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The Effect of Globalization on Domestic Legal Services

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The Effect of Globalization on Domestic Legal Services

Michael Dowdle, E. Clinton Bamberger, Dorchen Leidholdt, Filipe Gonzalez Morales, and Lucie White

Abstract

Globalization, in the context of this panel, refers to international, trans-border processes which are not regulated by the international legal framework, either private law or public international law. These processes, these unregulated influences, are having both positive and negative effects and affecting aspects of culture and society which had previously been considered domestic or wholly domestic concerns. This is creating a tension within both the domestic and international environments, and it is this particular tension that this panel seeks to address.

E. Clinton Bamberger, Emeritus Professor of Law, University of Maryland Law School, will speak about how domestic systems in one country can serve as surrogates or supplements, providers of access to justice, for persons denied access to justice in their own country. Lucie White, Professor of Law, Harvard will talk about how legal aid is affected when different cultures and different communities immigrate or immigrant communities are set up in a country. Filipe Gonzalez Morales, Director, Public Interest Action Program, Deigo Portales University, Chile, will talk about how globalization and other forces are coming together and affecting developing economies of scale in providing legal aid across national borders. Dorchen Leidholdt, Director, Center for Battered Women's Legal Services, Sanctuary for Families, New York will talk about how globalization and enlarging immigrant communities in New York City have affected her work in providing protection for battered women.

THE EFFECT OF GLOBALIZATION ON DOMESTIC LEGAL SERVICES

APRIL 7, 2000

- MODERATOR: Michael Dowdle, *Research Fellow,
Columbia Law School*
- PANELISTS: E. Clinton Bamberger, *Emeritus
Professor of Law, University of
Maryland Law School*
- Dorchen Leidholdt, *Director, Center for
Battered Women's Legal Services,
Sanctuary for Families, New York*
- Filipe Gonzalez Morales, *Director,
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- Lucie White, *Professor of Law, Harvard
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MR. DOWDLE: Hello. I am Mike Dowdle, and I will be moderating the panel on the effect of globalization on providing legal access to justice.

In order to introduce a little bit more about myself and about this probably obtuse topic, in 1996-1997 I worked with the Ministry of Justice of China on the development of their efforts to develop a legal aid program, and one of the things I became aware of was that they were looking very strongly at America and receiving a lot of benefits and funding from international sources, and that this was actually having the unintended effect of drowning out, or causing them to miss, certain very important domestic and indigenous legal aid services that had already developed in China. It was actually crowding out the field and replacing what was a fairly effective small-scale or grass-roots movement with a larger, much more heavily funded, and somewhat less effective, international American model. This is an example of the negative effects that globalization can have on legal aid and providing domestic services.

Globalization, in the context of this panel, refers to international, trans-border processes which are not regulated by the international legal framework, either private law or public interna-

tional law. These processes, these unregulated influences, are having both positive and negative effects and affecting aspects of culture and society which had previously been considered domestic or wholly domestic concerns. This is creating a tension within both the domestic and international environments, and it is this particular tension that this particular panel is seeking to address.

I have, it goes without saying, a very distinguished group of panelists. Each one will address a different aspect of globalization. On my far left is Professor Clinton Bamberger, Professor Emeritus of the University of Maryland. I have been admiring Professor Bamberger from afar for about five years. He was one of the people that I was trying to convince the Ministry of Justice to invite to China to talk about legal aid practices in the United States. Professor Bamberger was one of the drafters of the Legal Services Corporation Act. Is that correct?

PROFESSOR BAMBERGER: No, but I'll take that.

MR. DOWDLE: But he was involved in development of the American legal-aid system and has studied, worked, and taught in South Africa and is familiar with that system. He will be speaking about how domestic systems in one country can serve as surrogates or supplements, providers of access to justice, for persons denied access to justice in their own country.

On my far left is Professor Lucie White. I have admired Professor Lucie White from afar for about two years after she presented a very compelling presentation at Columbia Law School describing how immigrant cultures and the different social structures that these cultures embodied affected the efficacy of American domestic—not legal aid in this case—social-service providing; and again exploring the tension between how different cultural frameworks, different social frameworks, affect how services are rendered. She is on this panel, and she is going to talk in a similar vein about how legal aid is affected when different cultures and different communities immigrate or immigrant communities are set up in a country.

On my left is Felipe Gonzalez. I have admired Felipe Gonzalez from afar for about six months after he was recommended by Ed Rekosh to this panel. He is involved in a Ford Foundation program which seeks to develop access to justice and legal aid issues not just within his own country of Chile but within a trans-

national region involving Chile, Argentina, and Peru. He will be talking about how globalization and other forces are coming together and affecting developing, for lack of a better word, economies of scale in providing legal aid across national borders.

On my right is Dorchen Leidholdt. I have admired Ms. Leidholdt from afar for about two weeks after she graciously agreed to participate in this panel when one of the panelists could not attend. She is the director of the Center for Battered Women's Legal Services and will talk about how globalization and enlarging immigrant communities in New York City have affected her work in providing protection for battered women.

I will start with Professor Bamberger.

PROFESSOR BAMBERGER: I am very indebted to Michael because he began by defining this as an obtuse topic, and I quite agree. I looked up globalization in the Oxford English Dictionary, and it wasn't there. Then I saw that the edition I had was 1933. It doesn't recognize words since 1933. So I really floundered around thinking about what I could talk about. I read all I could, and I tried to see what I could talk about that hasn't been written about before, and I sort of have three stories, I guess, to tell.

One is about a South African claim asserted in the United Kingdom. The other is about the work of a lawyer in a developing country, in Nepal, and how he sees globalization affecting him. The third is a request for the World Bank to push its principles on the Republican Party in this country, because the World Bank is more progressive than the United States Congress on legal services, and I would like to talk about that.

But first let me talk about the South African case. There is a company called KPLC, which for more than sixty years, I think, operated mining and asbestos manufacturing companies in South Africa under terrible conditions, poisoning and killing tens of thousands of people. In 1979, they divested, and they left South Africa with nothing behind; no company, just a shell, and no insurance.

Recently, about two or three years ago—and some of you here from the United Kingdom and South Africa will know more about this case than I, and I hope you will, if it is of interest, say something about it—a lawyer from South Africa, now resident in the United Kingdom, filed an action in the United Kingdom on

behalf of these workers. He actually filed two actions, which is sort of interesting. First he filed a class action on behalf of five plaintiffs, and then he filed a class action on behalf of 3000 plaintiffs.

Now, the reasons he filed them in the United Kingdom are several. First, the company and its assets were there. The parent company of this South African wholly-owned subsidiary is a British company. Second, the United Kingdom has a much better history of damage awards for personal injuries than in South Africa. Third, South Africa had no regulations or statutes controlling the mining and manufacture of asbestos. The United Kingdom has a very good set of regulations about mining, so there was a standard of care set by those regulations. Finally, the case is financed in the United Kingdom by legal aid. He got financing for the case through the Legal Aid Board in the United Kingdom, and he could have never gotten that in South Africa. He wouldn't get it in the United States, either, because it's a class action, and poor people cannot have class action.

Now, here's a multinational company which will be held accountable because of legal services, held accountable to citizens and residents of another country because of the availability of legal aid for those plaintiffs in the multinational domicile. That also convinced me that maybe the Republicans in the United States Congress and their cohorts in the corporate world who have been assaulting legal aid for so many years anticipated that that might happen, and that is why they won't let Legal Aid in the United States file class action suits.

I wanted to just say that, about the status of that case, for those who are interested, the trial court held that there was jurisdiction; he could bring the action, both actions, the five-member class and the 3000-and-growing-number class. The other reason he brought it was that in South Africa damages recoverable by the estate of a decedent are limited, very limited. They only can be recovered if the action was at some certain stage when the person died. But in the United Kingdom, you can recover damages for the pain and suffering that the deceased suffered. So, he had that additional reason for filing the suit in the United Kingdom.

The status is the trial court granted jurisdiction. The Court of Appeals, on a rule of forum non-convenience, said no, the

case should be tried in South Africa. Meanwhile, as you would expect, the company, KPLC, quickly pledged to be a defendant of the case in South Africa. They didn't say anything about taking their assets there with them, but they said they would accept service of the suit in South Africa.

The case is to be heard by the House of Lords on June 19, 2000 and that is where the final decision is made. Meanwhile, the five-member class action had proceeded all the way up to the House of Lords, and the House of Lords had said yes, this case can be heard here. But now the attorneys for the defendants have said that this was all a ruse; the five-member class was a stalking-horse for the 3000-member class that is coming along, and therefore, that is unethical, or at least something is wrong with it, and the trial court has stayed both actions. So it is all very complicated, and there must be huge lawyers fees accumulating in the meantime.

I should also add that in both the United Kingdom and South Africa, the loser pays the legal costs, including attorney's fees of the winner, so that it was very important to have Legal Aid fund these costs, because otherwise these poor plaintiffs could not afford to have taken the gamble on having to pay those costs. Of course, that does mean that Legal Aid, if these plaintiffs win, will recover the attorney's fees from the defendant company.

Next, I wrote to my friend, a wonderful lawyer in Nepal named Xubaraj Sangroula, with whom I had done some work some years ago, and I said, "Here's what I've been asked to talk about. What does that all mean, and what does it mean to you?" Well, he had some interesting responses. It was an exchange of e-mail, so I am not sure that I can tell you all he had to say. Essentially, he thinks there ought to be some obligation on the part of multinational lawyers to support or to do some of that work or to support social lawyering in developing countries. He said also that in Nepal there are not many lawyers. Legal training in Nepal leaves something to be desired, and they are not as well trained or sophisticated as the multinational lawyers, and that multinational lawyers should have some obligation to help provide training and resources to build a competent bar in a developing country.

The last thing I want to talk about is the World Bank. I must say that I discuss this with all my knee-jerk, left wing prejudices

shattered this morning. The World Bank has essentially decided that to make the world safe for capitalism, there must be legal services for the poor. The World Bank has done some studies in various developing countries around the world. I read papers that were discussed at a world development meeting in August of 1999 that highlighted the anti-poor bias of the law; the concern of access to justice; access to legal information and legal literacy, as Maria told us about this morning; the adequacy of legal representation; and the protection of human rights. It was like reading a document written in the mid-1960s when we were creating legal services in this country. That it came from the World Bank, to me, it just upset a lot of my biases, I must tell you. It was wonderful to read.

For instance, the World Bank thinks there ought to be class actions for the poor because many of the problems affecting the poor involve large numbers of people suffering from similar injuries. Civil society organizations can help the poor by taking legal action on behalf of an entire group of individuals. That sounds like something Danny Greenberg might write, but that's from the World Bank. Now, it is a study document. There are all sorts of disavowals of it, but they financed it, and they talked about it, and that's very important to me.

The next point is that the World Bank thinks that legal services lawyers should engage in lobbying, organizing, and other kinds of nefarious activities that the Congress absolutely prohibits them from doing.

Civil society organizations, such as legal services organizations, often play a key role in helping the poor access the benefits and protections of the legal system. They help change the rules that affect the poor, embodied in constitutions, statutes, regulations, municipal ordinances, and a myriad of other codes. That's wonderful language. Quite seriously, I think it's something that we ought to build on, at least here in the United States.

When so many parts of the right and a lot of people in the middle think that legal services lawyers should not be real lawyers, should not do what lawyers really do, I think we ought to show the World Bank statement to them. I might mail it to the few Republican friends that I have and ask them if they under-

stand that they are espousing doctrines contrary to the World Bank.

Thanks very much.

MR. DOWDLE: Thank you, Professor Bamberger. The next speaker is Felipe Gonzalez.

MR. GONZALEZ: Well, thank you very much for the invitation and your words of admiration in such a short time. I am going to speak about the how the process of globalization has posed an impact on the issue of access to justice in the public interest practices in Latin America. First of all, something about the political context of Latin America. A series of common trends has taken place over the last few years, and this is partially a result of the process of globalization as well.

Virtually all governments now are civilian governments, there are virtually no open dictatorships, and there is an increased international awareness about the political conditions in Latin America. There are open economies as well, and there is an inter-American system of human rights which has become strong, although always challenged by some countries in Latin America. Nonetheless, there are still significant disparities between some countries in the region, and there are some authoritarian eruptions, such as in Peru, Venezuela, or Paraguay. Some of them have already ended, as in Paraguay; others have continued, as in Peru; and there is the climate of violence in Colombia.

In this context, my efforts have taken place regarding judicial reforms throughout the hemisphere, and this has become a central issue. In the past in Latin America, the judiciary didn't play a significant role. I would say that the judiciary did not see itself as authentic, as a real branch of state power, but rather part of the administration. It has not provided, really, in most countries a strong fiscalization of the political authorities nor has it made operative constitutional guarantees.

Now this may be starting to change, although we are at an early stage to make an evaluation of this. A series of factors—the globalization process, international awareness about this matter, the strong criticism of judiciaries throughout the Latin American region for their lack of concern about the human rights abuses that occurred in the 1970s and the 1980s, and still in some countries, and other factors—have produced this increased awareness about the judicial reform issue.

Some groups are attempting to make full use of the usual arena to achieve social and political changes. They are trying to make constitutional guarantees operative, and not just nominal in their texts, and they are trying to encourage the use of international standards by the domestic courts as well. What has been seen is a more active role on the part of the judges, a role consistent with the rule of law in a democratic society.

Within the context of judicial reform, a special focus has been put on the reform of the criminal justice system, which is the aspect of the system which produced the most grave human rights violations. Some efforts have been made to enhance the public defender's office or to create them where they don't exist. This has become a more critical issue: the absence or the ineffectiveness of the public defenders office. It is a more critical issue now than in the past, where many conflicts were solved through the political parties or the political actors. Now, when the state power, meaning the executive power, has diminished in a market economy, many people are trying to seek the solution for their problems through the judicial system.

There have been efforts. Some of them have been already mentioned here—the multilateral banks, the United Nations, the Organization of American States. In this regard, the Inter-American Court of Human Rights provided an interesting interpretation of the American Convention in the early 1990s regarding the access to justice standards. The Inter-American Court stated that, according to the American Convention, the requisite of exhausting the domestic remedies before coming to the Inter-American system would not be applicable when there is no real access to justice. Where the person doesn't have access to a lawyer, for instance, this person would bring the case directly to the Inter-American Commission of Human Rights, jumping over the domestic courts in a way. This kind of statement from the Inter-American Court put further pressure on the governments in the region as well. As you know, the whole international system works through the rule of domestic remedies, and this can be circumvented when you do not have access to justice in the domestic courts.

There are, however, some features of the usual culture in Latin America which are against the development of access to justice and of human rights. A strong sense of bureaucracy and

extremely slow procedures, a ritualistic rather than effective legal representation in many cases, are some of these features.

Concerning the issue of legal education, there are increasing forms of interaction and exchange between different countries, both south-north and south-south. Some networks have been created. I myself am involved in one network, as the Moderator described, comprised of universities in Argentina, Chile, and Peru, so a lot of interaction is taking place.

I would say that there have been two waves of clinical legal education in Latin America. The first one took place in the 1960s in the context of the law and development programs, when most of the clinics in Latin America were established. Most of them remain that were not closed after the dictatorships began as a strong wave in the region. However, because of the authoritarian regimes that followed in the 1970s, and also because of the strong conservative character of most law schools in the continent, these clinics have not played a strong role in legal education. In some countries they have an important role in providing legal aid, but in the context of legal education, many times they have been in a way marginalized or they have played a marginal role within the law schools.

I would say that now we are going through a second wave, which is related to the access to justice and also the increased human rights awareness. This has led to the creation of public interest law clinics in some universities and the recreation of some of the old legal clinics. So now, the clinical legal education is starting to have a stronger impact on legal education in some universities, and this means that the old trend, which is legal education focused on repetition and memorization of norms, might give ground now to a legal education, which has a stronger focus on the development of skills and also on the development of certain values, such as social justice, in the students.

As for the role of the legal community, in some countries of Latin America, the bar associations have been involved in legal aid. This was the case of Chile for many years when it was mandatory to belong to a bar. Then the legal aid services were transferred to the State.

But what doesn't exist is a *pro bono* culture really. Of course, there are lawyers who work especially through non-government-

tal organizations or some associations taking cases of human rights or other cases of consumer protection and environmental protection and so forth. But what does not exist in the region is the practice that law firms, for instance, become involved in litigation with a social impact.

The efforts to change legal education also attempt to make a difference in the future work of law firms in this regard, but this is a process that is just starting. It is a culture information, I would say. There is also a need for legal regulation, the need for incentives in the law, tax exemptions or tax incentives for law firms to become involved in these kinds of activities.

As for the NGOs, they play now a stronger role than they did in the past. There are a lot of networks. Some of them also do litigation of public impact and they have an increased access to internal fora. Their access and work at the Inter-American Commission of Human Rights is a paradigmatic example of this. The most recent achievement is the consultative status for NGOs at the Organization of American States, which was decided in December of 1999.

The NGOs also provide some sort of legal aid in some countries and do a lot of human rights work and public interest law work, but those are mostly on paradigmatic cases rather than to provide extensive legal aid. They cannot replace the state in that role.

In terms of substantive issues as a complement to the institutional and procedural aspects that I have described, I would say that the major impact of globalization has consisted of a greater awareness of discriminatory practices, and there are public interest groups working on this. Traditionally, the issue of discrimination was not an issue for the courts in Latin America. It has become an issue for the courts over the last few years.

To be sure, the developments in international law and comparative law have produced an impact in Latin America in this regard, especially on the issue of women's human rights, where we have followed the same route at a slower pace, from the so-called protective measures in the early Twentieth Century to some form of affirmative action.

Awareness about the issue of domestic violence also is widespread now, and it wasn't an issue in Latin America until fifteen

years ago. At least there was not a public concern about the domestic violence problem.

There are still some important problems in the relationship between women's human rights and the Latin American culture. There are subtle implicit forms of cultural relativism in this regard. Sometimes the governmental authorities feel free to apply in half a way only international standards, because they feel their context is different than the context of the United Nations as a whole where the Treaty was approved.

There is also an increasing concern about indigenous rights. People of indigenous origin are becoming more self-conscious of this fact. In the case of the Chilean census, for instance, you can see how many more people now recognize themselves as Indian peoples than in the past. This is the same trend that happened in the census here in the United States.

What has been achieved in terms of access to justice through the struggle to end discrimination in Latin America? Some standards have been achieved, there is some legislation, some enforcement of the constitutional guarantees which weren't really enforced before; and some bridges are being built between civil and political rights and economic and social rights in a way to improve the struggle against discrimination.

To conclude with my presentation, I would like to analyze one final question, which is: To what extent has Latin American culture been pervaded by human rights standards as a result of this process of globalization? The globalization process, of course, tends to enhance the presence of human rights in the local cultures, and I have shown some examples of this. However, there are still many signs showing that human rights have not deeply pervaded the culture of Latin American countries.

There is the authoritarian heritage at the political and social levels which continues to exist, and this continues to make democracies weak. A sector such as the armed forces continues to play a role beyond its normal mandate in a rule of law system in many Latin American countries. And it is societies such as those in Latin America which also contribute to maintaining these authoritarian trends opposing a more equal and pluralistic society. So, discriminatory practices are still widespread despite the increased awareness about it from parts of the civil society.

The process of globalization has produced a huge impact

on the economies of many countries in the region. It has provided a new basis to enhance the role of new groups, but, at the same time, it has increased the disparities in the region, which produces additional human rights problems.

So I would conclude by saying that globalization has been a two-fold process in Latin America—on the one hand increasing the awareness about human rights, but on the other, at the same time, bringing new problems to be solved.

Thank you very much.

MR. DOWDLE: Thank you, Professor Gonzalez.

I would like to point out that the gender segregation on this panel is voluntary and, as predicted by feminist theory, the men are on the right.

Our next speaker is Ms. Dorchon Leidholdt.

MS. LEIDHOLDT: Thank you very much.

I am going to talk about the effect of globalization on the domestic legal services program I direct, the Center for Battered Women's Legal Services at Sanctuary for Families, and, instead of speaking obtusely or abstractly, I am going to speak very concretely about the work we do.

Globalization has transformed our practice—who we serve, the kinds of cases we handle, how we deliver legal services and who delivers them, how we conduct outreach into communities, who we forge our strongest connections with, and who we turn to for funding. The migration of people from poor countries to rich countries in search of betterment, especially in search of work, heightened by the Asian economic crisis and the collapse of Eastern European economies, has been a key precipitating factor.

A parallel, but equally important, factor has been a converse movement, the travel of affluent men from wealthy countries to poor countries, usually in search of brides, but sometimes in search of sexual and domestic servants. I do a great deal of work on the issue of trafficking in women, but in my presentation today I am going to focus on domestic violence.

Another factor that has strengthened our global perspective and relationships is the growing internalization of the women's movement, facilitated by the United Nations; women's conferences over the last twenty-five years in Copenhagen, Mexico City, Nairobi, and Beijing; and by Internet communication among

women's rights activists. Dialogue with non-governmental organizations and women's rights activists in other parts of the world has given us a deeper understanding of the cultural obstacles our immigrant clients face in their efforts to extricate themselves from abusive relationships, and has strengthened our advocacy to them.

Since the founding of the Center for Battered Women's Legal Services eleven years ago, the demographics of our client base has changed dramatically. At the beginning, in 1988, the vast majority of our clients, over ninety percent, were women who were born in the United States. Currently, over seventy percent of our clients are immigrant victims of domestic violence from every part of the world. Most are from Latin America and Asia, but a growing number are from Eastern Europe, the Middle East, and Africa.

Many of our clients come to this country from poor countries in which the status of women is low and employment and educational possibilities are meager. They come in search of economic betterment and hopes of good education and in hopes of employment that pays a living wage. Once here, they often find that employment prospects are not what they had hoped for. Speaking little, if any, English and often on visas that quickly expire, they are vulnerable and often end up in abusive and exploitative relationships. We have had many, many clients who fit this profile.

To give you a few examples:

- A Brazilian fashion model whose picture appeared on the cover of *Brazilian Vogue* ended up working for an escort service when her visa expired. Her driver for the escort service pursued her romantically, plied her with drugs to which she quickly became addicted, and began to abuse her.
- A young Burmese student who came here to pursue educational opportunities was courted by and married a British computer technician who worked in the Wall Street area. Initially posing as her rescuer, her husband began to demand that she wait on him like a servant, and he brutally beat her when she didn't immediately comply with his demands.
- And then there is the young South Asian women who

grew up in an orphanage in India and found work here as a housekeeper. She managed to save US\$10,000 for the dowry that her family couldn't provide for her. She met another man from her country who introduced her to his friend. He wooed and married her, took her money, beat her, and threw her out. It turned out that the two men were in cahoots.

Women who come to this country under these circumstances are very, very vulnerable to this kind of exploitation and abuse. A large number of our clients are brought here by immigrant husbands who have established themselves in the United States, found jobs, built businesses, learned English, and obtained green cards or citizenship, and then returned home to seek out a bride in their native communities. The women they marry, usually through family arrangement, often do not speak English, are dependent on their new husbands for their immigration sponsorship, are unable to work except in the most marginal of jobs, often bear children very quickly because that is what the family expects and demands, and often come from communities in which women's status is very low. Most leave home as teenagers to become part of their husband's family systems here. The power differential between them and their husbands is acute. When domestic violence starts, as it often does, they generally have little or no knowledge about the legal system and social service providers, and no family or community support. Indeed, their in-laws sometimes join their abusive spouses in committing acts of violence against them.

Just to give you an example of how difficult it can be, we now have two clients from rural areas of Bangladesh where female seclusion is practiced, and even the grocery shopping is done by men because women are not allowed to be seen in public. They are not allowed to leave their homes. And you can just imagine what happens when life-threatening abuse catapults these women out of this restrictive environment into an utterly alien world in New York City.

Another one of our clients was subjected to female genital mutilation when she was a child in her native Senegal, was married to her husband, a middle-aged man, when she was eleven years old, and was eventually brought here. When we began to provide legal assistance to her, she was undocumented. During

this period of time, her husband sent home—and actually it wasn't to her home, it was to his home—two of her young children. That was five years ago. She now has no idea where her children are. So you have a sense of the absolute powerlessness that women in this situation find themselves in.

A growing number of our clients are from Eastern Europe. When the economies there collapsed, many came here with their husbands, often after many years of marriage. Dislocation and the struggle for economic survival heightens already-existing tensions and sometimes exacerbates already-existing abuse. Whereas in Eastern Europe many of these women had good educations and held good jobs, now they find themselves doing menial work and faced with a loss of status, not only in society but also in their marriages.

Several of our recent clients have been mail-order brides from Eastern Europe. Their American husbands picked them out of photo arrays on Internet Web sites that advertised docile, compliant, and unconditionally available wives. Women recruited by mail order bride businesses are often educated and eager to flee countries in which sex discrimination in employment is rampant and opportunities for women are close to nonexistent. The same companies that promise the men submissive wives promise the women wonderful relationships with loving, supportive husbands. There is an inevitable clash of expectations and often physical and sexual abuse.

Just as globalization has altered the demographic profile of the clients we serve, it has changed the kinds of cases we handle. Previously we handled almost exclusively family law and criminal cases. Now we find that the majority of our clients have immigration matters that must be carefully coordinated with their other legal issues. We have developed expertise in battered spouse waivers, self-petitions under the Violence Against Women Act, and have a growing asylum law practice. When a Hungarian doctor not too long ago fled to New York from Italy after her Italian husband beat her and threatened to kill their infant son, we found ourselves arguing that her case fit an exception to the application of the Hague Convention.

To represent these clients effectively, we have had to develop knowledge about the different social conditions, the different forms of discrimination, and abuse that women face in every

part of the world. Practices that once seemed bizarre and exotic now seem real, immediate, and terrifying. We have had to understand the histories of these practices, and the roles they play in our clients' cultures in order to help judges and immigration officials understand the protection our clients need.

It is extremely challenging, for example, to try to explain to a judge with little cultural awareness or sensitivity that in some cultures women have to marry the men who raped them. If the court does not understand this cultural prescription, however, he or she will undoubtedly make a negative assessment of the client's credibility and assume that she is either crazy or that she is lying. We have two cases now where we are trying to explain this particular reality for women in Turkey and China to judges in the United States.

In two recent cases, our clients' husbands contacted their wives families in their native countries, Syria and Turkey, after the women had called the police here in New York City to report domestic violence. Enraged at having been arrested, the husbands told their wives' family members overseas that the women were committing adultery and that's why they had beaten them. Both families vowed to kill the women for tarnishing their honor. In both of these cases, our clients were ultimately granted asylum for their well-founded fear of death at the hands of their parents and siblings should they be forced to return to Turkey and to Syria. Thus, we have learned that women who are threatened with honor killing are not only living in Pakistan and Jordan. They are also here in New York City.

To meet the needs of these women, we have had to develop different kinds of projects, hire staff with different qualifications, and reach out to different groups. We have developed the Immigration Intervention Project, coordinated by our full-time immigration attorney who supervises *pro bono* lawyers who take immigration cases for our clients. We are building the Dedicated Liaison Project, in which a Korean-American staff attorney serves as a dedicated liaison to agencies meeting the needs of Korean-speaking battered women. And we hope to hire dedicated liaisons to the South Asian and East Asian communities as well. We have a Latina advocacy project, where a full-time staff attorney conducts outreach and representation to Spanish-speaking domestic violence victims, and a Spanish *pro se* divorce clinic.

Our outreach strategies have also been altered. Our Korean-speaking attorney writes monthly columns on domestic violence for the three Korean-language newspapers in New York City, while our three Spanish-speaking attorneys are regular guests on Univision. When I review resumes these days, my eye now leaps to the words under the heading "Languages" and to phrases, like "bilingual and bicultural," which have a cachet that Yale and Stanford once held.

Changes in our client population affected by globalization have altered the organizations we work in partnership with. Traditional domestic violence services providers have been replaced or joined by organizations that have grown to meet the needs of victims of domestic violence in New York City's different immigrant communities—Korean-American Family Service Center, Sakhi for South Asian Women, New York Asian Women's Center, and Arab-American Family Support Center, to name a few. We are acutely aware that it is the established immigrant communities that have such organizations, and newer and poorer immigrant communities lack these lifelines.

The international nature of our work has motivated us to participate in international women's rights and human rights events, and to build strong international connections with other feminist activists around the world. The Center for Battered Women's Legal Services attended and conducted a workshop at the Fourth World Conference on Women in Beijing, China. We were not surprised, given our work here, to learn that organizing against domestic violence is happening all over the globe. In Beijing we were able to share information and experiences with other NGOs who are doing legal services work for battered women in different parts of the world, and we have maintained these connections and continue to communicate with these organizations.

In 1997, one of our *pro bono* lawyers moved to Cambodia and, with our support, helped found the Cambodian Women's Crisis Center, which serves both victims of domestic violence and victims of the sex industry. We provided technical assistance, sample grant proposals and fund raising, and we arranged for the Sanctuary for Families Clinical Director to travel to Pnom Penh to train the Center's domestic violence counselors. In turn, we learned an enormous amount about the violence faced

by Cambodian women, as well as the obstacles they face in leaving abusive relationships.

In sum, globalization has transformed our work. It has made us confront and grapple with the extreme forms of discrimination and abuse women and girls face in other parts of the world, discrimination and abuse that often continues when they move here. It has strained our resources, and it has also motivated us to grow. In our eleven years, we have grown from three to fifteen lawyers, in large part out of our efforts to meet the needs of these new communities and of the women who are in such desperate situations in New York City.

It has also forced us to become more resourceful and more innovative in developing programs that meet our international clients' needs. It has given us a much deeper understanding of different cultural traditions and has taught us much about the courage of women who transgress them in order to build safe lives for themselves and their children. It has radically altered our understanding of the communities we serve and how that service can best be accomplished. For us, globalization has made the world seem a good bit smaller and our mission very much larger.

Thank you.

MR. DOWDLE: Finally, batting clean-up for us is Professor Lucie White of Harvard Law School.

PROFESSOR WHITE: The absence of Mark Barenberg enabled us to have this critically important and illuminating presentation. I only wish that Mark could be here also, because he would have been able to give similar perspectives on the changes that domestic legal services lawyers are facing in the labor arena that are just as profound as the changes that they are facing in the arena of domestic violence.

I was also, like Clint, puzzled about the scope of the concept of globalization, and ended up taking the title of the panel really literally, which is "The Effect of Globalization on Domestic Legal Services." So in many ways I will be following up on and saying things that are congruent with, and a little bit more abstractly framed than, the presentation that we just heard.

I speak in part from the perspective of having worked as a Legal Aid lawyer. I worked as a front-line Legal Aid lawyer through most of the 1980s in rural North Carolina. Then in the

early 1990s, I worked closely with Legal Aid programs in Los Angeles. And for the last six years, I have been working again closely with Legal Aid programs in Boston, primarily in Cambridge, Massachusetts. So it is in part from that background that I speak.

I had to start the project of thinking about this topic by defining for myself what features of this huge topic, globalization, seemed more salient to the changes that I have seen in domestic legal services. I just want to run through what some of those features of globalization that are most salient to me are.

One is the huge change in communication networks and technologies, the Internet, the telephone, the television, etc. The second two really relate mostly to work: the integration of financial markets and, with it, the mobility of financial capital, causing huge shifts in the patterns of waged work that are available to people. Third, and related to that also, the geographic dispersal of the stages of production processes. So a single firm would be producing components in Taiwan and having those assembled in Detroit. The diffusion of mass-oriented consumer culture, which is part of what creates the pull for people from all parts of the world to come to the United States, produces the pictures that we have just been hearing about, and with that diffusion of consumer culture, the mobility of labor, the mobility of people. The harmonization of national legal systems, so you get more possibility of parallel lawsuits in different places because the laws are becoming more similar. The emergence of transnational, regional, and international legal and regulatory agencies, procedural frameworks, and standards, and with them, transnational social movements—the women's movement being an example. These things, which are interrelated, contested, ideologically framed, etc., have created a set of both challenges and opportunities to domestic legal services.

I would just underline also the changes that are faced by everyday Legal Aid lawyers in Cambridge, Massachusetts, doing evictions, welfare cases, unemployment petitions, and domestic violence cases—the work that they do has changed enormously, particularly over the last decade. And there are changes that are very real and practical changes that make huge differences in the kind of training that people need, the kinds of laws that they are working with, and the kinds of alliances that they need to make.

With respect to the challenges that are faced, I want to expand on, again, the talk that we just heard, that from the perspective of everyday lawyers in Legal Aid offices or *pro bono* lawyers, lawyers are facing new kinds of clients. Seventy percent of the people in public housing in Cambridge, Massachusetts, today were born in a foreign country, and that is a shift that has happened in the last seven years. Superficially what this change means in many parts of the country, even rural areas in the Midwest and the Southeast, is that you are getting more and more and more Legal Services clients who are Spanish-speaking. In places like the global cities, you are getting the array of people from all over the world that you just heard about.

Why is this happening? It is happening, for one reason, because the proliferation of mass culture, consumer culture, and of transportation means is enabling people from poor countries to come to the United States to make money. I am doing some work in Ghana now, and about twenty percent of the gross national product in Ghana is produced from remittances of people who, for the most part, have come to the United States and Northwest Europe, to earn money. So a major industry in developing countries are people who go to rich countries to bring back cash.

It is also happening, this change in the face of who comes into Legal Aid offices or doesn't, because of more complex socio-economic dynamics related to the integration of financial markets and the diffusion of manufacturing processes. Global centers for the coordination of these processes are emerging in large cities all over the world. And with the emergence of those global coordination centers, you are getting new, highly paid managerial professional jobs that, along with them, are generating huge new sectors of low-wage service industries, industries for people to do tear work in homes, service work in offices, restaurant work, and keypunch work. There is a huge proliferation of auxiliary industries that accompany the coordination industries that are developing in these global cities. That is another one of these dynamics that is bringing many, many, many people from all over the world, from poor countries, into these global cities.

Just as another example, I continue to do work in Los Angeles, and there is a conference going on up in Boston right now about Latinos in the Twenty-first Century, and a sociologist from

Los Angeles who is working among Latino domestic workers in Los Angeles is presenting there. What she is seeing increasingly is that the market for women from Latin America, low-income women, to do in-home nanny work has been booming in the last several years. The market for men to do industrial-related service work is waning off a little bit, but the market for women is booming.

What she is seeing is that women in this care market are beginning to move out into manufacturing work. She said Utah has become a big center for manufacturing fitness equipment for the high-end professional, managerial people who need to run on treadmills. And women are moving from the nanny jobs into these peripheral manufacturing jobs in outlying areas of the Southwest. So, you get patterns of movement of people that are creating different kinds of need in the garden-variety Legal Aid programs in every place that they move to.

What does this mean for Legal Aid? For one thing, it means new language challenges. I will absolutely underline that you have to have Legal Aid lawyers who can speak the languages of your clients, especially Spanish. When students come to me at the Law School and say, "What courses should I take if I want to have a career in public interest?" I say, "Take Spanish, first of all, and then find the area studies department for the area you think you are most likely to be encountering immigrants and take courses in the political economy and the history and the anthropology of those parts of the world."

There are new levels of insecurity and instability in the working situations of people. Many more people are doing informal sector work, contingent work, and personal services work in particular that is atomized and privatized in individual households.

I have been paying a lot of attention in the last several years to care work and the issues of care workers, many of whom are imported or drawn into the United States, such as the issues of such basic rights as access to telephones and the right to keep your passport once you have arrived here. The most basic rights of movement and communication are being abused for care workers in cities like Boston, Los Angeles, and New York. It is an area that has not been developed as fully as the work on domestic violence, but it is one that really warrants more concern.

Another challenge, in addition to the challenges in people's work situation, is new dimensions of complexity in domestic situations. Stresses on families, as gender roles change when people emigrate, can produce heightened stress and heightened violence. There are new levels of vulnerability to violence, because of immigration which we've heard about before. And there are complexities related to care and social reproduction, when people are forced to leave their own dependents at home when they emigrate and often have legal issues and legal concerns that relate to the welfare of their dependents back home. All of those are very practical areas where Legal Aid offices are challenged to keep up with the new client base.

How can Legal Aid offices handle these kinds of challenges? One way is through new forms of more community-based, culturally centered methods of outreach and service delivery. A second way is to recognize the necessity to develop new areas of expertise.

The first one on my list was having people trained not just in immigration law, but in the intersections between immigration law and employment law, between immigration law and domestic violence law, between immigration law and access to welfare services. These are unbelievably complicated areas of law, in part, because of the mess that was made of some of these intersections in the legislation of 1996. And you really have to intensively train lawyers to be up to speed in these new areas of law. Another area where lawyers need a lot training is privatized care work and the issues that need to be addressed in order to create the legal frameworks and the institutional frameworks that would permit those rights to even be developed and asserted.

So, in addition to this new expertise, one of the challenges then is the new forms of training for Legal Aid lawyers, for law students interested in going into public service work, and for lawyers who are doing *pro bono* work. New forms of training have to be established in language, culture, the political economy of immigration in particular, in labor and new labor strategies, in violence and domestic violence, and in care.

A second challenge that globalization is placing on domestic legal services is brought about by pressures on our domestic systems of social welfare provisions, including legal services, and

I consider legal services one form of social welfare provision which has been brought about as a result of different global pressures. Those pressures of globalization are prompting retrenchment and restructuring of social welfare systems in all of the advanced industrial countries.

In their heyday, different advanced industrial countries had distinctively different social welfare systems, so that the Swedish social democratic system looked very different from the German corporatist welfare system, and that looked very different from the U.S. liberal, minimalist, market-connected social welfare system.

Today, many scholars of comparative welfare are noting that these different kinds of social welfare systems are converging. They are all converging in the direction of a more minimalist system, and they are converging in direct response to pressures from globalization. In particular, one scholar of this trend, Paul Pierson, has noticed three systematic ways that welfare states and welfare systems, including that in the United States, are retrenching or reorganizing in response to globalization.

A first move he calls "re-commodification," which involves removing welfare entitlements that would give low-wage workers more power to exit from dangerous or undesirable work situations in order to improve them. In the United States, that translates into the contraction that we have seen in welfare entitlements that you could get without a work test or having to prove that you are unable to work. This, again, is something that is happening all over the world, or all over the industrialized world.

For legal services, this re-commodification of welfare means several things, and this is something that affects both U.S. native-born clients and immigrant clients. More clients are going to be working at low-wage jobs, often at marginal jobs. More of these clients, particularly women, are going to be facing new kinds of legal issues regarding their care needs, because the welfare entitlements which were not work-tested have been taken away as part of this retrenchment. More medically and psychologically challenged clients who will have no sources of income except work, and therefore issues of job accommodation and disability advocacy, are going to become more salient. And also, because of the absence of an exit strategy to enable clients to assert rights

at the workplace, you are going to find more need to develop alternative ways to support the clients' enforcement of their work-related rights.

A second trend in welfare retrenchment is what Pierson calls "cost containment." Here, what you're seeing is welfare states seeking to cut their overall burden of social expenditures—their national budgets. This pressure is arising from the idea that national economies will be more robust participants in global trade if they come into the global marketplace with low deficits, balanced budgets, and strong currencies.

The first trend, toward re-commodification, is more stimulated by the notion that firms will do better in the global marketplace if they can be lean and mean and not burdened down by a lot of labor costs that are not absolutely essential.

The second trend has animated the elimination of a lot of peripheral welfare programs that have, by and large, supported the family stresses of women, children, and families. Programs related to supplemental programs in the public schools, the public health system, and the social welfare programs that are critical for alleviating some of the family stresses of poverty. This trend translates into new levels of social and familial stress that legal services programs are seeing manifested in, among other things, domestic violence and other kinds of dysfunction in families. It also translates into those agencies that had been there to deal with those stresses not being there, so that Legal Aid programs are being asked more and more to serve the function of basic social support programs, just as public schools are. So you are getting that added stress on legal services.

A final trend is something that Pierson calls "recalibration." This trend in welfare states involves top-heavy, bureaucratic approaches to welfare delivery being challenged as cumbersome, inefficient, dysfunctional, and getting replaced by more complex, hybrid, multi-sectarian, decentralized, privatized, performance-driven, participatory forms of service delivery. This is the reinventing government kind of theme that Al Gore has pushed so hard. This theme was a big part of welfare reform, and it translated into the delivery of the remaining welfare entitlements, not into the hands of clients through formal clear-cut legal entitlements. It enabled the Legal Aid lawyer to go after the state as an adversary in a fair hearing. Instead, what you are get-

ting now is that welfare entitlements are increasingly being delivered through negotiated contracts with private providers who are required to offer performance-evaluated services to whole groups of clients, like managed care and health care. Then individual clients have to negotiate with those private providers for packages of services.

This radically important change in the delivery of welfare services has completely shifted the way that Legal Aid lawyers have to approach advocating for clients against the state. They have to find new entry points for advocacy, they have to find new kinds of legal strategies, and they have to familiarize themselves with entirely new sets of background legal rules. Matt Diller is writing an article, which will come out soon, that describes this enormous shift in the context of welfare advocacy in the United States, and Barbara Bezdek is also working on it. It creates a huge change in the most basic business as usual form of Legal Aid work with completely domestic native-born clients.

These three pressures on welfare states have also created similar kinds of shifts in the internal funding and structuring of Legal Aid programs, making the programs through which we are providing the services stressed at the same time that the programs we are trying to advocate against are being changed. All the familiar cutbacks that we know about in Legal Aid itself can be seen in this light. So you've really got profound structural challenges in domestic Legal Aid that have been triggered by these kinds of global forces and global pressures.

At the same time, just to conclude, I want to reiterate the conclusion of the last talk, to say that globalization has also brought with it some new opportunities, new opportunities that are very exciting in the context of grassroots poverty advocacy. There is a new human rights movement, human rights rhetoric, human rights instruments, and human rights fora that can be utilized effectively in some cases in domestic legal services advocacy. There are new social movement opportunities, that are in some cases really robust, that you can join with; new stress and methods of building local community-based institutions as part of Legal Aid work; and new styles of participatory, client-centered, direct, educational, and empowerment-oriented work with clients.

All of these new approaches to the work and new opportuni-

ties for partnership with other organizations that are also seizing these opportunities are definitely more than the silver lining to the cloud. It really creates an entire new world of possibility in Legal Aid.

To conclude, I have been working with Jennifer Gordon and Frances Ainsley, who teaches at the University of Tennessee, recently to do case studies of forty new legal services organizations, all of them NGOs within the United States, that are working on the issues of immigrant worker rights. We identified forty organizations that were exciting enough to do detailed case studies on, and there are remarkable things going on within Legal Aid in the United States in response to these global pressures and motivated by these global opportunities. It is just that we really have to think outside of the box a little bit in order to see what these are.

Thank you very much.

MR. DOWDLE: Okay, I'll open it up for questions or comments. Yes, sir?

AUDIENCE: Reference has been made periodically to different laws that get passed which have a tremendous impact on what these organizations attending here are all about, such as the immigration law of 1996 in the United States and the welfare laws that were passed. I am wondering if there is some umbrella group to which you all, or many of you, may belong which attempts to monitor and head off this kind of legislation before it becomes passed and becomes a nightmare, so that you can use your resources more effectively and economically by not having to devote them to things that become a *fait accompli* politically? That is the first question.

The second question for Professor Bamberger: As far as the World Bank and how progressive it may be in its policies, my guess is if you spoke to your Republican friends, as few as they may be, that if it came to Jesse Helms's attention, he might try to do something about it, which would try to cut back on that.

I think this is a case where globalization has had, or may have, a good effect on neutralizing the power of the United States as a major economic player and might tend to somehow make us more positive by preventing us from using our clout as we have done in the past.

As far as Pinochet is concerned, I am wondering if the

globalization that has come about is sort of a reverse kind of a movement. Has it had an impact on Chile where the cultures from other countries—such as Spain and what Spain has done, and what Britain more or less tried to do—have had an impact and made the Chilean people more bold, perhaps the Chilean lawyers, and given them some hope and encouragement in terms of what happened in that case?

MR. DOWDLE: Do you want to comment?

MR. GONZALEZ: Well, the Pinochet case has had a tremendous impact on the work of the courts in Chile. As a result of the Pinochet case, the courts now are conducting a more serious investigation about the human rights violations which occurred during the dictatorship, and they are also interpreting the amnesty law in a way more beneficial for the victims. Some Supreme Court decisions also have stated that they have taken the international doctrine on the forced disappearance of persons; according to which this is a permanent crime and a continuous one, so the amnesty law will not apply to them as long as the fate of the person who disappeared is unknown.

Well, it was a paradox also, because many people who are from a very open economy in Chile were saying at the time of the Pinochet detention, "What is this? Spain and Britain are intervening in our internal affairs."

PROFESSOR WHITE: If I could just make a brief comment about your reference to the 1996 welfare law. There is a national coalition of folks, headed by Peter Edelman at Georgetown and a few other people, to organize widely with respect to the reauthorization of the welfare law, which is coming up in 2002, I guess. I think that there were lots of people doing lots of work before 1996 that didn't get anywhere.

I think one lesson that people are trying to learn is to be more cognizant of the background of political and economic forces in which these laws are being enacted so that we don't advocate for things that are clearly off the radar screen in terms of possibility, and instead become a little bit more savvy about the changes that we really push hard for. And the coalition that is organized around the reauthorization, I think, has really got its act together with respect to that question.

So I would just suggest if there were some effort to coordi-

nate something here, that you at least are in communication with that group.

MR. DOWDLE: Okay, last question.

AUDIENCE: This is really a comment, and I think it is from the developing countries' perspective. The impact of globalization on our economies and world structure adjustment programs has meant that countries are losing jobs; they are shrinking. So just as we get democracy, human rights, and our great constitutions, we have to deliver all these things—in South Africa we have lost half a million jobs. That throws extra burdens on legal services and everything else as well.

That has been one of the consequences that happens in Eastern Europe. It is happening in all the developing countries. And even now, when President Clinton visited us last year and said we are going to move from aid to trade, when we start looking at trade, we find there are all sorts of barriers. This is why you got what you got at the World Trade Organization and elsewhere, and I am sure it is going to arise again.

You had the same with the European Foundation. We are still trying to negotiate our agreement, because we are fighting about things. Although there is a lot of rhetoric and democracy is good for us, at the same time the playing fields are not always level, I think, and that is a big problem for developing countries.

PROFESSOR WHITE: That is a huge problem that has really been recognized and written about widely, the imposition on national sovereignty that the International Monetary Fund, primarily the IMF conditionalities, and the World Bank create. That is directed against the IMF.

That is a role that people really can play, because it is kind of a direct contradiction between these economically tied conditionalities and this generic move to promote democracy that is going on sponsored by the World Bank in the very same countries whose real powers of sovereignty are being constrained.