In speaking at New York University School of Law in 1969, Associate Supreme Court Justice Thurgood Marshall declared:

The goals of economic and social justice, like the goal of racial justice, can only be achieved through committed effort. All segments of society are, of course, essential to this effort, but one of the most effective contributions will be that made by lawyers. . . . The role of the individual lawyer remains a necessary ingredient, but he simply cannot do enough to make more than a dent in the complex set of problems facing segments of today's society.23

It is obvious, therefore, that the bar must face up to some basic structural questions. Changes must be made, partially because there are severe constitutional problems associated with many of the old rules of champerty and maintenance and the old pro-

hibitions against group practice, but more importantly because the old structure is no longer completely responsive to present needs. The needs of the poor, of minorities, of indigent criminal defendants—these needs can only be met through forms of group practice. If the bar is to live up to its social responsibilities, it cannot let the narrow interests of a few practitioners stand in the way.24

The legal profession must come to grips with the institutional nature of this society. The growth and concentration of population, and the strength of governmental, corporate, and union structures require new responses. Concerned citizens can confront injustice and participate in the affairs of their community only through group action. Lawyers must be allowed to represent institutions like the unincorporated community group. The esoteric difficulties of sorting out attorney-client responsibility pale compared to the problems posed by unrepresented groups of individuals faced with an urban renewal project, highway construction, cut-backs in welfare benefits, or environmental pollution.

It is ironic that the role of lawyers in organizing is questioned and suspect.25 For it is the core of the lawyer's responsibility to assist community development, to help individuals exercise their constitutional rights, and relate to the established instruments of government. That some question this role in relation to the poor and minorities is conclusive evidence of its necessity. There is no fundamental difference in terms of the ethics of professional responsibility between counseling a group of welfare recipients and advising a Savings & Loan Association, or between helping potential displacees assert their legal rights and representing a land redeveloper.

The difficulties encountered in creating viable student and faculty roles in a sophisticated urban and poverty law program lie at the heart of the urban consumer revolution. Today, they are part of the course of study which must be confronted if we are to fully educate lawyers. In a climate of increasing hostility to the poor and racial minorities, the urban law school must accept and meet the challenge to render legal institutions responsive to the human needs of the inner-city resident.

24. Id. at 670.