Representing Homeless Families: Repeat Player Implementation Strategies

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> *The leverage provided by litigation depends on its strategic combination with inputs at other levels. The question then is whether the organization of the profession permits lawyers to develop and employ skills at these other levels.* (Galanter 1974:151)
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> *Without any ability to pose a credible political threat, poverty lawyers have become adept at squeezing resources out of hostile agencies and legislative bodies at all levels of government.* (Diller 1995:1427)[1]
>
> *In mounting reform suits, Legal Services lawyers are not properly understood as autonomous, outside agents attempting to impose rationality on the administration of public welfare services over the opposition of a universally hostile state.* (Katz 1984:189)

In 1974, Marc Galanter examined the strategic role of public interest lawyers in helping the "have nots" come out ahead in the legal system. Galanter argued that, to become agents for social change, lawyers must recognize that their role as advocates extends beyond the courtroom into the implementation process (Galanter 1974:151). This article analyzes the efforts of one group of public interest lawyers—those working in Legal Services agencies dedicated to law reform—to influence the implementation of redistributive programs for a particular group of "have nots": homeless families or those on the brink of losing their housing. Based on my studies, I argue that by skillfully combining adversarial legal tactics with collaboration, poverty lawyers can transform judicial decisions into "symbolic resources" to leverage

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the implementation of redistributive remedies. When the reform lawyers have the authority to participate in the process of administrative rule making during the implementation process, they can reshape the norms and organizational infrastructures within state agencies.

Galanter thus was correct when he suggested that public interest lawyers may rely on their own resources to "operate in forums other than the courts" and "form enduring alliances" to influence the implementation process (ibid.). Yet he offered little insight about whether these lawyers can effectively challenge political opposition to reforms when the "have nots" lack clout in political and administrative venues. Under these conditions, judicial oversight can enhance the ability of public interest lawyers to act as "repeat players" during the implementation phase and can expand opportunities for the lawyers to mobilize support for their redistributive reforms. If the implementation of reforms threatens an agency's legitimacy in its own political environment, however, officials are likely to respond with bureaucratic and political countermobilizations against judicial mandates. Galanter also argued that if lawyers identify with their clients, they are more likely to become advocates in nonjudicial arenas and expand their identities as legal professionals (ibid., pp. 114, 115, 118, 151). As lawyers collaborate with administrative actors and become increasingly integral to the implementation process, however, they may also compromise their own capacity to challenge the legality of official policies. Thus, strategic decisions to increase participation in the process of implementation may extend the "temporary advantages" that the lawyers had leveraged through the courts, but they may also narrow future opportunities for the public interest law organizations to pursue reform litigation.

Galanter: Strategic Advantages of Public Interest Lawyers

Galanter's 1974 article portrayed the Legal Services lawyers engaged in law reform activity as the prototype of public interest lawyers who could create strategic advantages for the "have nots." The founders of the federally funded Legal Services Program in the mid-1960s hoped that subsidized legal representation for poor people would not only win favorable decisions for their clients in specific cases, but would also improve the position of the "have nots" for leveraging power in all legal, administrative, and political venues. The creation of the federal Legal Services Program provided a challenge to the undisputed authority of state social welfare agencies to evaluate the best interests of their impoverished clients and administer social policy (Sparer 1965). The poverty lawyers used law reform strategies to (1) expand access to the civil courts, (2) develop new substantive and procedu-

ral rights for poor people, (3) challenge abuses by and shape decisions of governmental agencies, and (4) increase opportunities for poor people to influence the political process (ibid., pp. 120–21, 150n. 141; see also Cahn & Cahn 1964; Carlin et al. 1966; Sparer 1965).

According to Galanter (1974:96–97, 138–39), law reforms must "penetrate" the implementing agencies to be meaningful. He argued: "The system has the capacity to change a great deal at the level of rules without corresponding changes in everyday practice or distribution of tangible advantages. Indeed rule change may become a symbolic substitute for redistribution of advantages" (ibid., p. 49). Galanter considered, however, the strategic advantages of the "haves" in the wake of judicial rule change neither inherent nor absolute. The ability of the "have nots" to form coherent organizations that become "repeat players" (RPs) is the primary factor that improves their strategic position for using courts to induce redistributive reforms. As RPs, the "have nots" can draw on financial resources to purchase legal expertise. Combining legal and political expertise, RPs can develop long-range goals, pursue additional favorable rule changes, and mobilize support for the implementation of these new rules (ibid., pp. 141, 150).

When the "have nots" lack coherent organizations that can act as RPs, according to Galanter, public interest law firms that have the capacity to become RPs may provide a substitute (ibid., p. 143). To approximate the strategic position of parties who are RPs, public interest law firms must substantially identify with the goals of their clients so that they do not trade off their clients' best interests for their own long-term professional interests. If lawyers lack a sense of solidarity with their clients, they may structure outcomes to ensure their clients' continued dependence on lawyers rather than create substantive reforms that empower their clients as social groups and individuals (ibid., pp. 118–19). To represent the "have nots" effectively, public interest lawyers must attempt to secure rule changes that directly alter the strategic position of their clients by facilitating organizing, expanding the resources for legal services, and increasing the costs to their opponents of pursuing counteroffensives. Thus, to provide leverage for the "have nots," the public interest lawyers must have a strategic vision that views litigation as a resource for more long-range strategies to increase the political clout of their clients.

Beyond Galanter: Political and Legal Dynamics of Implementation

Although Galanter's analysis allows that public interest lawyers can enhance the ability of their "have not" clients to achieve redistributive rule changes, the ability of disadvantaged clients to

organize groups with the capacity to influence the implementation process is critical for effective strategies. Yet Galanter leaves open the question of whether the lawyers themselves can extend their temporary leverage from litigation to secure redistributive reforms when the conditions for organizing clients are unfavorable. Other sociolegal scholars have studied the role of poverty lawyers in influencing rule-making processes within the courts (Lawrence 1990; Davis 1995) and Congress (Melnick 1994a), as well as community organizing (Davis 1995; Galanter 1974; Katz 1984; Scheingold 1974; Stumpf 1975). Less attention, however, has been given to the influences of Legal Services litigation on implementing bureaucratic reforms.

Two sociolegal scholars who have addressed the impact of poverty lawyers on bureaucratic processes, Joel Handler and Jack Katz, provide rather negative assessments, for seemingly contradictory reasons. Handler (1966, 1978) argues that judicial mandates won by poverty lawyers are unlikely to influence the microdynamics of administering poverty programs. According to Handler, judicial rule changes are mediated by "bureaucratic contingencies," which frequently thwart efforts to implement redistributive remedies (1978:18–22). The imbalance between the power of "dependent" clients and state bureaucracies during the implementation process limits the clients' abilities to challenge unjust agency practices (Handler 1966:497–500; 1990:13–34). Furthermore, Handler argues that it is unlikely that poverty lawyers can force the implementation of judicially constructed rules that are perceived by agency workers as conflicting with the existing goals of their state bureaucracies. He suggests that advocates for "dependent" clients would be most effective if they could persuade agency officials that it is in their own best interest to invite their clients into "participatory" relationships (Handler 1996) and concludes that litigation is unlikely to induce any significant bureaucratic reforms because of an inherent capacity for resistance during the implementation process.

In contrast, Katz (1984:179–86) claims that the poverty lawyers can influence agency reform, but only in a way that ultimately deepens the dependency of the poor on the state without providing adequate resources to relieve their poverty. According to Katz, the poverty lawyers' legal reform efforts actually enhance the power of social welfare bureaucracies to pursue their organizational interests in administering policies that segregate the poor and "legalize" poverty. Katz refers to Legal Services lawyers as "external professional rationalizers of state social welfare agencies" (1984:189).

Although Handler offers important insights concerning barriers legal reformers face during implementation and Katz provides a framework for understanding the limitations of using state regulatory regimes as agents for alleviating poverty, neither

adequately addresses the independent leverage that public interest lawyers may have during implementation. Both approaches fail to capture the political dynamics of changing administrative rules during implementation and the particular role that lawyers can play in that process.

By applying Galanter's insights concerning the relationship between law and politics in judicial rule change to our analysis of the implementation process, we can better understand the power RP lawyers can have to influence the practices of state agencies. The implementation process can be seen as a continuing process of conflict and negotiations to create a legal framework for policy reform. Thus, lawyers who are long-term participants in implementation can expand their approach to law reform beyond the negotiation of a particular remedy to the development of long-range strategies to change the architecture of state agencies to be more conducive to redistributive reforms. They can focus their efforts on creating new rules to transform the agency's infrastructure for decisionmaking and influencing the professional norms that guide agency practices.

This approach to understanding implementation challenges Handler's dichotomy between adversarial legal tactics and opportunities for collaboration with bureaucratic actors. Court orders and judicially constructed remedies can provide the lawyers points of access to implementation decisions. To have an ongoing influence on shaping administrative rules, however, the lawyers must also have the organizational resources to mobilize support for their reform goals inside the targeted agencies. Consequently, when lawyers are RPs, the use of litigation may be an important tactic for gaining opportunities to influence official policies and practices on a microlevel.

Katz's portrayal of poverty lawyers as rationalizers of bureaucratic practices oversimplifies the common interests of poverty lawyers and agency administrators in "legalizing the state's administrative segregation of poverty" (ibid., p. 196). The legalization of reforms involves political conflict and compromise that transform judicial rulings into agency policies and practices. To achieve their reform goals effectively, the legal advocates must both influence the creation of new rules to redefine agency policies and practices and mobilize support within the targeted agencies for those changes. This process of collaboration is most likely when official actors believe that the reforms will enhance their positions within their political environments.

Heimer provides a useful approach for understanding variations in the impact of new reforms on preexisting administrative processes. Although Heimer focuses on the implementation of new legislation, her approach is also useful for analyzing the implementation of judicially induced policy reform. She clarifies the relationship between the political context for implementa-

tion and the potential for enduring policy changes. According to Heimer, legislative reforms are most likely to be incorporated into "pre-existing organization routines" when "legal institutions can insinuate themselves into the machinery" of the organization targeted for reform and when legal actors within the organizational setting are "empowered by enforcing law" (1996:30). In addition, the mobilization of support for legal mandates is "intertwined with the question of legitimacy" of the organization within its political environment (ibid., p. 31). Organizations must convince certain actors within this environment to contribute the resources necessary for the organization's continued existence. Thus, the ability of public interest lawyers to transform their symbolic judicial victories into substantive redistributive programs may be directly linked to their abilities to transform their substantive legal frames and agendas into organizational infrastructures that enhance, rather than threaten, the reputations of the targeted organizations, so that they continue to receive financial resources and attract competent staff. This process is likely to be particularly challenging when legislatures are increasingly hostile to redistributive programs. Both Handler and Heimer recognize the important role of agency workers in deciding whether or not changing administrative practices is consistent with their own interests. Heimer, however, offers new insights about both the importance of "legalizing" the implementation process and the conditions under which this process of legalization will be most likely to reform organizational practices. We can see the particular role that "repeat player" lawyers, who are authorized by the court to participate in the implementation process, can have in "legalizing" reforms. The limits of public interest lawyers to defend the interests of the "have nots" during the implementation phase are also apparent. The lawyers must be able not only to influence the development of implementation rules, as suggested by Galanter, but also to convince officials that the new rules will enhance the legitimacy of their agency in its political environment and that compliance with rule changes will benefit the implementing staff in their work environment.

"Right-to-Home" Cases: Resistance to Disentitlement Strategies

By the time the "right-to-home" class actions were initiated during the 1980s, many broad reform goals of the Legal Services founders had been frustrated. The War on Poverty initiated by the federal government in the 1960s had been abandoned; the National Welfare Rights Organization and many local welfare rights groups had been disbanded; and the U.S. Supreme Court had refused to recognize poor people's constitutional "right to live—a right to sustenance, to food, to decent housing" (House-

man 1991:315). By the 1980s, there was neither sufficient political will nor legal precedent to support policy reforms that would require welfare grants to meet poor people's basic needs for sustenance. It had become standard practice for state public assistance agencies to provide grants that fell far below amounts that government officials had calculated as the poverty threshold. Between 1970 and 1980, the median monthly state public assistance grants for a family of three dropped from $673 to $497, which was 53% of the monthly poverty threshold of $947 (Children's Defense Fund 1994:5). Federal and state administrative reforms implemented to reduce the costs of public assistance created bureaucratic barriers for eligibility that advocates for the poor have characterized as bureaucratic "disentitlements" (Brodkin 1986; Fabricant & Burghardt 1992:73–78). As politicians continued to pressure social welfare administrators to reduce the costs of social welfare programs, a legal environment was being constructed that rationalized the dependence of poor people on a housing market, labor market, and welfare system that left many poor parents unable to provide shelter for their children.

Faced with increasingly adverse political, legal, and administrative environments, Legal Services lawyers in at least eight states initiated class actions with right-to-home legal claims that attempted to expand their states' commitments to providing more generous and accessible assistance programs for their destitute clients. The poverty lawyers argued that existing state policies and practices were contributing to family homelessness and, consequently, violating their clients' rights to take care of their own children.[2] In this sense, the poverty lawyers were challenging the political retreat from providing a safety net for families as violating statutory standards that had established a public responsibility for the protection of children and the right of families to live together in their own homes.

To assess the impact of law reform strategies by the poverty lawyers, I have looked beyond the conventional approaches that focus on the institutional limitations of the courts to force bureaucracies to comply with specific legal mandates. Studies of the judiciary's limited power to enforce its decisions and of the bureaucracies' resistance to legal intervention provide important

[2] The "right to home" class actions I have identified are *Connelly v. Carlisle,* Suffolk Civic Act. No. 43-3159 (Mass. Sup. Court 1993); *Consentino v. Perales,* 546 N.Y.S.2d 75 (1st Dept. 1989); *Jiggetts v. Grinker* (N.Y.), 75 N.Y.2d 411 (1990); *Hansen v. McMahon,* 238 *California Reporter* 232 (Cal. App. 2 Dist. 1987); *In Re: Petitions for Rulemaking,* N.J.A.C. 10:82-1.2, 117 N.J. 311, 566 A.2d 1154 (1989); *M sachusetts Coalition for the Homeless v. Secretary of Human Services,* 400 Mass. 806, 511 N.E.2a 603 (1987); *Maticka v. City of Atlantic City,* 216 N.J. Super. 43[illegible] App. Div. 1987); *Norman v. Johnson,* 739 F. Supp. 1182 (N.D. Ill. 1990); *Savage v. Aronson,* No. CV-NH-8904-3142 (Conn. Super. Ct., New Haven Housing Sess., 1989); *Washington State Coalition for the Homeless v. Secretary of Department of Social and Health Services,* No. 91-2-15889-4 (Wash. Super. Ct., King Co., 1991); and *Tilden v. Hayward,* Civ. Action No. 1197 (Chancery Ct., New Castle Cnty, Del, 1989). Citations from National Housing Law Project 1992; and Roisman 1991.

insights for understanding why litigation "alone" cannot ensure irreversible gains for the "have nots." They provide, however, limited insights about the ways reform litigation can leverage opportunities for the lawyers to influence the policy-making process and reshape regulatory regimes. Galanter (1974, 1983), Garth (1992), and McCann (1992, 1994, 1999) suggest that we shift our attention away from legal judgments as mandates and instead focus on the actors who are interpreting how the courts' decisions affect their future bargaining positions. McCann argues that judicial authorities do not compel a change in behavior with their official legal interpretations. Various actors, however, evaluate how these court decisions "indirectly create important expectations, endowments, incentives, and constraints" for pursuing reform strategies in particular institutional venues (McCann 1999:68).

This article draws on three right-to-home case studies to analyze the strategic responses of poverty lawyers and state agency officials to judicial rule changes and the consequences of their strategies and counterstrategies to influence the implementation of those rules. For *Hansen v. McMahon* and *Norman v. Johnson,* I examine how four factors influenced the dynamics of implementation: (1) the judicial decisions as symbolic resources, (2) the level of judicial oversight, (3) the organizational resources of Legal Services lawyers available for implementation, and (4) changes in the political environment. An analysis of the third case, *Jiggetts v. Grinker* (also known as *Jiggetts v. Perales* or *Jiggetts v. Dowling*), is incorporated into a concluding discussion about the power of poverty lawyers as repeat players to influence the implementation of remedies.

On a microlevel, this article analyzes the dynamics of conflict and collaboration between the poverty lawyers and state officials during the implementation of redistributive remedies. I evaluate the effectiveness of the poverty lawyers' efforts to influence three aspects of governing new redistributive programs: participation in decisionmaking concerning agency practices, the transformation of professional norms, and the mobilization of administrative resources to facilitate an economic redistribution to the "have nots." On a macrolevel, I demonstrate how the implementation strategies of the poverty lawyers and state agency officials alter the legitimacy of their own organizations in their political and legal environments. Furthermore, I examine the relationship between the perceptions of organizational legitimacy and the development of long-term commitments to reforms instigated by judicial rule changes. For the social welfare administrators, I focus on how their implementation strategies are used to mobilize support from legislators and the governor, the actors responsible for their funding, as well as to convince judges of their authority to make administrative decisions. When the pov-

erty lawyers take an active role in bureaucratic reform, on a microlevel, their legitimacy is based on maintaining their authority as legal professionals, who have special skills to evaluate whether the implementers are complying with their legal mandates. In addition, on a macrolevel, the Legal Services organizations must attract funding for their work, develop collaborative relationships with other advocates, and create a work environment that draws and retains skilled lawyers. This analysis of the influence of the poverty lawyers on both the microlevel and macrolevel of implementation provides a basis for assessing the possibilities and limitations of public interest lawyers as repeat players to make the architecture of state agencies more responsive to the interests of the "have nots."

Hansen v. McMahon

Factors Shaping Implementation Process

Judicial Decision as Symbolic Resource

In a right-to-home class action in California, the poverty lawyers claimed that the state's provision of emergency shelter only to children who had been separated from their parents—not to homeless children still living with their parents—violated the intent of state child welfare statutes (Superior Court 1986). Pretrial rulings in *Hansen v. McMahon* required the state child welfare agency to respond to the shelter needs of homeless families (Court of Appeal 1987). The judicial rulings received media coverage that supported the judges' interpretation of law, criticized the child welfare agency's resistance to compliance, praised the poverty lawyers, and offered empathy for the homeless families (Ramos 1986; Murphy 1986). Favorable editorials were published in the *Los Angeles Times* (18 May 1986, Home Edition, sec. 5, p. 4) and the *San Diego Union-Tribute* (9 August 1986, Opinion, Ed. 1, 2, p. C3). The state officials, the poverty lawyers, and child welfare advocates, however, were all opposed to the administration of a homeless assistance program by the state child welfare agency, which primarily served abused and neglected children. Consequently, the substance of these rulings was eliminated during negotiations. The poverty lawyers agreed to the legislative reforms that mooted their suit in exchange for legislation that established a new housing assistance program to be administered through the state agency responsible for distributing economic assistance to poor families (Bird interview). Therefore, the symbolic power that had been provided by judicial decisions quickly dissipated during the implementation of the new Homeless Assistance Program (HAP). The program began to be viewed in the legislature as a bargaining chip that could be cut or substantially

reduced for fiscal considerations with little political cost and no threat of judicial intervention.

Furthermore, as a Special Needs program, HAP was particularly vulnerable to political criticism because of the discretion involved in determining whether families were homeless and eligible for assistance. Handler and Sosin (1983:13) argue that for Special Needs programs, "documentation is elusive, and the likelihood exists that a particular decision will be questioned by politicians or journalists on the grounds of waste or fraud." Handler's prediction was borne out during the implementation of HAP. A report by the Auditor General (1990) about fraud in HAP became an important symbolic resource in Governor Pete Wilson's campaign to eliminate the program. He argued that there was no effective way of deciding who was actually homeless and entitled to these benefits (Ellis 1991).

Level of Judicial Oversight

By negotiating the creation of a program outside the purview of the judiciary, the advocates lost more than the symbolic power of the judicial decisions. They also were excluded from participating in decisions concerning implementation. After the poverty lawyers were able to collaborate with state legislators and state officials to create the establishing legislation and to secure federal funding for HAP, the actual administration of the program was limited to the existing actors within the state public assistance agency. The poverty lawyers could not rely on the courts to monitor the process. Furthermore, absent any risk of judicial intervention, funding levels were threatened by waning political commitments.

Poverty Lawyers' Organizational Resources

Lawyers from the Western Center on Law and Poverty, which was a statewide Support Center for Legal Services agencies, had litigated the *Hansen* case. This small staff of seven did not have the personnel capacity to be involved with the details of implementation in any one case. As repeat players in the poverty law field, however, the Western Center did have resources to pursue three kinds of strategies to influence the implementation process. First, the poverty lawyers filed three suits to challenge regulations issued by the Department of Social Services (DSS) that would restrict eligibility and access to the Homeless Assistance Program (Newman interview). Second, the Western Center had a lobbyist in the legislature who collaborated with allies in advocacy groups representing low-income people and sympathetic legislators to prevent legislative cutbacks to homeless assistance (McKeever interview). Finally, in cooperation with networks of providers and advocacy organizations serving homeless families,

the poverty lawyers both informed homeless families about gaining access to housing assistance and developed an informational campaign to counter the negative portrayal of the program in the Auditor General's report (Berlin interview; Bird interview; Farber interview; see also California Homeless and Housing Coalition 1991).

Changing Political Environment

Several aspects of the political environment in California created barriers to the implementation of HAP. First, the administrators of county public assistance offices were facing pressures from staff reductions at the same time they were attempting to implement new programs that required immediate, emergency responses to mushrooming caseloads (Auditor General 1990:100–101). Three years after the implementation of HAP began, California faced a $14.3 billion state deficit (Beyle 1992:51–52). The incoming governor, Pete Wilson, targeted welfare programs for deep cuts (Ellis 1991).

Implementation on a Microlevel

Initially, the rules governing the HAP program created opportunities for social welfare workers to help families who previously had had to rely on the limited resources of volunteer agencies. With the establishing legislation for HAP, the problem of homelessness, which had been largely ignored by official actors, suddenly became an emergency that required an immediate state response. According to the new legislation, if families who had no more than $100 in "liquid assets" could provide evidence that they lacked a "fixed and regular nighttime residence" or that they were living in temporary shelter, they were eligible to receive $30 a day for up to three weeks to cover the costs of temporary shelter. Furthermore, those seeking permanent housing were eligible for permanent housing assistance to cover the last month's rent and security deposits. The county welfare department was required to issue a payment or denial of assistance within one working day after families presented evidence of the availability of permanent housing if they had provided the necessary verification to establish eligibility for the aid.[3]

The HAP program was launched in February 1988, and the new rules were quickly implemented in DSS offices throughout California. During the first 2 years of the program, more than $143 million was distributed to homeless families (Auditor General 1990:68). During the first full year of HAP, more than 90,000 families, including 185,000 children, were served, according to

[3] California State Statutes of 1987, Ch. 1353, Sec. 1, 4895–98.

an analysis issued by the Center on Budget and Policy Priorities, which was summarized in a Business Wire Report (14 May 1991).

Although the rules governing HAP initially facilitated the mobilization of existing administrative resources for the widespread implementation of the program, they did not expand participation in the administrative rule-making process to the advocates. Consequently, when county administrators faced cross-pressures to improve the process of verifying the eligibility of HAP applicants and to adjust to staff reductions required by budget cuts, the poverty lawyers were not in a position to help create new rules that could alleviate the stress on county departments. Although the poverty lawyers and advocates for homeless families could establish relationships with the administrators and workers in some local offices to facilitate better treatment of homeless families (Farber interview), they were unable to participate in making decisions concerning the systemwide implementation of the HAP program. Furthermore, when Pete Wilson became governor, he articulated a welfare policy that relied on inadequate benefits as an incentive to force recipients into the low-wage labor market (Ellis 1991). This philosophical approach to social welfare undermined the rationale for providing government funding for housing assistance because the increased threat of homelessness could be considered an incentive for parents to find work.

The lobbyist from the Western Center collaborated with sympathetic legislators and representatives from DSS to create rule changes for the HAP program that would improve the process of eligibility determination without undermining the redistributive aspects of the program. The Governor's Office, however, ignored these reform proposals because the administration was committed to budget cuts (McKeever interview). Although the poverty lawyers worked in coalitions with other advocates for poor people, they lacked the political clout within the legislature to resist cutbacks in the HAP program (McKeever interview; Berlin interview).

Statutory revisions in 1991 limited eligibility for homeless assistance applicants, linked the process of verifying "family homelessness" to an investigation by the "early fraud prevention and detection unit," and shortened the period for temporary shelter assistance to 16 days.[4] Shelter providers noted that their clients became disturbed by this presumption of fraud in the application process (Berlin interview; Farber interview). By 1995, eligibility for homeless assistance was reduced to once in a lifetime.[5] The director of the California Homeless and Housing Coalition claimed that the new regulations had created a new group of

[4] California State Statutes of 1991, Ch. 97, Sec. 6, 518–21.

[5] West's California Legislative Service, Vol. 5 (1995), California State Statutes, Ch. 307, Sec. 7, 1441–42.

homeless families who were unable even to gain entrance to emergency shelters. The shelters did not want to take in families who had previously received homeless assistance because now they would be ineligible for the resources necessary to leave the shelters and to move into permanent housing (Berlin interview).

Implementation on a Macrolevel

The social service administrators and poverty lawyers had agreed that the judicial mandate to provide a housing assistance program within the child welfare agency was not the most effective way to respond to family homelessness. The child welfare administrators had been very concerned about trying to implement a program to house homeless families within the organizational infrastructure of an agency that was already unable to adequately respond to its legal mandate to protect children who were being abused or neglected by their parents. The poverty lawyers also wanted to prevent homeless families from having to depend on the child welfare agency to get shelter assistance because they feared increased surveillance of homeless families that might lead to unwanted out-of-home placements. Consequently, both parties agreed to make the housing assistance program an add-on to the public assistance program, and the existing infrastructure for determining eligibility and distributing grants could be used. Workers in the public assistance offices and nonprofit agencies serving homeless families would have new resources available for their clients, and the poverty lawyers would not have to devote their scarce resources to developing or monitoring a new bureaucratic structure.

During the implementation process, however, the burden and cost of administering HAP for the DSS administrators outweighed the benefit of providing new resources to clients. When county DSS offices became targets for fraud investigations and public assistance programs targets for budget cutting, the leadership of the department joined the governor's efforts to eliminate the troublesome program. This position was strengthened by a shift in the official social welfare philosophy, which now overtly advocated making benefits inadequate enough to provoke poor people to eschew public assistance grants for low-wage jobs.

Summary

When the poverty lawyers and DSS administrators negotiated a remedy for the *Hansen* case in the legislature, there was general agreement on the goals for creating a new Homeless Assistance Program. The poverty lawyers thought that clients would easily gain access to housing assistance because it was an add-on to an existing program (Bird interview). In fact, economic resources

were distributed fairly quickly throughout California to provide homeless families assistance both for temporary shelter and the transition to permanent housing. All four factors shaping the implementation process, however, significantly impeded the ability of the poverty lawyers to develop a long-range strategy to mobilize a commitment within the agency to the new program. First, the favorable judicial decisions lost their symbolic power when legislative reforms mooted the suit. Second, without judicial oversight, the poverty lawyers had no special authority to participate in the ongoing process of administrative rule-making to legalize the program. Third, as a small organization serving the entire state, the Western Center on Law and Poverty lacked the personnel to be integrally involved in the implementation process. Finally, the governor's response to a burgeoning budget deficit included eliminating and cutting back programs serving poor people. The administrative leadership in the state agency had no political incentive or judicial pressure to try to protect this program that the governor was trying to cut. Consequently, during the first 6 years of the implementation of HAP, revisions to the establishing statutes severely limited the redistributive potential of the program.

Norman v. Johnson

Factors Shaping Implementation Process

Judicial Decision as Symbolic Resource

In a "Memorandum Opinion and Order" delivered in May 1990, a U.S. District Court Judge in Illinois ordered the state child welfare agency to provide sufficient housing and economic assistance to two class plaintiffs in *Norman v. Johnson* (also known as *Fields v. Johnson, Norman v. Suter, Norman v. Ryder,* and *Norman v. McDonald*) (U.S. District Court 1990). The lawyers for the Department of Children and Family Services (DCFS) were discouraged from continuing litigation because the judge had rebuffed all their legal arguments (Tchen interview). When a new DCFS director was hired, he decided to negotiate a consent decree for the *Norman* class action suit as well as for several other class actions against DCFS. The resulting "Consent Order" (U.S. District Court 1991) constructed the legal foundation for child welfare policy reform to provide material assistance to families involved in the child welfare system who were homeless or victims of domestic violence. The inclusion of domestic violence victims in the consent decree expanded the class being served beyond what had been established during litigation. The "Consent Order" set out the requirements for the development of a cash assistance program and housing advocacy program to be operated within

the child welfare agency. In addition, the role of the poverty lawyers in the implementation process was established. They would review all new policies, procedures, programs, rules, regulations, training programs, and notices for implementation. During the monitoring process, they would also have opportunities for input.

Level of Judicial Oversight

Judicial oversight was significant during the first 6 years of the implementation of the *Norman* consent decree. The initial "Consent Order" (ibid.) provided that court supervised monitoring would continue for 4 years. The court approved an "Agreed Order" (U.S. District Court 1995) to extend monitoring and judicial supervision for another year. At the end of this period, the court accepted the poverty lawyers' motion to extend monitoring through 1997 (U.S. District Court 1996a, 1996c). Consequently, during the initial period of implementation, court-appointed monitors were submitting regular reports to the district judge concerning compliance with various aspects of the consent decree.[6] The poverty lawyers and attorneys for DCFS also had opportunities to present to the court complaints about the implementation process when they were unable to negotiate satisfactory agreements with each other.

Poverty Lawyers' Organizational Resources

The lead lawyers in the *Norman* case worked in two projects of the Legal Assistance Foundation of Chicago, the Homeless Families Project and Children's Rights Project. They had been involved in previous law reform efforts to improve the quality of legal representation of children in out-of-home care and to expand resources for particular groups of child welfare clients. The "Consent Order" in the *Norman* case provided that the poverty lawyers be reimbursed by DCFS for their participation in the implementation process. Consequently, the poverty lawyers not only had already gained experience and expertise as RPs in child welfare advocacy, but they also established new economic resources through the consent decree to subsidize their role in implementation.

[6] During the implementation process of the *Norman* case, monitoring reports were submitted to the court to Judge William Hart, U.S. District Court for the Northern District of Illinois Eastern Division, on the following dates: the First (1 March 1992), the Second (28 September 1992), the Third (17 March 1993), the Fourth (23 August 1993), the Fifth (15 March 1994), the Sixth (24 May 1995), the Seventh (3 June 1996), and the Eighth (7 May 1997).

Changing Political Environment

Three kinds of changes in the political environment could have influenced the *Norman* consent decree. First, the child welfare work force was cut by 10% in 1992 (Pearson 1992). Second, in 1993, there was a backlash against "family preservation" policies after intensive media coverage of the grisly hanging of a child who had been returned from foster care to his mentally ill mother. During this period, there was a sharp increase in the foster care caseload as public anxiety about the dangers of child abuse and neglect escalated. The child welfare agency faced cross-pressures to reduce the foster care caseload to make the system more manageable and to prevent child deaths by removing children from parents who were likely to harm them (Vorenberg 1993). The third factor was growing legislative opposition to consent decrees after the *B.H. v. Ryder* settlement contributed to the state child welfare budget increasing from $500 million in 1991 to $1.2 billion in 1995 (Novak 1995).

Implementation on a Microlevel

The implementation of the *Norman* consent decree was significantly influenced by the role and personalities of the monitors selected. Although the language in the "Consent Order" (1991) called for the appointment of an "impartial monitor" who was agreed upon by the parties, informally the poverty lawyers and lawyers for DCFS negotiated an agreement to hire two comonitors, a former DCFS administrator who was favored by the child welfare agency and an activist in the homeless advocacy community. As social workers, both monitors shared values and a common vision that their role as monitors was to translate the decree into functioning programs. Consequently, they not only evaluated agency progress, but they also facilitated the development of the necessary rules and protocols to guide implementation and mobilized support within the department (Smith interview). The monitors listened to the concerns of those working with various aspects of the developing programs and proposed strategies for addressing their problems. DCFS accepted their recommendations to hire new staff with experience in housing poor people and in advocacy against domestic violence. Community advocates and DCFS staff collaborated in a domestic violence advisory group that both provided policy expertise and mobilized external support for reforms (Smith interview; Shaw interview). Thus, both existing staff and a range of new actors were incorporated in the process for creating new rules and protocols for implementing the *Norman* programs.

Once DCFS officials agreed to negotiate the consent decree, they adopted the philosophy that providing economic and hous-

ing assistance to destitute child welfare clients was good child welfare practice (Smith interview; Heybach interview; Redleaf interview). This normative commitment did not waver even though the directorship of the DCFS changed four times during the implementation process, the department faced staff reductions, and the legislature challenged policies within the department that favored keeping families together. The monitor, however, doubted that a financial commitment to *Norman* programs would have been sustained if the judicial oversight had been prematurely ended, because the DCFS faced so many competing demands for resources (Smith interview).

The implementation process involved a number of new actors participating in decisions concerning DCFS policy: the monitors, poverty lawyers, judge, new staff, and community advocates. DCFS attempted to limit the intrusion of outsiders in its policy-making process through the creation of an Office of Litigation Management. The implementation of the *Norman* consent decree as well as other negotiated settlements was administered through this office. In this way, DCFS attempted both to create systems of accountability specific to their legal obligations and to maintain clear definitions of the classes of clients being served so as to limit those mandates. Consequently, although new legal machinery was created to implement the decree, this regulatory regime was not fully integrated into the larger administrative processes (Cheney-Egin interview; Smith interview; Redleaf interview; Heybach interview).

The *Norman* budget grew slowly from $1.8 million for fiscal year 1992–1993 to $2 million for fiscal year 1997–1998 (U.S. District Court 1996d:17). In 1995, nearly 2,500 families who were child welfare clients received some form of cash assistance through the *Norman* program (U.S. District Court 1996b).

Implementation on a Macrolevel

Throughout the implementation process, DCFS administrators considered the *Norman* program a political asset. The costs of the program remained low, and the monitors provided the evidence in their monitoring reports that *Norman* services prevented much greater expenses than would have been required by out-of-home placements. Even when challenging the extension of monitoring in 1996, the department asserted its commitment to the program:

> From the day the Consent Decree in this Court was entered, the Department has devoted substantial resources, both monetary and staff, to implementing this systemic reform Decree. These efforts have continued to this day, even in the face of a caseload that has grown from 20,000 to over 52,000 children. As a result of this work, among other things, over $3 million in

> cash assistance has been distributed to the plaintiff parents to help them keep or be reunited with their children, new Housing Assistance Programs have been established throughout the state, and improvements far beyond this Decree have been made in DCFS's response to domestic violence. These achievements are consistent with the Department's overall reforms to mount programs that will deflect children from entering State custody and returning them safely home more quickly, goals that are consistent with the best interests of these abused and neglected children and with the State's need to efficiently manage scarce public resources by reducing the costs of caring for children in foster care. (U.S. District Court 1996b)

Although the *Norman* program itself was not politically controversial, continued judicial supervision could have become a political liability. After the legislators expressed intense opposition to DCFS's consent decrees in 1995, DCFS administrators unsuccessfully attempted to end the monitoring relationship in the *Norman* case.

Summary

Despite some negative developments in the political environment during the implementation of the *Norman* consent decree, the legislature continued to devote resources to the housing and economic assistance programs in the state child welfare agency. Several factors provided the poverty lawyers leverage to influence the implementation process during the first 6 years. Throughout implementation, the consent decree served as an important symbolic resource for the parties. It provided a structure and resources for the poverty lawyers to influence the administrative rule-making process and established standards for monitoring the agency's reforms. Because the implementation process was under the jurisdiction of the court, the substance of this decree was not subject to legislative revisions for the first 6 years. The comonitors effectively used their positions not only to legalize new programs that could carry out the objectives of the consent decree but also to mobilize support from those responsible for implementing the program and to incorporate new actors into the implementation process. Although DCFS administrators transformed their thinking about the importance of economic support as a component of a child welfare, they still tried to constrain their legal obligations to provide *Norman* resources to child welfare clients.

Discussion: Repeat Players, Rule Change, and Legitimacy in the Implementation Process

Galanter argued that for public interest lawyers to represent the "have nots" in the legal system effectively, they must develop long-term strategies that would improve the strategic position of their clients in future conflicts. He recognized that the ability of legal reformers to make judicial rule changes "penetrate" the implementing agencies is critical to achieving redistributive reforms (Galanter 1974:96, 97). He did not, however, elaborate an approach to analyze the dynamics of the implementation process. Conventional approaches to implementation examine the compliance of administering agencies with judicial decisions. In contrast, this study approaches the implementation process in terms of both conflict and collaboration over administrative rule changes. These right-to-home case studies provide data to evaluate whether public interest lawyers, as repeat players, can develop long-term strategies to restructure the legal architecture of the agencies to facilitate redistributive reforms. Furthermore, we can examine how judicial rule changes and oversight influence the lawyers' leverage for administrative reforms. Heimer's analysis suggests that critical to the reform process is the ability of the reformers on a microlevel to legalize reforms within the agencies and to establish official actors within the administrative infrastructure who are empowered by enforcing the new rules. Heimer argues that an organizational commitment to new programs is most likely when implementers believe that the reforms will enhance the legitimacy of the organization in its political environment.

Microlevel Implementation: *Hansen* and *Norman* Comparison

In both the *Hansen* and the *Norman* right-to-home cases, the poverty lawyers were trying to influence the implementation of redistributive reforms in political environments that were increasingly adverse to expanding resources to poor families. The Legal Services lawyers were able to use judicial decisions to create leverage for constructing redistributive remedies in both cases. These remedies, however, provided different sets of opportunities for the poverty lawyers to influence the ongoing process of legalizing these remedies and mobilizing support for redistributive reforms within the implementing agencies.

Faced with a preliminary injunction, the DSS officials in the *Hansen* case agreed to negotiate the creation of a new Homeless Assistance Program in the state legislature. After collaborating on the writing of the new statutes defining the program, however,

the lawyers had no authority to influence the rule making that would take place during the implementation process. By administering the program within the existing structures of the county public assistance agencies, there was an immediate redistributive impact. The *Sacramento Bee* (9 December 1990) reported that new benefits reached about 10,000 families a month during the second year of implementation (California Homeless and Housing Coalition 1991). Within the first 2 years of implementation, however, the county DSS offices faced increased pressures to prevent "fraud" in the program, and the new governor targeted poverty programs—including HAP—for cuts as a way of controlling a mushrooming state deficit. Despite the poverty lawyers' legislative advocacy and active participation in coalitions with advocates for the homeless, they were unable to mobilize enough political support to protect the program. By 1995, legislation had been enacted that allowed each family to be eligible for homeless assistance only one time.

In contrast, the construction of a consent decree and judicial supervision in the *Norman* case provided the poverty lawyers greater opportunities to influence the rules governing the implementation process and mobilize support for the new redistributive programs than before. In the *Norman* case, the provision in the "Consent Order" for a court-supervised monitor opened negotiations for expanding the position to two monitors. Because these monitors were attuned to both the dynamics of program development in a large bureaucracy and the concerns of the advocacy community, they had the knowledge, skills, and authority to "legalize" the housing and economic assistance programs within the child welfare agency. The system of court-supervised monitoring, which was extended for 2 years beyond the original provision of the consent decree, provided ongoing mechanisms for the poverty lawyers to influence the implementation process. During the first 6 years of implementation, a strong commitment to the program was established within the child welfare department. Despite changes in the political environment for the child welfare agency, there was never any political pressure to cut back the program.

It would be possible to attribute in part the relative stability of the *Norman* programs to their being much less extensive and costly than the program in California. Although the *Norman* programs never topped $2 million, the Homeless Assistance Program in California quickly grew to a $70 million program, with $35 million funded through the state. The low financial cost, however, does not provide a full explanation for the stability of the *Norman* program.

A comparison with the implementation process of a third right-to-home case, *Jiggetts v. Grinker,* provides important insights concerning the importance of judicial oversight for poverty law-

yers who are repeat players in the implementation process and concerning the limits of poverty lawyers as guardians of the bureaucratic rule-making process.

Legal Leverage and Administrative Irrationality: *Jiggetts*

From March to June 1991, *Jiggetts v. Grinker* was in trial in New York City. The Legal Aid lawyers argued that the existing shelter allowance in the public assistance program was inadequate to cover the costs of rent in New York City (Supreme Court of the State of New York 1991). By the time the judge issued her decision 6 years later, pretrial judicial rulings had already allowed the Legal Aid lawyers enough leverage to create a new supplementary shelter assistance program. About 10% of the families receiving welfare grants in New York City were also receiving *Jiggetts* relief (Wise 1997). The *Jiggetts* program cost at least $72 million annually (Wise 1997), approximately the same cost as the implementation of the Homeless Assistance Program in California. Yet although the California governor was able to significantly reduce HAP, the governors of New York were unable to mobilize political support to change the statutes that had provided the foundation for *Jiggetts*.

In New York City, the poverty lawyers used a preliminary injunction (Supreme Court of the State of New York 1988) as leverage to create a process for intervening new plaintiffs in the *Jiggetts* case. The Legal Aid lawyers became the de facto administrators of a new supplemental shelter program. They codified the rules and supervised the process of eligibility determination. As the number of intervenors grew, city social welfare agencies and landlords became dependent on the housing stability provided by the relief that these clients were receiving. By 1996, between 27,000 and 30,000 welfare recipients were receiving *Jiggetts* payments every month. If these payments were to be stopped, existing emergency housing programs would be completely overwhelmed and landlords would lose an important source of income (Bahn interview; Diller interview; Malin interview; Nortz interview).

Although the *Jiggetts* program enhanced the ability of New York City's Human Resources Administration to create a pressure valve to deal with homelessness, the poverty lawyers and advocates for the homeless never mobilized enough statewide support to legislate increased shelter allowances. Administrators in the New York State Department of Social Services continued to refuse to advocate for grant increases without approval of this strategy by the governor and legislature (Nortz interview). The poverty lawyers used judicial decisions to develop and administer the *Jiggetts* program, which significantly expanded the resources for families threatened with eviction. The poverty lawyers' internal

involvement in the *Jiggetts* program, however, also had some unpredicted impacts on the Legal Aid organization itself. Saddled with the bureaucratic task of processing *Jiggetts* claims, lawyers felt that their skills were being underused, and workplace dissatisfaction grew. According to a former Legal Aid lawyer, who had created the legal strategy for *Jiggetts,* the class action had precipitated "a total transformation of Legal Aid practice" (Morawetz interview). She explains:

> What happened was these people, for whom in the past you could do nothing, now had to be processed through *Jiggetts* relief, and it is very uninteresting, boring work. At Legal Aid, it has become a very, very difficult issue that people don't want to do these cases. It is debilitating for a Legal Services office to have lots and lots of extremely routine boring cases.

The litigation to establish adequate shelter allowances in the *Jiggetts* case is an example of what Katz referred to as poverty lawyers serving as "outside agents attempting to impose rationality on the administration of public welfare services over the opposition of a universally hostile state" (Katz 1984:189). The ad-hoc negotiations over the rules that created the implementation process for *Jiggetts* relief, however, were the antithesis of administrative rationality.

Macrolevel Implementation: A Comparison

The poverty lawyers and monitors in the *Norman* case seemed most effective in using the implementation process to increase the legitimacy of the child welfare agency in its political environment. They were able to use judicial supervision as pressure to facilitate rule changes within the bureaucracy and mobilize support within the agency for redistributive reforms. During this process, the child welfare agency in Illinois began to tout the *Norman* programs as fundamental to good child welfare practice and as important resources for preventing the expense of unnecessary out-of-home placements.

In contrast, during the implementation of the Homeless Assistance Program in California, the poverty lawyers lacked the authority to influence the architecture of the state agency. When the beleaguered county welfare offices came under political scrutiny to ferret out "fraud" in the program, the program increasingly became a liability for the state agency. The poverty lawyers collaborated with advocates and state officials to propose rule changes that would not reduce the redistributive impact of HAP. They were unable, however, to resist the political backlash against welfare programs. Consequently, statutory revisions constrained both eligibility for housing assistance and the amount of aid.

The *Jiggetts* program enhanced the legitimacy of state social welfare agencies in New York City by stabilizing the housing situation of families facing evictions. In addition, as Legal Aid lawyers assumed administrative roles in the *Jiggetts* program, they relieved the state from some of these duties. The integral role of the poverty lawyers in implementing *Jiggetts,* however, also had some negative consequences for the legitimacy of the Legal Aid Society. Staff dissatisfaction increased sharply as lawyers resented being assigned to process *Jiggetts* applications, which felt like clerical work rather than legal advocacy.

Conclusion

In this study, we have seen that poverty lawyers were critical to both the development and defense of new redistributive programs for the "have nots." Particularly in the two cases where there was judicial oversight, the poverty lawyers and administrative officials negotiated the rule-making processes that would govern the new programs. From their "insider positions" within the implementation process, the poverty lawyers were also able to mobilize support for the judicially induced policy reforms. This analysis of the implementation strategies of the poverty lawyers provides evidence for speculating more broadly about the potential of public interest lawyers, as repeat players, to challenge the "mobilization of bias" in administrative agencies that fail to respond to the concerns of the "have nots." Schattschneider (1983:30) has argued that "organization in itself is a mobilization of bias in preparation for action." Consequently, bureaucratic structures are likely to thwart the implementation of court decisions with redistributive consequences that challenge existing agency goals (Handler 1978, 1996; Kagan 1991; Melnick 1994b; Shapiro 1988). In this implementation study, we are particularly interested in the possibilities and limitations for the legal advocates to reform the organizational infrastructure of the implementing agencies enough to achieve redistributive goals that had seemed untenable under the agency's existing "mobilization of bias."

Galanter has argued that with adequate resources, the litigants or their public interest lawyers could "secure the penetration of rules favorable to them" (Galanter 1974:103). He left unexplained, however, the process of "penetrating" administrative agencies to transform judicial rule changes into redistributive reforms for the "have nots." Heimer (1996:30) identifies the "legalization" of reforms within agencies as necessary for changing "pre-existing organizational routines." These modifications are most likely when legal actors who are empowered to enforce the new reforms are present. As legal professionals with an expertise in poverty law, the public interest attorneys had special skills to

contribute to the process of "legalizing" redistributive reforms. As outsiders to the implementing agencies, however, the poverty lawyers needed the legal authority to participate in ongoing rulemaking within the agencies administering the programs. Judicial oversight allowed the poverty lawyers to shape the "legalization" process and influence the microdynamics of reform.

Targets of reform frequently try to appease their constituents with symbolic rewards without actually redistributing new resources (Lipsky 1968:1155; Galanter 1974:49). As repeat players in the implementation process, the lawyers in the *Norman* and *Jiggetts* cases could leverage reforms that would have substantive, not just symbolic consequences. The poverty lawyers negotiated rule changes to create effective systems for establishing, monitoring, and evaluating the redistributive programs. Furthermore, the lawyers' ongoing involvement allowed them to identify where decisions were being made that impeded the development and administration of new programs.

Court-supervised implementation, however, was not sufficient for integrating new redistributive reforms into the existing bureaucratic structures. In addition, the lawyers had to mobilize intraagency support for reforms by convincing the administrative leadership that the new programs would enhance the reputation of the agency within its political environment and provide the staff with adequate resources to carry out their responsibilities. Thus, effective implementation required not only influencing the microlevel but also the macrolevel of reform. This process was particularly challenging in political environments in which the legislative leadership was retreating from previous commitments to maintaining a safety net for poor people. Under these conditions, even a well-functioning program could be vulnerable to funding cuts. When a diverse set of constituencies were mobilized for a program during the process of implementation, however, the program was more likely to be able to withstand political pressures for elimination.

The integration of the lawyers for the "have nots" into the implementation process had negative consequences when the lawyers not only influenced the rule-making process and mobilized support for reforms, but also assumed administrative roles. At this point, the lawyers not only represented the interests of their class of clients, but also became program constituents with their own set of interests as rule enforcers. Furthermore, the transformation of legal advocacy work to the performance of administrative routines threatened the legitimacy of the Legal Aid Society among its own staff.

Law and society scholars have debated the role of formal rule making and legal representation in leveraging power for the "have nots." On one hand, some have argued that the attention to the formal "rules of the game" and litigation is misplaced; re-

form strategies should create collaborative relationships between the various actors in conflicts to shape discretionary decisions. Handler (1966, 1978, 1990, 1996), Melnick (1983), and Kagan (1991) have critiqued the limitations of adversarial legal relationships for achieving administrative reforms. On the other hand, other law and society scholars have argued that when the parties to a conflict have unequal power, formal rules and legal representation for the "have nots" in an adversarial process can be critical for creating leverage (Delgado et al. 1985; Lieberman 1981; McCann 1994).

This study suggests that to create successful implementation strategies, advocates for the "have nots" must combine the leverage created by formal rule changes with collaborative tactics that mobilize administrative and political support for those changes. Thus, the public interest lawyers can draw on their organizational resources to use the leverage from judicial decisions to "penetrate" administrative agencies. Access to the rule-making process, however, must be complemented with a strategy for developing long-term political and administrative commitments to reform goals. In addition, the involvement of legal advocates for the "have nots" in the implementation process does not ensure the creation of a political environment that will support the concerns of the lawyers' disadvantaged clients. Nonetheless, as repeat players, the public interest lawyers can create spaces in the political and administrative processes for contesting both the existing "mobilization of bias" within official venues and particular egregious administrative polices.

Political commitments in the 1960s to the funding of legal services to represent poor people in criminal and civil courts increased opportunities for the interests of those who were disadvantaged to be addressed in official venues. Although legal representation did not fundamentally transform political and economic relations of power, resources were created for poor people to move from a position of "passive dependence on the system to active assertion of [their] interests" (Feeley 1986:176). In the criminal justice system, the importance of legal representation extended beyond litigation to the plea bargaining process, in which the legal adversarial relationship provided a context for negotiating punishments (ibid., p. 176). The Legal Services lawyers not only represented their clients interests in judicial arenas, but the threat of increased judicial intervention provided leverage for the lawyers to influence the implementation of redistributive remedies. During the 1990s, the decreased funds for and restrictions on the legal representation of poor people have implications beyond reducing the opportunities for the "have nots" to prevail in courts. In addition, administrative agencies have become more insulated from the grievances of their impoverished clients. Spaces for establishing resources to protect fami-

lies from the most egregious consequences of poverty have been closed.

References

Auditor General of California (1990) *Report by the Auditor General of California: Improvements Are Needed in the State's Program to Provide Assistance to Homeless Families.* Sacramento: California State Auditor.

Beyle, Thad (1992) *Governors and Hard Times.* Washington, DC: Congressional Quarterly.

Brodkin, Evelyn Z. (1986) *The False Promise of Administrative Reform: Implementing Quality Control in Welfare.* Philadelphia: Temple Univ. Press.

Cahn, Edgar S., & Jean C. Cahn (1964) "The War on Poverty: A Civilian Perspective," 73 *Yale Law J.* 1316–52.

California Homeless and Housing Coalition (1991) *Facts and Myths about the AFDC Homeless Assistance Program.* Los Angeles: California Homeless and Housing Coalition.

Carlin, Jerome E., Jan Howard, & Sheldon L. Messinger (1966) "Civil Justice and the Poor: Issues for Sociological Research," 1 *Law & Society Rev.* 9–89.

Children's Defense Fund (1994) *The State of America's Children Yearbook.* Washington, DC: Children's Defense Fund.

Davis, Martha (1995) *Brutal Need: Lawyers and the Welfare Rights Movement, 1960–1973.* New Haven: Yale Univ. Press.

Delgado, Richard, Chris Dunn, Pamela Brown, Helena Lee, & David Hubbert (1985) "Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution," 6 *Wisconsin Law Rev.* 1359–1404.

Diller, Matthew (1995) "Poverty Lawyering in the Golden Age," 93 *Michigan Law Rev.* 1401–32.

Ellis, Virginia (1991) "The Governor's Budget Proposal; Lower Benefits Linked to Shift in Philosophy; Welfare: Governor Says Recipients, Mostly Single Mothers, Don't Have Enough Incentive to Get Off Programs. Critics Believe the Ranks of the Homeless Will Swell," *Los Angeles Times,* 11 Jan., p. A3.

Fabricant, Michael B., & Steve Burghardt (1992) *The Welfare State Crisis and the Transformation of Social Work.* Armonk, NY: M. E. Sharpe, Inc.

Feeley, Malcolm (1986) "Bench Trials, Adversariness, and Plea Bargaining: A Comment of Schulhofer's Plan," 14 *New York Univ. Rev. of Law & Social Change,* 173–78.

Galanter, Mark (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Rev.* 95–160.

——— (1983) "The Radiating Effects of Courts," in K. O. Boyum and L. Mather, eds., *Empirical Theories about Courts.* New York: Longman.

Garth, Bryant G. (1992) "Power and Legal Artifice: The Federal Class Action," 26 *Law & Society Rev.* 237–71.

Handler, Joel F. (1966) "Controlling Official Behavior in Welfare Administration," 54 *California Law Rev.* 479–510.

——— (1978) *Social Movements and the Legal System: A Theory of Law Reform and Social Change.* New York: Academic Press.

——— (1990) *Law and the Search for Community.* Philadelphia: Univ. of Pennsylvania Press.

——— (1996) *Down from Bureaucracy: The Ambiguity of Privatization and Empowerment.* Princeton, NJ: Princeton Univ. Press.

Handler, Joel F., & Michael Sosin(1983) *Last Resorts: Emergency Assistance and Special Needs Programs in Public Welfare.* New York: Academic Press.

Heimer, Carol A. (1996) "Explaining Variation in the Impact of Law: Organizations, Institutions, and Professions." 15 *Studies in Law, Politics, & Society* 29–59.

Houseman, Alan W. (1991) "Poverty Law: Past and Future," in E. F. Lardent, ed., *Civil Justice: An Agenda for the 1990s*. New Orleans: American Bar Association.

Kagan, Robert A. (1991) "Adversarial Legalism and American Government," 10 *J. of Policy Analysis & Management*, 369–406.

Katz, Jack (1984) *Poor People's Lawyers in Transition*. New Brunswick, NJ: Rutgers Univ. Press.

Lawrence, Susan E. (1990) *The Poor in Court: The Legal Services Program and Supreme Court Decision Making*. Princeton, NJ: Princeton Univ. Press.

Lieberman, Jethro K. (1981) *The Litigious Society*. New York: Basic Books.

Lipsky, Michael (1968) "Protest as a Political Resource," 62 *American Political Science Rev.* 1144–58.

McCann, Michael W. (1992) "Reform Litigation on Trial," 17 *Law & Social Inquiry* 715–45.

——— (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: Univ. of Chicago.

——— (1999) "How the Supreme Court Matters in American Politics: New Institutional Perspectives," in C. Clayton & H. Gillman, eds., *The Supreme Court and American Politics: New Institutionalist Approaches*. Lawrence: Univ. Press of Kansas.

Melnick, R. Shep (1983) *Regulation and the Courts: The Case of the Clean Air Act*. Washington, DC: Brookings Institution.

——— (1994a) "Administrative Law and Bureaucratic Reality," in T. O. Sargentich, ed., *Administrative Law Anthology*. Cincinnati: Anderson Publishing.

——— (1994b) *Between the Lines: Interpreting Welfare Rights*. Washington, DC: Brookings Institution.

Murphy, Kim (1986) "State is Ordered to Revise Welfare Rule," *Los Angeles Times*, 2 Aug., Home Ed., sec. 2, p. 1.

National Housing Law Project (1992) *Annotated Docket of Selected Cases and Other Materials Involving Homelessness*. Working Draft. Washington DC: National Housing Law Project.

Novak, Tim (1995) "DCFS Chief Hits Senate Stall on his Appointment," *Chicago Sun-Times*, 1 June, p. 16.

Pearson, Rick (1992) "State Starts Sending Pink Slips to Public Aid, DCFS Workers," *Chicago Tribune*, 11 Aug., p. Chicagoland 2.

Ramos, George (1986) "State Ordered to Provide Aid to Homeless Families," *Los Angeles Times*, 13 May, sec. 1, p. 1.

Roisman, Florence (1991) *Establishing a Right to Housing: An Advocate's Guide*. Washington, DC: National Support Center for Low Income Housing.

Schattschneider, E. E. (1983) *The Semisovereign People: A Realist's View of Democracy in America*. Fort Worth, TX: Holt, Rinehart and Winston.

Scheingold, Stuart A. (1974) *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven, CT: Yale Univ. Press.

Shapiro, Martin (1988) *Who Guards the Guardians?* Athens: Univ. of Georgia Press.

Sparer, Edward V. (1965) "Role of the Welfare Client's Lawyer," 12 *UCLA Law Rev.* 361–80.

Stumpf, Harry P. (1975) *Community Politics and Legal Services: The Other Side of the Law*. Beverly Hills, CA: Sage Publications.

Vorenberg, Elizabeth (1993) "Child Services Can Tear Families Apart," *New York Times*, 28 June, p. A16.

Wise, Daniel (1997) "Rent Aid to Welfare Recipients Continued Under Interim Orders," *New York Law J.*, 9 May, pp. 1, 4.

Legal Documents

Hansen v. McMahon, File No. CA 000974

Superior Court of the State of California for the County of Los Angeles (1986) "Class Action Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate" (April 17).
Court of Appeal of the State of California, Second Appellate District, Division 6 (1987) "Opinion," by Judge J. Abbe, 1 July.

Jiggetts v. Grinker, File No. 40582/97

Supreme Court of the State of New York, County of New York (1991) "Plaintiffs' Proposed Findings of Fact," 4 Dec.
——— (1988) "Order," by Judge K. Moscowitz, 12 Jan.

Norman v. Johnson, File No. 89 C 1624

U.S. District Court for the Northern District of Illinois Eastern Division (1990) "Memorandum Opinion and Order," by Judge W. T. Hart, 18 May.
——— (1991) "Consent Order," 28 March.
——— (1995) "Agreed Order," by Judge W. T. Hart, 27 Feb.
——— (1996a) "Motion for (1) Continued Monitoring and/or (2) Declaratory and Injunctive Relief Redressing Substantial Non-Compliance with the Consent Decrees and the Court Order of March 10, 1996," 7 Feb.
——— (1996b) "Defendant's Memorandum in Opposition to Plaintiffs' Motion for Continued Monitoring and/or Declaratory and Injunctive Relief," 26 Feb.
——— (1996c) "Memorandum Opinion and Order," by Judge W. T. Hart, 11 April.
——— (1996d.) "Seventh Monitoring Report," 3 June.

Interviews with Author

Hansen v. McMahon

Berlin, Nancy (1996.) Director of the California Homeless and Housing Coalition. Interview by author. Los Angeles, 14 Oct.
Bird, Melinda (1996) Attorney, formerly with Western Center on Law and Poverty, Los Angeles. Interview by author. Los Angeles, 17 Oct.
Farber, Jeffrey (1996) Social worker, Los Angeles. Family Housing. Interview by author. Los Angeles, 14 Oct.
McKeever, Casey (1996) Legislative advocate with Western Center on Law and Poverty, Sacramento. Phone interview, 7 Oct.
Newman, Robert (1996) Attorney with Western Center on Law and Poverty. Interview by author. Los Angeles, 16 Oct.

Jiggetts v. Grinker

Bahn, Susan (1997) Attorney, Legal Aid Society, New York City. Interview by author. New York City, 25 June.
Diller, Matthew (1996) Attorney, formerly with Legal Aid Society, New York City. Interview by author. New York City, 10 July.
Malin, Joan (1997) Former Commissioner for Homeless Administration, New York City. Interview by author. New York City, 25 June.

Morawetz, Nancy (1997) Attorney, formerly with Legal Aid Society, New York City. Interview by author. New York City, 1 July.
Nortz, Shelley (1997) Director for State Policy, Coalition for the Homeless, Albany. Phone interview, 12 June.

Norman v. Johnson

Cheney-Egin, John (1996) Housing specialist and divisional *Norman* liaison for the Office of Litigation Management, Illinois Department of Children and Family Services. Interview by author. Chicago, 17 July.
Heybach, Laurene (1996) Attorney, Legal Aid Foundation of Chicago. Interview by author. Chicago, 19 July.
Redleaf, Diane (1996) Attorney, formerly with Legal Aid Foundation of Chicago. Phone interview, 18 July.
Shaw, Barbara (1996) Executive Director, Illinois Council for the Prevention of Violence. Interview by author. Chicago, 23 July.
Smith, Jeanine (1996) Monitor, *Norman* Consent Decree. Interview by author. Chicago, 18 July.
Tchen, Christina (1996) Attorney, Partner in Skadden, Arps, Slate, Meagher and Flom, legal counsel for the Department of Children and Family Services. Interview by author. Chicago, 25 July.