

Good Intentions Gone Awry: Why We Really Don't Have Meaningful Client Involvement or Client-Centered Legal Services

The thesis of this paper is stated simply: While client involvement and client-centered legal services are core values of federally funded legal services, these core values have become meaningless in the day to day operations of the vast majority of legal services programs. No one wants to admit it. No one wants to face up to it. Yet this is a problem that we can no longer evade. We need to figure out what went wrong and why it went wrong.

In the past three years, through the vehicle of state planning, the Legal Services Corporation has been in the process of urging, cajoling and finally requiring legal services programs to examine the ways in which legal services are delivered to clients, focusing on developing a statewide delivery system, as opposed to improving service delivery within individual programs. This is the first real national initiative focused on service delivery emanating from the Legal Services Corporation in almost twenty years. State planners have also been asked to evaluate how legal services programs interact with each other and how that interaction can be improved to avoid duplication and how resources can be shared.. Most importantly, LSC has mandated that other stakeholders be involved in the process and that the process not be just an intermural affirmation of the existing structures. Interested parties, not tied to particular legal services programs, are often willing to look at the situation from a fresh perspective and bring new insights on how things might be improved. Most of the people who have looked at the present system have come to the conclusion that things can be improved and made more efficient and effective. Is it surprising that after almost twenty-five years of essentially the same program structure, that changes should be made? After all, the present service area of many programs was determined often as the result of a political compromise

made long ago for reasons that are no longer relevant. Looking at program delivery and program structure from a statewide perspective helps people to take off the blinders of tradition and habit and to take a new look at how legal services might be delivered in today's world with today's technology.

Change is difficult. The state planning process has raised some difficult questions. They are questions that require honest answers. Are the current ways that legal services programs represent clients the most effective and efficient ways to deliver legal services to low income clients, given changes in technology and changes within the client community over the last twenty years? Are there better ways in which programs can be organized to deliver legal services more effectively within a state? Do low income people throughout the state have relatively the same access to the same kinds of legal services? If there is a better way to deliver legal services to clients, does that better way require reconfiguration of existing legal services program service areas? Some, when faced with these questions, have backed away from the obvious answers. Others have decided to move forward and to begin to make some changes. We are all creatures of habit but we are also creatures who are capable of change and adaptation. Some exciting things are beginning to happen.

Some states have come up with answers that are both innovative and new. They are based on a truly fresh look at legal services within a state, an examination that is not tied to old structures and boundaries. Some of these states have decided to reconfigure the existing programs. Other states have decided to develop new ways in which existing programs can work together. Of these decisions, reconfiguration is often the most difficult decision to accept. It is difficult not just because people lose their jobs but because many people in legal services have

truly given of themselves to their programs and abandonment of old institutions, not matter how phrased, seems like a devaluation of the work done by these staff and board members. The truth is that these reconfigurations, where necessary, merely reflect that times have changed and that no program structure is divinely ordained or destined to remain unchanged forever.

All of this brings us to client involvement and client-centered legal services. As we have looked at program delivery and program structure, we now need to look at how clients can and should be involved in existing legal services programs. The past can teach us some lessons and in some cases provide ideas about what won't work and what will work.

As was mentioned earlier, client involvement and client-centered legal services are core values of federally funded legal services. Arising as it did out of the social activism of the late 1960s and early 1970s, federally funded legal services programs embraced the importance of client involvement and client-centered legal services as an essential part of its philosophical underpinnings. It was one of the ways in which federally funded legal services programs distinguished themselves from earlier legal aid programs. Even today, there are few, if any, legal services staff members who would say that legal services should not be client-centered or that clients should not be involved in setting policies for the program and in the resolution of their own legal problems. To most of us that comes as no surprise. To a private lawyer, it would sound very strange indeed. Because lawyers are the experts in the law, it sounds strange that the non-expert, the client, would have any involvement in legal decisions beyond the ultimate approval to proceed.

The real area of confusion and sometimes disagreement is not with the concept but with the definition of "client-centered" and the way in which clients should get involved in legal

services delivery. Around this issue there has been confusion on both sides. The extremes are obvious. There have been clients who thought that they should dictate what and how the lawyer ought to proceed and there have been lawyers who thought that clients should listen closely and do exactly as instructed, even if those instructions were inconsistent with what the client wanted to accomplish. Neither of these people define correctly what it means to have client-centered legal services or client involvement in legal services. Yet, apart from this confusion and disagreement about definitions, an argument can be made that the structures adopted to support the core values of client involvement and client-centered legal services were doomed from the beginning. These structures were doomed because they were inflexible and because they were imposed from above.

The early years of legal services provides us with some insights about what went wrong. Whatever its faults, OEO Legal Services had a clearly articulated mission. The role of OEO Legal Services was to work with client groups to readjust the political and economic power of low income people. Out of that mission came the priority of working with groups and using the legal system to advance the rights of groups of low income people through test litigation. Real poverty lawyers worked in the neighborhoods of large cities where poor people lived. The low income community was the client and success was measured by how much power, economic and political, the community was able to capture. Only secondarily did it matter how individuals within that community fared. It was assumed that as the community improved, the lives of individuals members of that community would also improve. In this situation, client involvement was ongoing and organic. Legal services programs were client-centered but largely in the group sense. And while this may be an over simplification of the process and the mission,

it is largely true. However, institutions often act like institutions and there was a desire at the national level to capture this dynamism and pass it on to new federally funded legal services organizations. With the best of intentions, several programs and policies were established on the national level that sought to institutionalize client involvement and client-centered legal services. Of the programs and policies established, the most visible was the National Client Council.

The National Client Council was established to work with clients and train them to be both effective advocates within their own communities and also to be effective advocates on the boards of local legal services programs. The National Client Council and its regional offices were funded first by OEO and then by the Legal Services Corporation. National training events were held and staff at NCC regional offices were directed to work with regional and state client councils. Funding for the National Client Council was terminated during the Reagan Administration amid charges of financial mismanagement and abuse. Client board members were suddenly left on their own or had to rely on their programs for training and organizational support.

Also on the national level, the original legislation that established the Legal Services Corporation mandated client involvement. The re-authorization of the Legal Services Corporation in 1978 included amendments that made the requirement of client involvement even more specific by requiring that all federally funded legal services program boards be composed of 1/3 eligible clients appointed by other client organizations.

While the goal to institutionalize client-centered legal services and client involvement was noble, it was based on certain assumptions that were only true in large urban areas. The model presumed the existence of independent client organizations who would elect

representatives to serve on the board of local legal services programs. Client representatives on the local legal services boards would, therefore, be representative of more than their own personal viewpoint. And when these client board members no longer represented the low income community, they would be replaced with other client board members by the appointing organization. In this scenario, client board members would function as conduits to and from the client community. Legal services programs would therefore continue to be responsive to changing client needs because of the ongoing communication between the client community and the program. In the late 1960s and early 1970s, there were plenty of organizations in which low income people were involved, particularly in large urban areas, from welfare rights groups to public housing resident councils. For these urban programs, the model worked reasonably well.

However, as the Legal Services Corporation began to receive additional money to expand legal services beyond the large cities of America, the model worked less successfully. Low income clients in smaller cities and rural areas were seldom organized into groups beyond the occasional resident council in public housing developments or a Head Start Parents group. The model that had worked in larger cities began to malfunction almost immediately in the new expansion programs. Low income communities in Davenport, Iowa and Huntsville, Alabama did not work the same way as low income communities in Atlanta, Georgia and Boston, Massachusetts. While the core values of client involvement and client-centered legal services were still invoked, for newly funded legal services programs, the priority became finding eligible client board members to meet the new requirements so that the program could receive its federal funding. Policies intended to foster the core values of client involvement and client-centered

legal services often undermined and obscured the importance of these values. Where good clients were found to serve on boards, they were pressed into remaining on the board year after year, long after their effectiveness had diminished and often when their ties to the low income community were nonexistent or no longer relevant..

Another problem with the policies was that they were well-intentioned, top down, mandated policies that were never re-examined to see if they were effective. They became frozen in time, less and less relevant to the daily functioning of many legal services programs. And like the emperor in the Hans Christian Anderson story, no one wanted to state the obvious, that the emperor had no clothes or in this case, that the core values of client involvement and client-centered legal services were dysfunctional. No one dared to suggest that there might be more effective ways of providing client involvement and ensuring that legal services were client-centered because any attempt to tinker with these policies looked like an abandonment of the core values in the institutional paranoia/survival mode of the 1980s.

It is time that we looked at old policies, examined them to see if they are fulfilling their original purpose and if not, to search and develop structures and policies that foster real client involvement and ensure that legal services programs are client-centered in their services.

New Principles of Client Involvement and Client-Centered Legal Services

To begin a process of examination of client involvement and client-center legal services programs, a few definitions might be in order.

“Client empowerment” as used here, means that the representation of all clients should be directed to enhancing the individual’s independence and control over his or her life and the resolution of his or her legal problem. Of necessity, the role of the client in the resolution of his or her legal problem will vary with the age of the client, his or her education or mental ability and the nature of the legal problem but involvement at some level should be the rule, not the exception.

“Client-centered legal services,” as used here, means that the caseload priorities of the legal services programs should reflect the current needs of the low income community as determined by formal priority setting, more frequent surveys or focus groups of clients and by consultation with other interested groups or individuals in the service area. Where new client needs are identified, the program must be committed to re-training staff members to meet these new needs or to find other resources in the legal community or larger community to meet new client needs.

Assuming that the definitions function, at least as working definitions, what policies or structures can be developed to help develop these core values? In the alternative, is it possible to create such structures or policies without undermining these core values again?

First Principle: Any national policies that are developed to encourage client involvement and to ensure client-centered legal services must not adopt a single model of client involvement and client-centered legal services. Each state and each program within those states should be encouraged to develop innovative policies or structures that ensure a client-centered legal services delivery system and appropriate client involvement.

Second Principle: Any national policies that are developed to encourage client involvement and to ensure client-centered legal services must require programs to review their local policies periodically. Local policies at a minimum, secure periodic input as to their effectiveness from clients whether individually, through established client groups or through ad hoc client groups, for example, a focus group.

Third Principle: Any national policies that are developed to encourage client involvement and to ensure client-centered legal services must guarantee that local legal services programs provide for a regular rotation of client board members on legal services program boards to reflect the various interests of the client community. Such policies must ensure that no individual client board member serves for more than six consecutive years on the board.

Fourth Principle: Programs should be encouraged to use ad hoc client groups to seek input on program caseload priorities apart from the formal priority setting process to test whether the program caseload priorities are meeting the real needs of clients.

Fifth Principle: While client involvement should be encouraged at all levels of the legal services program, these policies should affirm the expertise of the attorney in handling the legal aspects of the problem but when clients feel that their concerns are not being attended to, they should feel free to terminate the relationship.

Sixth Principle: Current national structures and policies that were intended to encourage client involvement and ensure client-centered legal services in local programs need to be examined for their effectiveness in supporting these core values. Where their existence has not supported these core values or where they have been counter productive in attaining these results, they must be discarded. Where legislative change might be necessary, such change should be pursued when appropriate.

Seventh Principle: In any policies or structures that are adopted, legal services programs must be challenged to remain connected to client communities in ways that are appropriate to support these core values.

Among other things, the state planning process has taught us that it is useful to examine our old beliefs and structures and to be willing to jettison them when they do not work. Our present policies and structures do not work to support or enhance the core values of client involvement and client-centered legal services and we must not be afraid to jettison those structures and policies when they do not work. Low income individuals and families need the help of legal services programs in resolving their legal problems. They also need legal services

programs who are deeply committed to involving clients in the resolution of their legal problems in appropriate ways. Also, low income people need legal services programs who are client-centered and who are delivering legal services that clients need. They do not need legal services that programs want to provide because they have staff members with expertise in those areas. The result will be a more vibrant and authentic legal services program.

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