

1998

Opening Address For The Seventh Annual Stein Center Symposium on Contemporary Urban Challenges

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Recommended Citation

Peter Edelman, *Opening Address For The Seventh Annual Stein Center Symposium on Contemporary Urban Challenges*, 25 Fordham Urb. L.J. 685 (1998).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol25/iss4/2>

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OPENING ADDRESS

*Peter Edelman**

Thank you so much, Michael Cardozo. I am deeply honored that you, Matt Diller, and everybody else who was involved in putting together this really important conference asked me to come and offer these remarks.

There are so many people sitting here on this platform and sitting out there in the audience who could be standing up here saying what I have to say; indeed, Michael Cardozo just said a whole lot of what I have to say. Some of what we need to do, in fact, we know, and it's just that it is hard to get it done. But for me to stand up here when there are people here from all over the country, from all over the city, who have given so much, done so much, know so much about these issues that we are here to talk about, it just makes me doubly and triply honored to be standing up here.

So I will at least try to get us started. I wish I could stay; I have to teach at nine o'clock tomorrow morning, and so I will have to run back. But, it is just so important that this meeting is going on, and we need of course not only to figure out strategy, but also to carry it out and be effective.

We do meet at a challenging time for lawyering to the poor. We all know budgets have been cut, and that there is an unrelenting attack on the poor and on lawyering for the poor. We had a brief flicker of idealism — at least I thought I saw it after the 1992 national elections. That's gone.

Statutory frameworks governing the poor are less and less friendly; the Constitution of the United States is read more and more as a kind of replay or reinvention of *Lochner*,¹ with the Supreme Court's role being to protect the private market order that we are told in many ways, over and over again, is the natural state of things.

But I did use the word "challenge" advisedly, because in crisis there is always opportunity, there is always a time to reassess. This

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1. *Lochner v. New York*, 198 U.S. 45 (1905).

is the time to chart the future, to figure out new approaches, to seek new allies and new commitments.

I suggest we start the conversation with a governing principle: that our resource to do lawyering for poor communities is and has to be the entire Bar, including the law schools, the corollary being that a narrow definition of who does lawyering for poor communities was never right and is particularly inappropriate now. Maybe there was a view once upon a time that we could get federal funding to increase to the point where it reached the general realm of adequacy. I think we know now that that's not going to take place in the near future. Indeed we do have to keep up the fight for federal funding. It is absolutely essential. It is at the top of the list, along with the relaxation of the restrictions on legal services.²

We also have to add state funding to that list. There is pending in New York State right now, as I think most people in this room know, with very strong support from the Bar and already endorsed by the Democratic Majority in the State Assembly, a proposal to make \$40 million annually available from civil filing fees for legal services to the poor. If you permit me to say, as someone who does not live in this state, it should be enacted. At least a dozen other states have drawn on filing fees as a financial source for legal services, and it would strike me that New York should do the same. The proposal doesn't involve an increase in fees; it's a question of allocating a portion of the funds that go into the general fund right now.

Of course there are other possible sources of money from within the State — punitive damage awards, unclaimed class action damages, lawyer registration fees, and other interest-bearing accounts — besides those that are already tapped for legal services. And yet, while all of this — federal and state funding of legal services, and the legal services model — are an absolutely essential part of the answer, they are not the whole answer. We need to broaden our sights.

The challenges for lawyers to work on reducing poverty are broad. They include lawyering for fundamental, structural societal change, for basic and serious policy change, for achieving consistent policy application, creating and strengthening community in-

2. Restrictions were recently enacted that prohibit lawyers who receive federal funds for the provision of legal services from engaging in certain activities. *See, e.g.* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321, 1321-53 (1996); *see also The Future of Legal Services: Legal and Ethical Implications of the LSC Restrictions*, 25 FORDHAM URB. L.J. 279 (1998).

stitutions that help the poor, and case-by-case representation. This is a long list, but I think it is very important that we commit ourselves to all of it.

To even begin to meet these challenges, I would suggest that the private Bar has to take on a greatly increased responsibility. This is not *the* answer, but it is an essential part of the answer. Law schools, both faculty and students, can do more too, and while I'll say less about it with Alan Houseman and others here to discuss the details, legal services offices, even with budget cuts and statutory prohibitions, need to reexamine the way they spend their time to make sure that they are being as productive as they possibly can be with those precious limited resources that they have.

Let me begin with something that precedes policy formation: passion. Passion. Especially a passion about the fundamentally unjust social and economic arrangements that permit persistent, ever-deepening, and inexcusable poverty in this fabulously wealthy nation.

Something has gone out of our politics. Despite increasing wealth in this country, the income of the poor not only constitutes an ever-decreasing share in the pie, but it actually keeps going down in absolute terms as well. Well over half the population continues to lose ground in its share of the pie.

More than two decades ago, the late economist Arthur Okun lamented the fact that the income of the top one percent of earners in our country equaled the income of the bottom fifth.³ Now the income of the top one percent equals the income of the bottom thirty-five percent.⁴ We have had a huge negative change in a twenty year period.

And poverty is deeply concatenated with issues of race and gender. We all know African-Americans and Latinos are poor at three times the rate of Whites, and yet the President of the United States can convene a blue ribbon review of race relations in the United States and the racial connection to poverty is yet to be mentioned. We will not seriously affect poverty or be effective as lawyers for poor communities if we do not strongly assert and reassert a view and take an advocacy role on the structural framework that creates and perpetuates so much poverty in this country, and do so with passion.

3. See Arthur M. Okun, *Equality and Efficiency: The Big Tradeoff*, in SEMINAR AND READINGS ON JUSTICE AND SOCIETY 121 (Aspen Institute 1997).

4. See John Accordino, *The Consequences of Welfare Reform for Central City Economies*, 64 J. AM. PLAN. ASS'N 11 (Jan. 1, 1998).

Lawyers are the preeminent political actors in our society. Maybe that should be otherwise, but it is a fact. They constitute a plurality, if not a majority, in most legislative bodies, at least at the state and national level. Lawyers have close connections to the most powerful people and institutions in our country. Yet, if you look at bar associations across the country, with notable exceptions here in New York State and here in New York City, very few take an interest in issues of poverty and, in particular, the structural questions. Very few lawyers, organized or unorganized, speak to the structural issues that form the map of poverty in America. We need to change that.

Second, we need lawyer involvement in policy adoption and implementation. That is a different category from structure. Even in the absence of challenges to the fundamental structure, policies are constantly being adopted that affect the poor. This, in particular, is an important time. We are in the process of implementing the most important national policy change⁵ affecting poor people since the enactment of the Social Security Act of 1935,⁶ and this policy change has the greatest negative potential of any in our history.

Devolution means that there are fifty-one theaters of action. Simple arithmetic suggests the need for more players if there is to be any chance of effective advocacy on behalf of the poor in this decentralized world.

The first round of new framework creation has now occurred in legislatures across the country. New York's outcome, while it is not exactly thrilling, is certainly far better than what Governor Pataki proposed. And that is due to the hard work and advocacy of a lot of people who are in this room, as well as others across the state. That did not happen by accident.

So you've already been busy, you've already been doing what I'm talking about. A major challenge now is to monitor the process of implementation on the ground. It is proliferating down to thousands of counties around the country. Paying careful attention to implementation is absolutely vital. What happens when the law is applied to real people can be either better or worse than it looks on paper. Indeed, decisions at the line level, at the street level, at the bureaucrat level about people's lives, are at the heart of what this welfare law is about.

5. See, e.g., Lindsay Mara Schoen, *Working Welfare Recipients: A Comparison of the Family Support Act and the Personal Responsibility and Work Opportunity and Reconciliation Act*, 24 FORDHAM URB. L.J. 635 (1997).

6. Social Security Act, 49 Stat. 620 (1935).

On one side, the issue is better training: better oversight within agencies of workers as they undertake this job. On the other side, however, is the knowledge that there are advocates, lawyers, and others watching, watching to make sure that where the rubber hits the road, people are treated positively and with dignity.

The legal services community in Ohio is getting involved in the county-by-county implementation of the new welfare law there. They are taking a leadership role in bringing people together from a variety of organizations from different professional bases that do not necessarily talk to each other every day otherwise. That is really important, and it is going to make a major difference, I think, in whether people are going to be helped or not to move from welfare to work, and for those who should not be working, to be able to stay home with their children and not be pushed around.

I for one do not believe that enough jobs are going to appear for all of those on public assistance who are supposed to find work, even in the absence of a recession. We are talking about relevant geographically accessible jobs. Not just any job, but a job that is relevant to a person who is on welfare who's supposed to find one, and — I don't have to say it to the people in this room — we must not believe the hype.

The President is out there, people are out there, politicians are out there all over this country saying, "It's working, it's wonderful." The fact is that the welfare rolls, with all of the hype, have only gone down to the level they were at in 1989 before a bubble started with the recession of the early 1990s.⁷ The further fact is we are talking about an additional three million people: adults with children whose families are on cash public assistance who are expected to be off the welfare rolls by the time the time limits hit. That is a major project.

The people who have gotten jobs so far are those who tend to go off the welfare rolls when times get better; the people who have not been reached yet are those who have less education, less skills, and more personal problems. The heavy lifting hasn't started. And in our largest cities, with New York City at the top of the list, and in isolated rural areas as well, the jobs are not there in sufficient numbers even now.

There was a terrific piece of journalism — and we need more journalism like this — on the front page of *The New York Times* on August 31 that documented in human terms the difficulties that

7. See Eleanor Mallett, *Going to Bat for Welfare*, *THE PLAIN DEALER*, NOV. 25, 1997, at 1E.

women are having right now finding jobs in New York City at the top of the business cycle, let alone when a recession hits.⁸ In New York City this has meant resorting to a workfare approach that is of dubious utility at best, and those of you who have been working on this know that is an understatement, to call it even of any utility.

The damage that workfare is doing in New York City should be documented and publicized. The litigation⁹ that is ongoing about workfare in New York City is useful, but it should be accompanied by a political strategy and by more attention to preventing individual people from being pushed around. All of this is a role for lawyers, now and in the future.

Even more fundamentally, we should be talking about a real job strategy instead of workfare, and right now we need to be pursuing strategies to obtain a living wage for the large number of people who have found work but are not able to escape poverty. You shouldn't have to go to work, do everything that society asks, be out there working full time, and not be able to get out of poverty. That should not be the outcome.

A long list of things is needed to help people keep jobs once they obtain them: child care, health coverage, transportation, literacy and other education and training, substance abuse treatment and mental health services, and coaching to assist people in making it on the job.

We need to keep pointing out that there are people who are not in a position to work, either because they have responsibilities to care for a family member at home or because of personal problems or limitations. Also, it is vitally important that we make the case for restoration of a safety net for children, for those families for whom work is not available or is not appropriate. The worst single thing that this law did was to blast away the safety net, as limited as it was, that we did have.

There are roles for lawyers in all of this: helping to build the staff coalitions to work the Legislature and engage in administrative advocacy; litigating about policy wherever useful; and representing individuals who are pushed around by the bureaucratic regimen that now governs their lives.

8. See Rachel L. Swarns, *In Bronx Club, Welfare Mothers Prepare for Jobs and Then Wait*, N.Y. TIMES, Aug. 31, 1997, at A1.

9. See, e.g., *Tormos v. Hammons*, 658 N.Y.S.2d 272 (App. Div. 1997); *Kassler v. Wing*, 658 N.Y.S.2d 94 (App. Div. 1997); *Mitchell v. Barrios-Paoli*, No.400896/97 (N.Y. Sup. Ct. N.Y. County, Sept. 24, 1997); *Bruckman v. Giuliani*, 174 Misc. 2d 26, 662 N.Y.S.2d 914 (Sup. Ct. 1997); *Church v. Wing*, 229 A.D.2d 1019, 645 N.Y.S.2d 356 (App. Div. 1996).

The number of families and single people put in jeopardy by the recent statutory changes is massive. It encompasses not only welfare, but also disabled children, mentally impaired adults with drug or alcohol problems, immigrants, and general assistance recipients affected by state law changes. There have also been deep cuts in low-income housing programs.

Strategies to create individual representation, and not necessarily by lawyers, by the way, are essential. New strategic partners to create client flows instead of waiting for what comes in the door are essential. Client sources can include non-profit community organizations, government agencies, schools, health providers, and so on — a long list.

Third, there are new roles for lawyers in helping to build and strengthen community institutions. This is not a new idea, to be sure. But it cannot be said too often that any lingering romanticism about exclusive reliance on big case litigation as *the* avenue to social change needs to be laid aside. Litigation has its place (in sympathetic state courts and sometimes in federal courts) for the occasional winning constitutional issue, or when a state is systematically misinterpreting or violating a federal statute.

But, especially with the pressures created by the new welfare law, it is all the more important that a variety of new community institutions be created. Jobs that are created as a result of community economic development do double duty: they help to renew neighborhoods, and they provide employment in accessible, and one hopes stable, enterprises that are close to home. Community building needs to become a major focus of lawyering for the poor. Indeed, if there was one thought that I could leave tonight, and that I hope will be a major focus of this conference, it is that.

The transactional and real estate development and venture capital skills of lawyers in private practice should be harnessed to the tasks of economic development and community development in low income neighborhoods. These are skills that many legal services lawyers do not have, or don't really have the time to exercise, although the economic development work of Brooklyn Legal Services Corporation A with community-based non-profits, which you're going to hear about at this conference, is a tremendous example to the contrary.

Private practitioners add other dimensions as well. They come with contacts in the banking, business, and political arenas that legal services lawyers do not have. Just the task of helping to create the best possible supply of affordable child care of acceptable

quality is something that lawyers can assist with in very significant ways.

Indeed, one purpose of this conference is to showcase a number of exemplary projects where lawyers and community organizations and organizers are working together in new ways. The work of Brooklyn Legal Services Corporation A, the Workplace Project and Jennifer Gordon on Long Island, and the Environmental Justice Project of New York Lawyers for the Public Interest, are models which really do show the way, I think, for the future.

Returning to the discussion of possibilities for the private Bar, I was particularly struck in reading the report of the Law Firm Pro Bono Project,¹⁰ which I know many of you know about, about the work of and the story of Leonard, Street & Deinard, a firm in Minneapolis. It is important to me personally because my father practiced with that firm for nineteen years before establishing his own firm after World War II. What this 120 lawyer firm has done is to adopt an entire neighborhood. They opened a legal services clinic in the neighborhood and they put it in an existing community health clinic. And the nice part of that story is that the community health clinic happens to be run by a physician who is the son of one of the founders of the law firm.

The law clinic handles the typical case load of a legal services office, but the firm also serves as counsel to a number of neighborhood non-profit organizations. It worked on affordable housing; it helped bring a grocery store to the neighborhood by doing the legal work on that deal; and it was involved in the building of a community center and the structuring of a revolving loan fund for home repairs. It also worked on a lead paint abatement project and wrote a number of community brochures on legal issues. And it currently writes a monthly legal information column in the community newsletter.

This example communicates the possibilities, much more than any hypothetical description that any of us might offer. It is concrete, it is real, and it says this is what can actually be done. The idea of a neighborhood law clinic run by a downtown law firm is not a new idea, but this model is completely up to date. The firm is fully involved in the task of community building, as well as in representing individuals. I think that is really important.

10. See ESTHER F. LARDENT, 1995 LAW FIRM PRO BONO CHALLENGE REPORT 15 (1995). The Law Firm Pro Bono project is a project of the Pro Bono Institute and the American Bar Association.

And as far as I have been able to ascertain — if I'm incorrect, I'd be very happy to be proven wrong — I don't think that there is a law firm in New York City that operates a neighborhood law office. Not that we have a lot, I might say, in Washington, but Covington & Burling in Washington has run one for many years.

There are other things law firms can do, of course. A law firm can adopt a school, offering legal representation to all families in the school on the myriad of problems that poor families have. Law firms can offer their lawyers rotations through legal services offices, public defenders offices, as a number of New York firms do and more should, and, of course, law firms can finance fellowships for young lawyers to do public interest work, the Skadden, Arps program¹¹ being the spectacular prime example of this.

Lawyers who take early retirement can attach themselves to community-building efforts on a full-time basis. Lawyers experiencing a midlife crisis can do something useful instead of buying a red sports car. And we should not be shy in asking law firms to do more, because, you know, when we ask them, we are giving a gift, you see, an opportunity to work on the most important issue that we face as a nation. The list of relevant issues that lawyers can help on is just endless: not only the multiple problems of individual families, but zoning, toxic waste disposal, brown fields cleanup, reducing gun violence, and on and on.

There are 700 firms in the country that have over fifty lawyers.¹² The ABA Pro Bono Project has signed up 160 of them to donate either three percent or five percent (there are two levels offered by the Project) of their billable hours to pro bono work.¹³ There is tremendous potential in this. And we can do so much more.

I think it is time to revive the discussion of mandatory pro bono work within the Bar, certainly on a state-by-state basis, and nationally as well. At the very least, mandatory reporting of pro bono activity would be a good step.

Fourth, I would suggest — and I know this has been a matter of some discussion here in New York City — that there should be organized in every city large enough to support it a non-profit pro bono intake center, clearinghouse, and strategy coordination

11. The Skadden Fellowship Program, sponsored by the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, was founded in 1988 and currently offers twenty-five fellowships per year for public interest legal work.

12. Telephone Interview with the American Bar Association Law Firm Pro Bono Project (Apr. 24, 1998).

13. *See id.*

center on poverty law issues. The model for this, of course, is the Lawyers' Committee for Civil Rights Under Law. Especially with the restrictions on legal services offices, class action litigation that challenges large-scale failures and misinterpretations of policy needs a strategy central. So do legislative and administrative advocacy efforts. In other words, if you take the broader view that I was talking about that starts from structural advocacy and goes through larger policy advocacy, I think it makes the case even stronger for this sort of a center. Community building agendas and the multiple neighborhoods of a large city will be served more efficiently and more fully if there is a central pro bono clearinghouse. And, of course, the substantive issues constitute a long, long list. Financing should be relatively easy if there is a commitment to do it in terms of local foundations and law firms supporting it. I think it makes sense.

Now, I recognize that the Bar Association and New York Lawyers for the Public Interest are already doing a lot of the things that would be involved in what I'm talking about, but I do think that there is room for an over-arching entity to create a strategic focus. I think that could be a useful addition and all of that could fit together.

I want to suggest for discussion here, in the next day, and elsewhere if it's worthwhile, that it is also useful for the legal services community to do some rethinking of its role. I know that it is hard under these circumstances with all the cuts to even get through the day worrying about who's going to be turned away and who's going to be served, without being told you've got to change the way you do business. So I say that with trepidation. But nonetheless, it seems to me that the legal services office in a community might begin thinking of itself partly in a more catalytic role. The question in each case — in some cases anyway — might not be, "Do I sue?" or, "How do I personally handle this matter?" It might be, "How do I maximize the limited resources of this office? How do we maximize the participation of the rest of the Bar? How do we make alliances with community development corporations, health providers, public health advocates, human services people, the business community, trade unions, the faith community, to change policy, to build community institutions, to get maximum involvement in helping people? How do we contribute to educating people in the community to be able to help themselves whenever possible without need for a lawyer? How do we insert alternative

dispute resolution perspectives into our work?" All of this, it seems to me, is a challenge that is worth considering.

A fifth point in a strategic approach is taking another look at how we more systematically make use of what we might call extenders. Whether catalyzed by the legal services community or by others, there are so many areas — and I think everyone knows this — where representational help can be done by people who are not lawyers. This is not a simple proposition, particularly if we're talking about volunteers, because people, especially in the neighborhood, are often not in a position to volunteer. They are just trying to survive and they need to get paid.

There are so many areas of possible application of this idea, in the child welfare system, in individualized education plans for special needs children, in SSI¹⁴ determinations and redeterminations, especially for children and substance abusers, and in welfare fair hearings. So, this is a subject that is not new, but one where there may be some possibilities that have not been exhausted.

Sixth, I also think it is time for some renewed thinking on how we get legal services to people whose income is not below the poverty line, but who nonetheless cannot afford to go to a lawyer. We know that this is a very, very large group of people. One reason — if I could just take a step back on this to give you some perspective — one reason for the paucity of our politics concerning the poor is that we do so little to acknowledge and respond to the problems of people who are just above the poverty line. They struggle daily to make ends meet and what they see are welfare recipients threatening their jobs now. What they see are welfare recipients being offered child care subsidies that in many states they are not going to receive, even though they are equally in need of help, although I am happy to say that there are a few states like Illinois¹⁵ and Minnesota¹⁶ that have committed themselves to end the waiting lists for child care for everybody who needs help. More states should do that.

What those people who are on that next rung of the ladder see is lower-income people who have health coverage through Medicaid when they have nothing. And of course they hear politicians whose strategy is to divide and conquer, who exploit their anger

14. "SSI" is an acronym for Supplemental Security Income.

15. See Linda Edelman, *States Stave Off a "Battle at the Bottom:" Illinois is Giving Day Care to All 30,000 Families that Need It*, CHRISTIAN SCI. MONITOR, July 29, 1997, at 1.

16. See *id.*

and encourage their bitterness. We need a politics of fairness; we need policies of fairness. One place to re-invigorate our efforts is in the area of legal representation.

So, are there ways that we can encourage practitioners to create small firms that serve "regular people?" Can we do more with pre-paid models, what we have called "Judicare"¹⁷ — that, like HMOs, provide legal assistance without a specific fee for service when the need arises? What barriers of law prevent businesses or trade unions or churches from organizing or arranging for such coverage for their employees or members? I think this needs to be on our agenda for the twenty-first century.

I haven't talked much about what law faculties and law students can do, and some of this is, of course, both obvious and complicated. Clinics are not cheap to operate. I know this as both a former Associate Dean and former, and hopefully again, future, clinician. Yet I think we could do more. Just as classroom professors should not teach from dog-eared notes, clinicians should be ready to adjust their focus to the cutting edge.

Equal justice foundations where law students raise money so fellow students can do public interest work in the summer are growing at almost every law school. Pro bono activities by students during the school year are increasing. Every one of the activities that I've discussed can be a place where students can get involved, whether as part of a class or on an extracurricular basis.

Faculty should at least be teaching the facts and the policy issues in a current way, because the map of poverty policy is changing, as we know, in major ways. So at the very least curriculum content should keep up.

Fordham University School of Law has a grant from the IOLA¹⁸ Fund in New York for its students to do clinical work and externships on welfare issues at a neighborhood legal services office of the Northern Manhattan Improvement Corporation in Washington Heights. The City University of New York Law School recently got a grant from the Open Society Institute for clinical students to help asylum seekers who are detained at Kennedy Airport and to expand community education efforts on naturalization and public benefits issues. Of course, the list of good things that are happening in law schools to help low income people, including at my own law school at Georgetown, of which I am very proud, is a long one.

17. Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 589-90 (1994).

18. "IOLA" is an acronym for Interest on Lawyers Accounts.

But we need to see more such efforts and we need to see more efforts that connect students to the world of policy formation and advocacy. As vital as case-by-case efforts to help individual people are — and we need to increase those — we sometimes miss the rest of the boat by not raising our sights to look at the legislature and the commissioner's office and any other place, including the street, that might be relevant to policy change and even structural change.

I need to say I found this a difficult talk to write. Lawyers were in the forefront of the struggle against poverty when it started its contemporary phase in the 1960s. The steam has gone out of that commitment as a country. Not in this room, but as a country. I think that happened partly because the commitment of lawyers has been the target — indeed, the country's commitment — has been the target of such a sustained, unremitting attack, and maybe also because litigation has become tarnished as a tool of change and we haven't found a replacement for it that has household acceptance in the legal culture.

I am heartened by the commitment I see in many of today's students and by the increasing interest in the private Bar, but it has no reflection in our larger politics as yet. So what we ultimately need is not just representation, not just help in building new institutions in particular communities, as critical as that is, but a movement: a revitalized, broad-based movement for economic, social, and racial justice in America. As lawyers and as citizens that's the ultimate challenge I would lay before us tonight.

Thank you so much for the chance to be with you.

