

Community Lawyering—Why Now?

By Ross Dolloff and Marc Potvin

Times are changing. We must adapt. The traditional lawyering model is based on the exercise of unilateral power.¹ The paradigm: I have a right; the courts will enforce that right; you have nothing to say about it. This model is increasingly narrow in application and limited in scope. Traditional legal “rights” are rapidly disappearing.² Whether through limitations on private rights of action, devolution of federal programs, or simply the conservative tilt toward programs that no longer serve our clients’ needs, exercising unilateral power through judicial enforcement of rights inhabits a smaller and smaller corner of our civil society.³

Even where “rights” continue to exist, the limitations of a unilateral approach become more and more apparent. How often have we seen litigation brought to secure a right under a regulatory or leg-

islative framework, then, once the litigation is successful, the law is immediately changed to eliminate the right? We believe this occurs because the traditional lawyering model never seeks to reconcile opponents to its power. Consequently opponents will use every means at their disposal to challenge and subvert it.

Community lawyering is striking as an alternative because it is based on a different vision of power: relational power leading to ultimate reconciliation with the decision maker. The paradigm is quite different: We are many. We understand the issues. We have experienced the problem. We are also your constituents, your voters, your customers. You need us. We operate in the same forums as you. We are open to compromise and to a recognition of your interests.⁴ We can exercise political power and market power, we can

¹ The definitions of power described here derive from the work of Bernard Loomer, a theologian, and were best expressed in a lecture, Bernard M. Loomer, *Two Kinds of Power*, reprinted in BERNARD J. LEE, *THE FUTURE CHURCH OF 140 B.C.E 173* (1995).

² See generally Eric K. Yamamoto et al., *Dismantling Civil Rights: Multiracial Resistance and Reconstruction*, 31 CUMB. L. REV. 523 (2000–2001)

³ See, e.g., *Alexander v. Sandoval*, 532 U.S. 275 (2001) (Clearinghouse No. 51,706); Christine N. Cimini, *Welfare Entitlements in the Era of Devolution*, 9 GEO. J. ON POVERTY L. & POL’Y 89 (2002); Kathleen A. Kost & Frank N. 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 (1996).

⁴ A critical difference between the two approaches is the expectation of compromise, a central component of the civic and political process. An interesting discussion of this distinction is found in John Tolland, *On the Importance of Being Unprincipled* (1938) (on file with Ross Dolloff). The article is used frequently in training events. Tolland argues that the only people who can operate effectively based on uncompromising principle are those with absolute power and those with no power whatsoever and no desire to have any.

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embarrass you in your community, we can expose your wrongdoing, we can turn your constituents against you, or we can support you. We will not bring in a third party to force you to act in a particular way. We expect you, based on your own self-interest, to act of your own volition the way we demand.

Ultimately what we seek through this approach is self-determination for our clients, the right to control their own destiny through an accommodation with traditional power structures. The power brokers, in response to the relational power of the group, both cede authority for decision making to local residents and provide a fair share of available resources to implement their collective vision. That vision frequently, almost universally, includes the creation of community-controlled entities to operate programs, create jobs, build housing, plan for neighborhood revitalization, and institutionalize the power relationships created.

How does this approach manifest itself in action? There are several stages. The first is relationship building.⁵ In a community lawyering model, all power derives directly from relationships—not traditional public relationships, but deeper ones, in which all participants arrive at a fundamental understanding of what motivates them and their peers, which elements of a community vision are widely shared and which are not, what issues and concerns are most deeply felt, what self-interest each person has in the outcome, and what assets each brings to the table. Over time, if the effort is successful, these relationships become institutionalized, typically through the creation of an organi-

zation of members who share the desire to wield relational power and a collective vision for the exercise of that power.⁶

Relationship building yields a second product—the development of a shared vision of a solution or set of solutions for a neighborhood or community. This shared vision propels the action-oriented phase of community building and problem solving. Utilizing the community lawyer as a resource, not as the preeminent leader, the effort reduces large problems, such as lack of affordable housing, to a concrete and actionable plan to address a discrete and measurable part of the problem. In the housing context this may mean the creation of a community development corporation and a demand for substantial public funding to seed its development, or it might mean a demand for zoning changes to allow affordable-housing development in a rich suburban community. From here, the community lawyering effort can take divergent paths, following an action plan that opportunistically exploits the areas of power and influence that one has available.⁷ Action-oriented activity includes a mix of research, political activity, direct action, media work, organizational development, training and leadership development, and, in some cases, the exercise or threat of unilateral action.

At Neighborhood Legal Services in northeastern Massachusetts, we devote to these activities about two and one-half full-time employees out of an advocacy staff of fifteen. We engage in these activities because they are effective. Substantively these efforts have yielded a massive infusion of resources directed to the needs of our

⁵ The power of voluntary association through the development of civic associations, based on relationships, has been recognized for hundreds of years as a hallmark of American civil society and one of the principal instruments that strengthen its political processes. See ALEXIS DE TOCQUEVILLE, 2 DEMOCRACY IN AMERICA 106–10 (Vintage 1990) (1840) (Ch. 5: Of the Use Which the Americans Make of Public Associations in Civil Life). The increasing lack of such associations in modern society has also been recognized as a major warning sign threatening the continued vitality of our democratic institutions. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000). In essence, the core of community lawyering is the development of voluntary civil-society associations and institutions in low-income communities.

⁶ For a compelling discussion of this process, see MARY BETH ROGERS, COLD ANGER: A STORY OF FAITH AND POWER POLITICS 55–64 (1990).

⁷ Involved individuals must act regularly as part of a community-building effort in order to stay engaged. “Organizations need action as an individual needs oxygen.” SAUL D. ALINSKY, RULES FOR RADICALS 120 (1971).



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directed job training program in specific occupations with good wages and health benefits. Community leaders determined the occupations not from academic research but from interviewing and building relationships with executives at the major business enterprises in our region. The community leaders learned that, among occupations not requiring college degrees but still providing high wages and good benefits, machinists and welders were in demand. In response, a training program was developed, \$250,000 per year secured from the state legislature, and, through the relationships established with business leaders, job guarantees secured for every graduate. Since 1996, 240 students, most low-income residents of our urban centers, have graduated from the program. Virtually all have secured a job in the trade they learned. Salaries average \$17.00 per hour with health insurance and other benefits. The average annual benefit to the 240 graduates, compared to their prior wages, is nearly \$4 million. Is the effort cost-effective? Combined, our contributions to all three efforts probably cost our program \$200,000.

Even more profound is the transformative effect of these projects on the communities where they occur. Each success energizes another. Unlike traditional advocacy, no effort is discrete. Powerless residents become veteran leaders. Community-based institutions are born and grow stronger. Projects increase in ambition and complexity. Power is exercised with increasing sophistication and confidence. The work creates powerful permanent institutions that can speak for themselves with a decreasing need for involvement of our staff.

These efforts can be directed at discrete and insular communities as a form of race-based advocacy. One example from our program's work represents this kind of opportunity. The Arlington neighborhood in Lawrence, Massachusetts, is statistically the poorest and most racially isolated neighborhood in the entire state. Its population is 87 percent Latino.

In 1998 residents came together in response to a flood control project that called for the demolition and removal of

clients, among such infusion being a major nonprofit health care organization's commitment and expenditure of \$20 million in resources to undertake a community health improvement plan—developed by one of the groups we support—that includes a downtown walk-in treatment center, a new community health center, school-based health clinics, ten new primary care physicians serving the uninsured, interpreter and outreach resources, and free access for the uninsured to prescription medications and specialty physicians. Another effort secured a large tract of state-owned land with a commitment for the construction of 125 units of new housing for low- and very low-income families and persons with disabilities. At an average local cost of \$90,000 a unit including land costs, this commitment brings more than \$11 million in affordable-housing resources to our clients.

Still another effort resulted in the creation and public funding of a community-

several properties affected by the flooding. Residents became concerned when they saw that the properties being acquired were not ones they knew to be prone to flooding but were instead properties abutting an elite Catholic high school that served virtually no neighborhood residents. The community counsel attorney at Neighborhood Legal Services met an emerging neighborhood association's members who sought his help in investigating their concerns about the project. He taught the association members how to research the project, and they learned that the ultimate and then secret plan was for the city to turn the properties over to the school to build new ball fields and expand its parking. The neighbors continued to build relationships, preparing to fight back. They began holding public meetings, press conferences, and informational sessions with decision makers. They filed formal complaints with state and federal officials. They developed an alternative-use plan for the properties, and, even more important, they employed their new skills to develop a plan for the redevelopment of the entire Arlington district—an achievable vision of their neighborhood rising from the ashes.

They won that first battle, securing city council support for their alternative plan and \$700,000 in funding to implement it—a resident-designed showplace public park. More important, they won over their opponents with their vision and power. Their own comprehensive rede-

velopment strategy for the neighborhood will soon be under way, with Arlington Neighborhood Association strategically acquiring vacant and dilapidated parcels and a large former mill for creation of new housing. They created job training, English-as-a-second-language, and basic skills programs designed specifically for neighborhood residents. They negotiated job preferences for local residents at a remaining mill in exchange for city support for Community Development Block Grant loans for the mill operator. They even were asked to extend their vision outside the neighborhood to encompass redevelopment of the entire river corridor of which Arlington is a part. In the process a permanent organizational force for these activities, the Arlington Neighborhood Association, has grown and thrived to become a single powerful voice for the neighborhood's concerns.

Not one of the activities described here could have been successfully undertaken through a traditional advocacy model. None involved a traditional rights-based framework in any central way. Each succeeded through the power of relationships, leadership development, and planned collective action. Each ultimately resulted in a continually growing partnership with the original adversaries, and each left in its wake a permanent powerful voice for community change. We owe it to ourselves to make this advocacy approach a standard and central part of our arsenal.