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Let's Get Real

An Addendum

By Edgar S. Cahn and Sharon Lee Schwartz

Edgar S. Cahn
*Professor, University of the District
of Columbia School of Law*

c/o TimeBanks USA
5500 39th St. NW
Washington, DC 20015
202.262.1176
yeswecan@aol.com

Sharon Lee Schwartz
Regional Director

Legal Aid Services of Oregon
P.O. Box 219
700 SE Kane St.
Roseburg, OR 97470
541.673.1182 ext. 205
sharonlee.schwartz@lasoregon.org

We write this addendum to the main article for two reasons. First, we believe deeply that the true mission of legal services cannot be realized without the client community participating as coproducers of justice. Second, while we appreciate the legitimate concerns and even outright opposition to the changes we envision, we believe that the reasons in favor of building partnerships for justice with our clients are stronger than the reasons against those partnerships.

By coproduction we mean initiatives from time banks such as these:¹

- In Washington, D.C., teenagers charged with misdemeanors pay back by serving as jurors in a youth court where such service has been found to reduce second arrests by over 50 percent.²
- In Washington, D.C., a community group, in return for legal help in getting rid of crack houses, operates an evening escort program for seniors and conducts a campaign for better street lighting.
- In New York City seniors who belong to a health maintenance organization offer shopping, companionship, rides, and informal support to other members, reducing hospital stays and deferring or avoiding nursing home care.³
- In Allentown, Pennsylvania, patients receiving health care learn to act as medical translators for Latino patients; a sponsoring hospital hires them as translators once they are certified.⁴

¹The examples are recounted in EDGAR S. CAHN, *NO MORE THROW-AWAY PEOPLE* (2000).

²*Id.* at 105–9.

³*Id.* at 146–50, 97–99, 128–29, 151–54.

⁴“From January 2009 through June 2012, 56 committed caring, bilingual, mostly low-income community members have been trained as medical interpreters. These interpreters have reported 2,521.75 hours of service in the role of medical interpreter.... After completing the training, some community members have been employed by Lehigh Valley Health Network, some continue to earn time credits through their continued commitment to interpreting, some have used their new credential to find employment with other employers, and a few previously trained interpreters have started their own interpretation company” (E-mail from Laura Gutierrez, Manager, Lehigh Valley Health Network, Division of Community Health and Health Studies, School of Nursing, to Edgar S. Cahn (Dec. 20, 2012)).

- In Washington, D.C., formerly incarcerated people deliver food to a homeless shelter and a nursing home and help children traverse gang territory safely to get to school;⁵
- In Chicago schools plagued by academic failure, truancy, and violence, cross-age peer tutoring mobilizes fifth and sixth graders to tutor first and second graders, leading to improved attendance and test scores and reduced truancy and violence.⁶

Rather than asking readers to accept our view, we hope to demonstrate the impact of coproduction through current and new projects such as those described above. We understand that doing so requires reframing our work to enlist our colleagues as allies. We hope that together we can spark a new movement for equal justice.

The objections to partnering with clients are many, and below we offer an explicit response to each. To explain our conclusion that achieving the true mission of legal services requires us to ask for help, from our clients, we respond more broadly to the fundamental questions of values that some objections raise.

Direct Responses to Objections

Objection: Asking persons in crisis to share their time, to take on other obligations when they are already in overload themselves, is unfair and unrealistic.

Response: Helping others helps one cope with crises, enabling escape from the paralysis that crisis creates and embedding one in a mutual help network that opens access to additional services. Helping others reaffirms one's strengths and enables one to earn time credits that enhance the ability to deal with needs and problems.

Social change movements should enlist those most affected by injustice. Women marched for the vote; blacks risked their lives for civil rights. The most vulnerable and destitute villagers in India freed

the country from the British Raj—non-violently—through collective action. We should not outsource the quest for justice to the legal profession.

Objection: Asking clients to share their time must be resisted in principle because it is the first step toward injecting a sliding-fee scale for services that were expressly designed to be free in order to advance equal justice.

Response: We do not propose asking indigent clients for money but rather for help—in some cases unique help that can come only from peers and the community. Requiring clients to pay money would impose an insurmountable barrier. Asking for time does not because time is something we all have. If we do not personally have time we have friends and family and networks whom we can enlist. That partnership is essential to expanding community-based support that can match competing priorities for limited funds.

Objection: Despite efforts to make clients' contributions voluntary and not obligatory, the power relationship between lawyer and client, particularly when the client is desperate for help, entails coercion.

Response: Program design can protect voluntariness. A client representative can invite participation in a time bank, or a retainer by a membership organization for clients it refers for legal help can be "paid" by the organization's members. Legal services are now rationed according to priorities established by legal aid staff with varying degrees of client input. Letting clients determine the level of representation by their level of time-bank participation could shift priority-setting power into clients' hands. Community members could contribute time credits to a time-bank community chest for members who cannot "pay it forward." In designing the initiatives, we can structure them carefully to reduce the power imbalance between lawyer and client.

⁵Chris L. Jenkins, *In Ward 7, Men's Morning Patrols Aimed at Giving Kids "Safe Passage" to School*, WASHINGTON POST (Sept. 15, 2011), <http://bit.ly/YMPngt>.

⁶CAHN, *supra* note 1, at 101–5.

Objection: Asking clients to share their time can undermine, sabotage, or disrupt a growing movement toward a civil right to counsel for low-income people in cases affecting basic human needs. It is the equivalent of imposing a sweat equity poll tax on a fundamental right.

Response: Transforming clients from passive consumers of legal services to active coproducers of justice creates a constituency that can speak to the importance of legal services. Lawyers do not own the quest for justice.

Objection: Lawyers cannot supervise or oversee community service by clients. We are not social workers.

Response: Lawyers need not supervise the efforts that generate hours earned any more than attorneys in private practice oversee the work their clients do to pay their bills. Legal aid programs are free to refer clients to community-building initiatives to “pay it forward.” We are asking them to help build the community where we both live.

Objection: We could be derelict in our duty to represent clients zealously if a client fails to pay a “community service bill.” How can we link a “pay it forward” obligation to client representation when we may not abandon a case or fail to carry out our duties diligently simply because a client defaults?

Response: Clients who do not pay are not new to the legal profession. Our ability to terminate representation is always limited by our ethical obligation. Casa de Maryland found that clients who made a reciprocal commitment took their cases more seriously; there were fewer “no-shows.”⁷ There are many alternatives to abandoning a case in the event of nonparticipation. The Pay-it-Forward agreement used by the Legal Aid Society of Oregon’s Roseburg office allowed a friend or family member to “cosign.”

Developing a community time-banking fund to which other clients can make contributions, and capping the number of hours that any one client can be asked to earn, are other solutions.

Objection: Asking clients to share their time adds an administrative cost to the delivery of legal services when programs already labor under budget cuts and are grossly underfunded.

Response: The cost of the time-banking project in Roseburg, Oregon, is slightly over \$5,000 per year and is funded by the time bank; once the time bank is established, cost will decrease. If \$5,000 per year engages clients in overcoming systemic problems and preventing others, increases faith in the rule of law, and generates broadened community support, it is funding that is well spent and might even generate additional financial support.

Referrals are already a major function of legal services programs. If the “Pay-it-Forward” program is incorporated as a referral option, administrative costs of the project can be reduced or even eliminated by referrals to community service organizations, religious organizations, schools, hospitals, or Head Start programs.

Objection: To ask clients to share their time is to impose a political agenda as the price of a publicly funded service.

Response: Time banking is neither left nor right, although we believe both sides will see benefits. Rather, time banking allows every member of society to contribute to solving our mutual problems.

Objection: Legal Services Corporation (LSC) regulations prohibit asking clients to share their time.

Response: There is no such prohibition. In fact, LSC President James Sandman has expressed his approval.⁸

⁷Casa de Maryland’s Employment Center trades services to its constituency with time dollars—with clients paying time-dollar invoices by performing a range of activities: babysitting, translating, and even picketing and demonstrating in front of businesses that cheat laborers out of wages to which they are legally entitled. Casa lawyers report that charging a time-dollar fee has a marked impact in increasing clients’ participation and ensuring their follow-through in appearing for hearings or producing needed documentation.

⁸Letter from James J. Sandman, President, Legal Services Corporation, to Edgar S. Cahn (Feb. 10, 2012) (on file with Cahn).

Objection: In a political climate where the survival of a social safety net is in constant jeopardy, critiquing how services are delivered is too dangerous.

Response: When indigent clients become “paying clients” through their contributions to the community, they cease to be objects of charity and become invaluable coproducers of justice. Coproduction will enhance the effectiveness of, and thus increase support for, the safety net.

Position Determines Perspective

As attorneys committed to advancing justice with a duty to represent our clients zealously, are we obligated to identify and utilize remedies that are effective for an individual client and similarly situated persons? If we have reason to believe that such a remedy may be available, are we obligated to explore the remedy's feasibility, if possible without resort to litigation? If we were to interfere with or obstruct experimentation with such a remedy, would we breach our fiduciary obligations unless we had a superior alternative? If we knew of effective action our clients or potential clients could take to prevent injury to their well-being, would withholding that information be inappropriate? And would consulting with the client community I am charged with serving and the formal governance system to which I am subject be inappropriate? Does looking at this problem from the client's perspective make sense?

The Client Perspective. We have talked to client leaders who tell us in essence that to see them only as clients is to define them by their problems and needs, which then become the only factors deserving a lawyer's time and attention. The approach rewards dependency and perpetuates passivity, making clients the caseload, the burden. Private law firms value and nurture relationships with paying clients. When they close a case, they do not send that client's file to the client morgue. Clients have asked whether it

occurs to us that some of them would like to be regarded as paying clients for what they contribute to their community, and that lawyers who fail to entertain the possibility that clients could “pay it forward” rob clients of an opportunity to advance the mission of legal services. Private attorneys would work to structure a payment schedule that did not overburden their clients. Why is it not appropriate for legal services attorneys to invest in suitable pay-it-forward partnerships that might even empower their clients as community contributors and leaders?

The Lawyer's Perspective. Charles Hamilton Houston, the Howard Law School dean who plotted the path that led to *Brown v. Board of Education*, was noted for his admonition that “[a] lawyer's either a social engineer or he's a parasite on society.”⁹ We lawyers are better at picking fights than designing remedies. But with so many of our public systems failing to fulfill their mission, perhaps we should note an emerging system-change strategy: coproduction. It entails enlisting the client-beneficiary-recipient and transforming that person from passive consumer to active coworker and coproducer of outcomes.

Some will say that, regardless of effectiveness, this kind of activity lies outside the purview of a government-funded legal services program. As one who cofounded that program, I, Edgar S. Cahn, offer some historical evidence. In early 1966, as special assistant to Office of Economic Opportunity Director Sargent Shriver, I coauthored an article on legal services that observed:

The demand for justice, coupled with a demand to assist in its full realization, is difficult to denigrate in a society so committed to the work ethic. The corollary of this is that redress through the legal system is likely to be the more valued if it comes not as a new dole, grudgingly bestowed, but rather as the prod-

⁹GENNA RAE McNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS 84 (1983); *Brown v. Board of Education*, 347 U.S. 483 (1954).

uct of an enterprise in which the consumer is also engaged as a producer.¹⁰

That opinion was not widely shared at the time, and the article begins with an explicit declaration that “the opinions expressed herein are the personal views of the authors and in no way represent the position of the United States government or any agency thereof.”¹¹ Accordingly, to close with Sargent Shriver’s remarks made several months later to the National Bar Association seems fitting. His remarks made clear his view that the legal services program had a much broader mandate than mere legal assistance:

We need to begin to devise ways in which disputes can be settled locally, within the community—through neighborhood reconciliation boards. We need to involve the poor themselves in law enforcement, in code inspection, in policing the practices of merchants and landlords and welfare authorities. Above all, we need to begin to build a sense of community, of full membership and full citizenship in a society that does not pit “we” against “they,” the powerful against the poor, or white against black.¹²

I, Cahn, have long urged advocates to work with clients, the client community, and public and nonprofit institutions to test ways to enlist clients in shaping solutions to social problems. In *No More Throw-Away People*, I described prior

attempts to engage clients as coproducers of justice.¹³ One of these efforts was wholly unsuccessful; that failure nearly resulted in the demise of the entire legal services program, which by then had served over a hundred million households. The other effort, in which clients and the organizations that had referred them were engaged, resulted in the survival of a unique public law school, the University of the District of Columbia School of Law, committed to advancing justice; it flourishes to this day as the most diverse law school in the United States with a clinical program ranked as one of the foremost in the nation.

My coauthor Sharon Lee Schwartz reached the same conclusion about five years ago: that we must ask for our clients’ help if we are to achieve lasting justice. Some strategy must be available that would allow us to create justice by using resources already at hand.

Using time banking to help us move with our clients toward coproduction of justice can be that strategy. It is time to pursue that vision of full membership and full citizenship. Legal services can continue its heroic struggles to establish justice in the face of escalating disparities, against growing odds and with diminishing resources. It can continue fighting the same fight, in the same ways. Or we can choose to adopt a different strategy and return to a more ancient mandate: “Justice, justice shall ye pursue.”¹⁴ That prophetic exhortation did not come with the label “for lawyers only.” Maybe it is time to enlist our clients and our communities.

¹⁰EDGAR S. CAHN & JEAN CAMPER CAHN, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAWYER 927, 945 (1966).

¹¹*Id.* at 927.

¹²Sargent Shriver, Director, Office of Economic Opportunity, Address to National Bar Association, Detroit, Michigan (Aug. 3, 1966), <http://bit.ly/UkyM3J>.

¹³CAHN, *supra* note 1. The first effort centered on the battle in the mid-1990s over the continuation of the federally funded legal services program after opponents of the program won control of Congress. The client voice was unheard in that battle, and the program, with new, draconian restrictions in place, barely survived. The second effort centered on the survival of the University of the District of Columbia School of Law, which was threatened by a District of Columbia budget crisis. This time, members of the community were integrally involved with the law school’s clinic through the establishment of time-dollar programs at a church and at public housing complexes. In hearings before the D.C. city council, clients’ voices in support of the school were heard loudly and clearly; the school survived and continues to thrive.

¹⁴Deut. 16:20.



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