

# CLEARINGHOUSE REVIEW

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## INSIDE

Medicare Secondary  
Payer Procedures for  
Recovery of Program  
Expenditures from  
Liability Insurance  
Payments

Expanding Low-Income  
Communities' Access to  
Telecommunications  
Technology

Tenants' Rights to  
Pretermination Notice in  
Cases of Landlords'  
Nonpayment of Utilities

The Divisible Pension:  
Another Income Source  
for Low-Income  
Divorced Clients



## Assisting Clients Seeking the Road to Decent Jobs: Job Training Advocacy

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## **Assisting Clients Seeking the Road to Decent Jobs: Job Training Advocacy**

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Since the birth of legal services, the political climate facing the poor and their advocates has never been grimmer. The speed, ferocity, and magnitude of welfare "reform" is putting in doubt basic assumptions both about government's relationship with those in need and about the ability of lawyers for the poor to provide assistance in cases involving economic subsistence. As the demolition of an entitlement-based system of Aid to Families with Dependent Children (AFDC) has become not only an acceptable topic of discussion but a bipartisan premise in the reform debate, the very nature of legal services casework is facing redefinition. Legal services programs will have to grapple with this redefinition and figure out ways to assist clients within this new environment.

The cutting of the welfare safety net will mean that issues surrounding low-wage work will emerge as greater service priorities than they have been. Such a shift in focus will obviously involve greater attention to employment law issues and to the various other issues relating to the inadequacy of low-wage jobs, namely, the absence of affordable child care and health insurance. A greater focus on the world of work will also require advocates to consider ways to assist individuals seeking employment, leading inevitably to the area of training and education, the doorway to higher-wage work.

Job training has been a largely neglected field in legal services work, falling into the cracks between the jurisdictions of employment, education, consumer, and welfare specialists. This lack of attention has begun to be addressed through the creation of the Jobs, Employment, Education and Training Working Group (JET), an interdisciplinary collection of national support and field staff, which has conducted some national and regional training sessions and produced some written materials. /1/ The intent of this article is to continue this process, with a particular focus on the work of a local program that has developed a substantial legal practice around education and training issues.

Several intersecting advocacy activities will be discussed, including: assisting clients to obtain student loan relief in order to access higher education; teaching clients to be knowledgeable consumers of the variety of education and training resources at work in a particular community; using administrative appeals, public participation in the plan development process and media work to analyze and challenge the way job training decisions are made by welfare and training bureaucracies; assisting in local organizing efforts to alter the various system biases which favor short-term programs leading to

dead-end jobs and which neglect traditional, education-based approaches to upward mobility; and restructuring legal services intake so as to allow education and training issues to surface. The discussion will begin with an explicit consideration of the reasons for doing work in this area, reasons that derive from an urgent and widespread client demand.

## **I. Why Job Training Advocacy Is Needed**

Job training can easily be used to shift attention from problems in the economy to problems concerning the qualifications of the unemployed, conveniently offering policymakers the opportunity to avoid focusing on the shortage of low-skill work that produces a living wage. /2/ In its most cynical form, job training can also provide political cover for politicians trying to make draconian benefit cuts seem less mean-spirited. /3/ Substantively, job training that stems from such limited purposes consists primarily in the teaching of "soft" skills, such as the importance of showing up on time and how to read want ads and handle interviews. While some clients may find such help useful, the paradigm welfare recipient is not a person who has never worked and needs to be taught how to find and keep a job. Rather, she cycles on and off welfare between a stream of unsatisfying, low-paying jobs that do not last. /4/ Even when job training programs are longer and skill oriented, the "skills" they offer (e.g., how to work in a cafeteria or as a security guard) are often little more than what participants can obtain on their own without training.

Despite the irrelevance of much of what passes as job training, legal services clients do have an urgent need for quality education and training opportunities. On one end of the spectrum are those individuals who do not have the skills and confidence necessary to hold even a minimum-wage job. While a brief motivational class will not provide them meaningful assistance, genuine literacy training and supportive services are necessary to their survival. At the other end of the spectrum are those who have more than enough inner resources to obtain low-wage jobs but who, for many reasons -- including the inherent instability of such jobs in this economy -- continually cycle in and out of employment, never gaining the foothold they need to climb out of poverty. Their correct assessment of the job market is that some postsecondary education is essential in order to attain economic self-sufficiency.

In addition to recognizing that clients want decent training, advocates must confront two other, perhaps surprising facts about job training: (1) that enormous numbers of our clients have already been through training programs, frequently more than once, and (2) that bad training can leave participants worse off than before. Most of these prior training experiences have been at short-term, high-priced and low-quality programs that leave their graduates still unemployed or underemployed, more discouraged, and often with the new burden of student loan debt. /5/ As one commentator has observed, the reality of the job training system "more nearly resembles a giant wheel tumbling people about like clothes in a dryer -- in and out of marginal jobs," rather than "a ladder for upward mobility." /6/

This aspect of clients' lives is largely unknown to legal services advocates. /7/ Although advocates defend the right to decent housing and champion the demand for protection from domestic violence or from a loss of subsistence public benefits, advocates remain largely unaware of the problems created by poor governmental training programs. In part this lack of knowledge is the product of efforts to manage the overwhelming demand for legal services through tools such as specialization and intake triage. Ironically, increasing efficiency in addressing the diverse legal problems of the poor may have kept advocates in the dark about the poorly advised decisions low-income people have made in search of a road out of poverty. Notions of client autonomy and the limited expertise of legal professionals concerning education and training have also played a role. However, a lack of legal services in this area can make clients vulnerable to the influence of employment and training bureaucrats and of salespeople from fraudulent schools. Especially today, as lawmakers in Washington and state capitals stand poised to redefine both the welfare and the job training systems, advocates cannot remain ignorant about the reality of the current training systems and the key elements of good education and training.

## **II. Student Loan Work**

### **A. Recognizing the Problem**

While some policymakers tout the benefits of a training voucher program as a needed innovation in the federal job training system, vast numbers of low-income people suffer from the consequences of a voucher program that already exists, namely, the financial aid system operated by the Department of Education under Title IV of the Higher Education Act (Title IV). /8/ This suffering is more than the psychological effect of wasted time and frustrated hopes that accompanies any failed training experience. It takes the form of a uniquely harmful legal status -- being in default of a federally guaranteed student loan -- a status acquired by unsuspecting, unsuccessful participants in vocational programs offered by private, for-profit schools (trade schools or "proprietary"). /9/

For the last decade, the proprietaries have marketed their wares directly to the poor, establishing themselves as the predominant political force in the world of training. /10/ They have flourished wherever large populations are unemployed. These schools can be identified by their names (usually acronyms for "business" or "career" "institutes," or even "colleges"), /11/ type of advertising (daytime television, subway posters, and direct mail); the content of their advertising (references to lifetime placement assistance and the availability of financial aid); or simply by the kind of training offered (generally nondegree vocational courses lasting less than a year).

Tuitions at these schools tend to be paid through Pell grants and the various guaranteed student loan programs (known collectively as the Federal Family Education Loan Program or FFELP) that comprise Title IV. While these financial aid programs are generally associated with attendance at universities, the proprietaries actually receive an enormous share of the total federal Title IV spending on postsecondary education tuition.

/12/ Although frequently not included within a general discussion of job training programs, these higher education expenditures going to the trade school sector dwarf all other training items in the federal budget. /13/

The nature and quality of the educational product being sold to students rarely have been considered by the federal bureaucracy that administers and funds this system. /14/ While some trade schools offer training for jobs not covered by the traditional educational sector -- jobs such as mechanic, chef, or commercial artist -- more often, the training provided is little more than a low-quality, more expensive version of community college vocational courses (e.g., medical assistant, office technology) or a costly, extended version of on-the-job training (e.g., security guard, nurse assistant). These programs usually lead to no recognized credential and no transferable credits and frequently have no admissions requirements -- other than the student being eligible for financial aid. The tuition fees are uniformly high, routinely \$5,000 for a nine-month course. The price and length of the programs are no accident; they are designed to meet the minimum course-length threshold for Pell grant funding and to capture a maximum Pell grant and FFEL for each student. /15/

Program accountability and integrity in this system is supposedly provided by a regulatory "triad" consisting of state licensure, peer accreditation, and federal gatekeeping and enforcement. In practice, this triad has proved ineffective in preventing widespread profiteering by school owners who are able to establish financial connections to Title IV. /16/ In addition to the lack of accountability for the quality of programs, the loose definition of student eligibility under Title IV allows many schools routinely to admit students with skill levels too low to be able to benefit from postsecondary training. Even a high school diploma or GED is no longer a precondition to obtaining higher education grants and loans. /17/

Without admissions requirements or performance requirements tied to receipt of the funds, the school admissions process has, in many cases, become little more than a marketing and sales challenge for entrepreneurial school owners. One industry survey found that the average trade school spends as much as one-quarter of its expense budget on marketing and sales. /18/ Low-income people are the target for this salesmanship as they make decisions about education and incurring student loan debt based on advice from "admissions representatives" who, until recently, were actually commissioned salespeople. /19/

The typical sales approach targets individuals with low self-esteem and low expectations for the future and represents the essence of education as being more about motivational shifts than about academics. For individuals with negative associations about schooling, the pitch offers an opportunity to be successful in a schoollike setting, with a real graduation ceremony (complete with a certificate and a cap and gown) and, most important, the chance to enter a "high-salary career" in a "fast-growing field." Quick results are promised -- an attractive alternative to years of study. Certainly, the fact that these schools are "accredited" /20/ adds credence to their claims. For people desperate for any escape from poverty, such sales campaigns are extremely seductive. As a result, legal

services clients have responded in droves -- to ads on daytime television and in newspapers; to telemarketers; and to personal solicitations inside subway stations, outside welfare offices, or right at their front doors.

Because many of these schools produce little in the way of ultimate employment, the consequence of attendance for the average student can routinely be nothing more than wasted time and student loan indebtedness. As a result of the magnitude of the proprietaries' market penetration, low-income communities have seen an explosion in student loan debt. A training provider in Philadelphia has confirmed the enormity of the student loan default problem through an anonymous survey of incoming students conducted over seven years. This study produced the astounding finding that more than half of its incoming students were in default on student loans from prior training experiences, with a class of about 30 students having an aggregate student loan debt of \$30,000. /21/ One national study concluded that 12 percent of AFDC participants in the Job Opportunities and Basic Skills (JOBS) Training Program are in default on a student loan. /22/ Thus, in any given legal services population, it is a safe assumption that student loan debt is a substantial problem.

Traditionally, student loan default has been one of the many legal problems that understaffed legal services programs have had to deemphasize in favor of emergencies relating to loss of shelter, income, and personal safety. Categorized as "consumer" work, student loan cases have been regarded either as being about debt relief or, to the extent they arise from enrollments in high-priced, low-quality trade schools, about consumer fraud. In smaller programs unable to support sustained consumer work, student loan problems generally cannot be serviced. But even in programs with established consumer units, the prioritizing of cases and assumptions about being "judgment-proof" has made student loan relief more a bankruptcy afterthought than a perceived priority.

However, student loan debt is like no other kind of indebtedness. It can produce lifelong garnishments, /23/ tax refund and earned income credit intercepts, /24/ and damaged credit. /25/ Student loan default is a principal cause of low-income mortgage denials. /26/ And most important, from the standpoint of someone seeking upward mobility through postsecondary education, a student loan default can effectively close the doors to a borrower's higher-education aspirations, by precluding the receipt of further financial aid. /27/

While access to higher education may not appear on many legal services priority lists, it is central to low-income people's quest for employment opportunities. If most quality jobs are grounded in some form of postsecondary education, then access to the means for paying the tuition of such educational programs must be protected. For many poor people, the primary educational resource available is the community college system, where quality training tends to be priced cheaply enough that a full course load can be paid for entirely with a Pell grant. Being ineligible for a Pell grant, however, effectively closes this opportunity.

This consequence of default -- ineligibility for Title IV grants and loans -- drives many

"job training" decisions being made daily by legal services clients. Job training programs tend to have built-in biases against traditional higher education anyway, and the widespread existence of student loan defaults within the welfare population has, unquestionably, reinforced this bias. If, for example, a welfare recipient identifies being a nurse as her career objective, the existence of a student loan default from a previous trade school experience routinely leads to the bad advice that nursing school -- affordable only through Pell grants and student loans -- is not an available option. As a result, such an individual may be steered -- regardless of her skill level and motivation -- into some short-term training program that is designed to lead to a low-wage job without a career ladder. If, on the other hand, the same individual is made aware that she can access future Title IV funding despite her default, she is given the means to resist such steering and pursue her dreams.

### ***B. Doing the Work***

Prior to 1992, a client in default who was seeking to reestablish eligibility for federal financial aid had little choice: either make arrangements to pay the loan in amounts exceeding her ability to pay -- the guaranty agencies generally have demanded monthly payments of at least \$50 -- or file for bankruptcy. /28/ That is no longer the case. In the 1992 amendments to the Higher Education Act (HEA) several new relief measures were adopted by Congress -- measures enabling virtually all those in default to reinstate their eligibility for financial aid.

These changes effectively open the door to higher education to large numbers of poor people. Without necessarily embarking on a whole new area of individual casework, legal services programs can provide clients with a critically needed service through community education and other limited assistance strategies. Because this service is so much in demand, even a limited program investment can provide additional paybacks, including introducing advocates to training networks in the community and building new constituencies for legal services.

Probably the most significant change in the law is the obligation of loan guaranty agencies /29/ to offer defaulted borrowers the opportunity to reestablish Title IV eligibility by making very small monthly payments on their defaulted loans. Under these so-called "reasonable and affordable" arrangements, borrowers can reinstate their eligibility by making six consecutive monthly payments that are "reasonable and affordable based upon the borrower's total financial circumstances." /30/ Thus, by making payments as small as \$5 per month and by continuing these payments while in school, an individual in default can obtain Pell grants -- and, if necessary, further loans -- to go back to school. /31/

In addition to enabling all those in default to go back to school while remaining in default, the 1992 HEA amendments also established two new grounds for getting loans canceled altogether. The new statutory provision directs the Department of Education to discharge any loan disbursed on or after January 1, 1986 if either the borrower was "unable to complete the program in which [she was] enrolled due to the closure of the

institution" or the borrower's "eligibility was falsely certified by the eligible institution." /32/ Eligible borrowers are absolved of further payment obligations, their credit is repaired, and they even receive refunds of any amounts paid on the discharged loans. /33/

While extremely slow getting started, the Department and the guaranty agencies are now discharging loans under the new provision. /34/ The closed-school discharge, the simplest of the two new cancellation programs, is generally available to eligible borrowers who know to ask for it. Eligibility consists of little more than having been in attendance on the date of the closure -- or having withdrawn within 90 days of the closure -- and not having completed the training at another school. /35/ The false-certification discharge has the potential to reach many more victims of trade school abuses, but it has largely been limited to individuals whose loan applications or endorsements were forged and individuals who were admitted without high school diplomas or GEDs and were not given an admissions test. /36/

In addition to this new relief available for student loan defaulters under the HEA amendments of 1992, President Clinton's new Federal Direct Student Loan (FDSL) Program has the potential to become a general amnesty program for those in default on old loans. /37/ Consolidation FDSL loans are now available to those wishing to refinance old guaranteed student loan debt into the new program. /38/ This will effectively take the borrower out of default and establish a payment obligation pegged to the borrower's ability to pay. /39/

This information is in high demand in low-income communities given the magnitude of the trade school scandal and the deep reservoir of hurt and anger it has produced. This demand can be easily glimpsed by asking questions about student loans on intake; posting signs or distributing flyers about the problem; and contacting agencies likely to be interacting with low-income people in search of training, including welfare caseworkers, private industry councils (PICs), training providers, and community college financial aid offices. These agencies are undoubtedly aware of the student loan problem and are probably working under the erroneous assumption that those with defaults are barred from higher-education options.

As a preliminary step in testing the waters for student loan demand, advocates may want to take cases of individuals seeking "reasonable and affordable" payment arrangements or closed-school discharges. Become familiar with the people in your state higher-education agency who are responsible for these programs and how the programs are being administered. Figure out what would happen if your clients were to make contact on their own.

As you become familiar with the issues, begin to develop written community education materials on the trade school problem and on dealing with student loan debt. The Career School Con Game, a seven-page pamphlet written by South Brooklyn Legal Services, is available in English and Spanish. /40/ Consider producing a flyer on the HEA amendments. /41/ Put some in your waiting room and give them to training providers and other agencies that interact with clients. In all likelihood, this will generate stories of past

training disappointments and disasters. Get to know the names of the schools, the kind of training offered, the schedule of tuition fees, the employment objectives of the training, and how those objectives relate to the local labor market. As the stories multiply, develop a data base to organize the information.

As you gain in confidence and experience, consider offering your services to training providers or your PIC for speaking engagements targeting either clients or staff. Tell a story about how a client got fooled into signing up for a trade school course; why she felt good about herself during the training; what happened when she looked for work and discovered that no jobs were available or that she lacked essential qualifications; her student loan default; her sense of failure and frustration; and her assumption that she can never get out of default and, consequently, that she can never go to a real school. Ask if the story sounds familiar, and ask for stories from the audience.

Use a blackboard or chart to show how Pell grants and student loans work and to introduce the cast of characters involved in Title IV. Explain how people in default can go back to school, and how to distinguish real educational opportunities from con games. Clients' past involvement with Title IV and their sense of urgency, about both reestablishing Pell eligibility and avoiding the pitfalls of their previous educational choices, bring an emotional stake to the learning process.

Terms can be explained and demystified:

It's called a "Pell" grant after the name of the Senator who sponsored the original law. The Pell grant is a direct payment from the U.S. Treasury to the school for an individual's tuition costs. The loan is a transaction between a lender and a student; it is usually a check made payable to the school and student, so they need the student's endorsement. "Default" is when you do not pay and the guaranty agency pays off the lender and then the agency comes after you. When you are in default, you cannot get any more financial aid.

The financial aid cast of characters can be sketched out and the economic interests of the various players unraveled:

Lenders make money on student loans. When you are in school or on deferment, the government pays the interest. If you don't pay when you get out of school, it doesn't affect the lender -- that's the "guarantee" in guaranteed student loan. You get no guaranty that the training you're paying for is going to get you anywhere; but the bank is guaranteed that it will be paid. The guaranty agencies make money, too, because they keep 30 cents of every dollar they collect for the government. As for the schools, tuitions tend to be about \$5,000 because that's about what one person can get in a Pell grant and a student loan for one academic year. So when they see you coming, they're seeing \$5,000.

School misrepresentations can be analyzed in terms of both the misinformation communicated by the schools and the vulnerabilities of those who are their intended targets:

One client told me about his interview and how, when he expressed skepticism about being a medical assistant, the admissions rep had him try on a white coat and a stethoscope. He said it felt good to wear a professional uniform and before long, he signed up. Did you hear the radio ad where the girlfriend asks Tanya, "Where'd ya' get that new car?" and Tanya responds that she just got a nurse assistant job from going to ABC Career Institute? Anybody know what a nurse assistant makes? You probably couldn't afford a new car after ten years of work, let alone just after graduating from a training course. Part of the problem, though, is that everyone these days is looking for shortcuts. Why take two years to get an associate's degree if you can get the same thing in six months? But do you really think a six-month medical assistant course at a school that says having a GED doesn't matter is the same as a two-year associate's degree medical assistant course at a community college? You think an employer would see the difference? By the way, anyone know what the tuition is at a community college? A year at a trade school costs \$5,000, and a year at a community college costs less than \$2,000. So you pay more and get less.

Without naming good schools and bad schools, give some commonsense guidelines to enable clients to make these distinctions themselves:

Beware of shortcuts. Don't minimize the importance of mastering high school skills. Don't pay for training you can get for free and don't go into a training course for a job you can get without a training course. If you want a particular job, find out if there is a particular credential you need, and research the schools that will get you that credential. And at all costs, beware of student loans.

Making an investment in this kind of community education can produce dramatic paybacks for a local program. It can create a client base of trade school and student loan victims for more extensive work. It can initiate for legal services new relationships with the education and training community, relationships that can enhance our effectiveness. It can provide legal services with an opportunity for public identification with the goal of economic and educational opportunity for low-income Americans.

### **III. Taking on a Local Job Training System**

While some legal services clients are lured by the education "market" into trade school enrollments financed through financial aid programs administered by the Department of Education, others are steered by caseworkers into free training programs primarily funded by other governmental funding streams. Currently, these revenues come from the Job Training Partnership Act (JTPA), /42/ administered by the Department of Labor, and the JOBS component of the AFDC program, /43/ administered by the Department of Health and Human Services (HHS). These programs are distinguished largely by the degree of discretion provided to local decision makers regarding the way local dollars are spent. As a result, the kind of training offered and the kind of institutions offering the training under these programs differ widely, from short-term nurse aide or security guard courses

to two-year associate's degree programs at community colleges.

While low-quality training financed through these programs does not burden participants with student loan debt, participation can be costly to the individual in terms of time and effort spent, disappointed hopes, and the inability to get a second shot from welfare or training bureaucrats. Obviously, bad training also represents the squandering of a scarce and important public resource.

With Congress considering various versions of consolidation and block granting for federal job training programs, JTPA and JOBS may not continue to exist in their current form. /44/ Whatever form the new system takes, however, a number of features of the old system will undoubtedly remain, including a large degree of local discretion as to the substance and administration of training programs and contracts with many of the same training providers. The issues that low-income people face will remain largely the same as they struggle to obtain high-quality education within a bureaucratic system that favors short-term training and quick job placement over the development of high-level skills.

Currently, neither JTPA nor JOBS creates any entitlement to job training and, in general, offers little in the way of litigation handles to challenge the type or quality of training offered. /45/ This is not likely to improve any time soon. Our experience in Philadelphia, however, has shown that much can be done -- without litigation -- to challenge and reform a job training system to make it more responsive to the needs of legal services clients. As with any advocacy activity, the key is to know the law, use the law to acquire the facts, analyze the power relationships at work, construct persuasive arguments firmly grounded in the facts, and develop sensible goals and strategies for action. The role of legal services lawyers in such work is clearly different, however, from the role of litigator. It is the lawyer functioning as advisor and broker -- a role common to lawyers in the corporate world but rarely seen in a typical legal services practice.

In Philadelphia, job training funds under both the JTPA and the JOBS program are administered by the local PIC. The PIC is a creature of the JTPA statute, /46/ but in Pennsylvania the JOBS program for welfare recipients is also administered through the PICs. /47/ As a result, the Philadelphia PIC is responsible for spending approximately \$20 million per year in job training funds designated for economically disadvantaged adults. /48/

Legal services practitioners in Philadelphia paid little attention to the activities of the PIC until a few years ago. What initially caught our attention in the spring of 1992, was the PIC's decision to grant several million dollars in contracts to some of the same proprietary trade schools that had become notorious from our student loan work. Thus, for example, welfare recipients would now be sent by the PIC to several medical-assistant courses that were substandard and unlikely to lead to employment.

Questions were raised not only by outraged members of the nonprofit training sector but also by several welfare caseworkers, who, while usually viewing us as adversaries, called us out of frustration to try to get help for their own clients. We were called because of

community education events we had run on trade school fraud, because of some publicity that had accompanied lawsuits we had filed against several of the worst trade schools, and because of the general reputation of the program as an effective advocate for the poor. At this juncture we had no client and no theory, just the sense that something was wrong and that this money could be spent more wisely.

A necessary preliminary step was interesting a client group in pursuing the issue of how local job training funds were being spent. The Philadelphia Unemployment Project (PUP) seemed the logical choice. A long-time client of Community Legal Services (CLS), PUP has for 20 years organized successful campaigns on behalf of the poor and unemployed. It is a membership organization with a small staff that has played a key role in national and state efforts to extend unemployment benefits; to raise the minimum wage; to create a unique state mortgage assistance program; and to improve the local health care safety net for uninsured patients. PUP had only a vague awareness of the workings of the job training system but was interested in learning more, primarily in order to be able to advise unemployed or underemployed members on how to access job opportunities. The initial direction and authorization to CLS were simply to get the facts.

### **A. *Gathering the Facts***

This initial phase -- essentially discovery outside the context of a lawsuit -- extended over a year. It began in November 1993 with a letter to the PIC president requesting a list of training providers, the types of training provided, the terms of PIC's contracts with training providers, placement and performance data, and a copy of PIC's two-year job training plan. /49/ Claiming to be a private entity, the PIC, through legal counsel, initially refused to release the information. Ultimately, the PIC was forced to relent, opening its contracts and performance records to public scrutiny.

Several legal handles provided a basis for engaging in this discovery, particularly the JTPA planning process and right-to-know provisions under the JTPA and state law. While ultimately successful in utilizing this law to overcome the PIC's resistance, our success did not come through litigation. Rather, it occurred through direct political action by PUP against the PIC; through effective use of the media; through garnering support from key players, such as unions and federal and state labor officials; and through a variety of related activities, including the filing of a JTPA grievance on behalf of three individuals who came to CLS seeking representation to challenge the training they had received from the PIC.

#### **1. The JTPA Planning Process**

The JTPA statute requires each PIC to develop a job training plan every two years and to make its proposed plan available to community-based organizations, labor unions, and the public for review and comment. /50/ Such review and comment can be meaningful only if all relevant facts are publicly available. Thus, the existence of a review-and-comment right brings with it an implicit right, albeit a vague one, to discovery. /51/

Accordingly, since the next job training plan was due by April 1994, our initial letter to the PIC explained that PUP needed the requested information in order to participate meaningfully in the public planning process that should be scheduled to take place the following spring.

While the PIC did release a copy of its draft plan and a variety of other information, it refused to release specific information about the training programs being funded, the contracts with training providers, or the performance data. Moreover, repeated inquiries to the PIC regarding its timetable for the development of the plan and its intentions concerning public participation went unanswered. In April 1994, PUP submitted comments to the plan anyway, with the disclaimer that, without benefit of the requested information, meaningful comment was difficult if not impossible. The comment letter included an objection to the PIC's failure to implement any process for public comment or participation and its failure to consult labor unions representing workers in the occupations for which training would be provided. /52/

These objections proved extremely persuasive to a labor representative on the state job training coordinating council, an individual with a long relationship with both PUP and CLS. /53/ He convinced other members of the council that the PIC should be confronted, and on April 13, 1994, the council voted to disapprove the PIC's plan, something that had never happened before. Without an approved plan, the PIC would lose its legal authority to spend JTPA funds as of the beginning of the next fiscal year. Immediately, the PIC began releasing contracts to PUP and scheduled a public hearing for May.

## 2. JTPA and State Right-to-Know Statute

While PICs are not federal agencies and therefore not subject to the Freedom of Information Act, JTPA requires PICs (and state labor departments) to make available all nonconfidential documents generated in the course of JTPA activities. /54/ While there may be some ambiguity as to what records PICs should be maintaining, JTPA regulations explicitly require them to maintain documents pertaining to procurement history. /55/ Job training plans must also be made available to the public. /56/ In addition to JTPA, state right-to-know and sunshine laws may provide avenues for obtaining information from a PIC. In Pennsylvania, the right-to-know statute applies to all quasi-governmental entities and establishes the right of citizens to examine and obtain copies of certain "public records" in the possession of such agencies, including contracts. /57/

Both JTPA and state right-to-know provisions were cited in PUP's document request to the Philadelphia PIC. In the course of trying various tactics to avoid public disclosure, the PIC sought a legal opinion from the state JTPA office. When the opinion finally arrived, it supported PUP's claim that both JTPA and the right-to-know act required the PIC to turn over information. Despite this opinion, the PIC continued to stonewall. Some information was released in the wake of the rejection of the plan and the subsequent public hearing, but the PIC continued to resist PUP's request for contract-by-contract performance data.

With the state legal opinion to back us up, we had a strong right-to-know claim for state court action. But while CLS recommended a lawsuit, PUP rejected that idea, choosing direct action instead. An angry delegation of PUP members, carrying signs and accompanied by a television camera crew and several radio and newspaper reporters, paid an unannounced visit to the PIC's executive offices. The performance data were released the following week. Had the litigation route been chosen, advocates would probably still be briefing the niceties of right-to-know.

### 3. The JTPA Grievance Procedure

In April 1994, in the midst of the controversy between PUP and the PIC, CLS commenced an administrative grievance on behalf of three individual clients who had been sent by the PIC to medical-assistant training at a proprietary school. /58/ The grievance charged that the PIC failed to conduct any labor market analysis before deciding to enter into a training contract with the school and that the PIC inappropriately referred the three complainants to the training. /59/

The grievance turned out to be a powerful discovery tool in the larger battle against PIC. At the same time that the PIC was resisting PUP's request for documents pertaining to training contracts, the PIC released to CLS all documents pertaining to the contract that was the subject of the grievance. This acquisition enabled CLS and PUP, having seen what materials did exist in the context of a single contract, to refine the larger request. Of particular interest were the performance data for the contract challenged in the grievance, which indicated that only 8 participants out of 60 were successfully placed in employment meeting the PIC's criteria. /60/ The grievance hearing itself, transcribed at the insistence of CLS, became, in effect, a sworn deposition of PIC officials at which the decision-making process underlying the PIC's contracting practices was finally exposed to public scrutiny.

### 4. Informal Fact Gathering

In addition to these "discovery" methods, research into the workings of the PIC system proceeded from a variety of other sources. Media coverage and word of mouth produced a client base that was never apparent before, producing client stories that began to appear in the offices of both CLS and PUP. Nonprofit training providers were another important source of information. In some cases, viewing us as newly arrived allies in the fight for a sensible system, they were eager to explain how PIC contracts are awarded and monitored. We also began attending the monthly public meetings of the PIC board; this enabled us to monitor the current contracts being awarded and allowed for building of relationships with sympathetic board members willing to share information.

### ***B. Analyzing the Facts and Developing a Campaign***

As we gathered information, gradually the pieces of the PIC puzzle fell into place -- who gets the money, who decides, what is known about participant success. Before long, with continuing technical assistance provided by CLS, PUP had become the local "expert" on job training and was well positioned to develop a set of demands and a strategy for inducing reforms. These conclusions and demands fell into a few broad categories.

## 1. Short-term Training for Low-wage Jobs

Following the state's rejection of the plan, the PIC turned over to PUP some of the requested information on its contracting record over the preceding two years. PUP's analysis of these data revealed that over 70 percent of the PIC's skill training for economically disadvantaged adults was in four areas: food service, clerical, nurse aide, and security guard. Ironically, PIC was paying more to send people to many of these four- to six-month training programs than it would have cost to send them to community college for two years. Yet PIC applicants who asked about taking courses at community colleges were told that was not an available option. /61/ During the course of the campaign, PUP identified two factors driving this emphasis on short-term training. One was the fallacious distinction in the minds of PIC bureaucrats between job training and education. The other was the system of perverse incentives created by JTPA performance standards.

When confronted with PUP's objections to the PIC's emphasis on short-term low-skill training and the demand that community college be made an option for disadvantaged workers, the PIC staff made clear that, in its view, education and job training were entirely separate endeavors and that PIC's mission was limited to providing job training. To the PIC, "job training" meant short-term programs aimed at obtaining "entry level" jobs (PUP called them "deadend"). Education was something entirely different that community college did and that had no relevance to the PIC's mission of preparing economically disadvantaged people for employment.

Challenging this false dichotomy between education and training is crucial to making genuine economic opportunity accessible to the poor. First, to the extent that higher education almost always increases employability, it is a form of job training. /62/ As the labor market shifts to requiring higher proficiencies at basic academic skills, such as math, English, and analytic and critical thinking (requiring workers who understand why the button is there, rather than just how to push the button), the most effective job training looks more like traditional education. /63/ Second, going to "college" does not necessarily mean pursuing a four-year liberal arts degree. Community colleges, which are the primary source of accessible higher education for low-income people, offer a full range of vocational programs, both two-year associate's degree programs and shorter certificate programs.

A more important distinction needs to be drawn between short-term training, which provides students the minimal amount of particularized knowledge necessary to perform a certain job, and long-term education, which teaches generalized skills that are

transferable from one context to another. This latter type of training or education is most likely to provide a route out of poverty and off the welfare rolls in the long term. /64/

Also operating to reinforce the bias in favor of short-term training are the JTPA performance standards. /65/ Undoubtedly envisioned by the statute's authors as the primary mechanism for ensuring the quality and effectiveness of job training, these standards can instead operate to discourage innovation and to bring all training down to the lowest common denominator.

The current performance standards measure the employment rate of trainees at a snapshot in time: 13 weeks after administrative termination from the JTPA program. /66/ Trainees are phoned at the 13-week point and asked whether they are employed and, if so, their total weekly gross earnings. The performance standard is met as long as a certain percentage of trainees earn an average weekly wage that translates to about \$6 per hour for full-time work. No information is collected regarding the duration of employment, the receipt of benefits, or whether the employment is related to the training. /67/ Thus, a PIC gets no more credit toward meeting the performance standards when it places a participant in a permanent \$15 per hour job with benefits than it does for a placement in a temporary \$6 per hour job that offers no benefits. /68/

By failing to create an incentive in favor of training that produces long-term, high-wage employment, the performance standards actually create a reverse incentive in favor of short-term training for low-skill, low-wage jobs. Short-term training, while not always cheaper than long-term training, does involve less risk of failure. The chances that a student will drop out due to family crisis, or simply give up, clearly increase as program length increases. Moreover, a high turnover rate in an occupation can actually work as an advantage in meeting performance standards. With high turnover, a single job may provide multiple job placements for successive trainees.

## 2. Absence of Planning and Expertise

The PIC's two-year job training plan was a 100-page boilerplate document that said virtually nothing of substance about the state of the Philadelphia labor market or the occupations for which the PIC would seek to provide training. Over time we learned that this absence of substance in the written document reflected the fact that the PIC engaged in no long-range planning and had little in the way of in-house expertise in either the job market or in education.

The PIC's contracting system reflected this knowledge gap. Rather than attempting to identify demand occupations through day-to-day contact with employers, then consulting experts to determine the type of training required for such occupations, and finally seeking out the appropriate training providers, the PIC turned the process on its head. It waited passively for proposals to come in from training providers, delegating to them the responsibility to provide some evidence of labor-market demand and a successful track record of placing trainees in employment. Remarkably, the PIC occasionally fell victim

to school-sales pitches similar to those made to our clients on the street: improbable-sounding claims of near-perfect placement records and promises of jobs in "fast-growing fields" offering high wages and opportunities for advancement. /69/

### 3. Filling Contract Slots Rather than Planning Careers

Once the PIC signed contracts for a certain number of training slots in a particular program, these slots had to be filled. Consequently, the PIC's assessment and counseling system was contract driven. Rather than assessing individual skills and interests and assisting the individual in developing an appropriate educational plan based on those skills and interests, the institutional objective was to fill slots. Under this "fast food" approach to job training, applicants were presented with a limited "menu" of training options and forced to choose among them, regardless of their appropriateness for the individual applicant.

### 4. "Regulatory" Constraints May Be Self-imposed

As PUP began to develop and present to the PIC a list of substantive issues and demands, the PIC began developing a stock response to PUP's suggestions for change: "The regulations won't let us." Here CLS played an important role in advising PUP about the content and effect of federal and state regulations. In repeated instances, the regulatory constraints invoked by the PIC were in fact largely imaginary. /70/

Perhaps the prime example of this dynamic was the PIC's repeated insistence that participants could not go to community college under the so-called "20-hour rule." This rule comes from JOBS regulations that make federal funding for the JOBS program contingent on a showing by the state that trainees participate on average in at least 20 hours of training per week. /71/ Since a full college course load typically involves less than 20 hours of class time per week, this rule posed a problem for JOBS participants attending community college.

In fact, the rule was by no means an insurmountable barrier. The fact that many other PICs in the state were using community colleges as their primary training providers at the time certainly made it clear that there were ways around the rule. First, internships, workshops, counseling sessions, or supervised study halls could be set up to supplement students' class time so as to comply with the 20-hour requirement. Second, since every JOBS participant was also JTPA eligible and since no comparable rule existed under JTPA, nothing prevented the PIC from simply designating those for whom a community college was appropriate as JTPA rather than JOBS participants.

## **C. Pushing for Change**

The PUP campaign against the Philadelphia PIC utilized a variety of simultaneous and interacting advocacy approaches and tactics. In retrospect, the absence of a private right

of action proved unexpectedly to be an advantage, forcing us to seek relief through politics and the court of public opinion. In many ways, this proved to be a friendlier forum than a federal or state courthouse. In addition to effecting change more quickly than a lawsuit, it enabled PUP members to retain control over the process rather than handing the fight over to lawyers. Perhaps most important, it kept the debate focused on the public-policy issues that were at the heart of PUP's concerns, rather than framing issues within the parameters of statutory and regulatory provisions.

## 1. Public Hearings

In May 1994, the PIC, still smarting from the state's rejection of its job training plan and desiring to have its money unfrozen, held its first ever public hearing on its plan. The draft "plan," which still provided no clue as to the agency's real plans, was neither distributed nor discussed. Instead, the hearing was organized and advertised as seeking "public input" on job training and on the performance of the PIC. While the PIC worked hard to control events, the testimony presented by and on behalf of PUP proved to be the highlight of the hearing. Of course, the PIC itself had created this situation by having attempted to ward off PUP's investigation for months, a fact known to many in the audience, including the press. PUP used the opportunity to unveil its findings concerning the contracting practices of the PIC: its steering of 70 percent of the money and participants into the so-called deadend jobs; its refusal to allow "economically disadvantaged" adults to obtain higher-quality training at community colleges, even where such options would be cheaper; its favoring of profit-making providers over community-based organizations; and the large amounts of money being made by some of its favorite contractors.

In November 1994, PUP got another opportunity to present its case via a public hearing, when a city council member decided to hold a one-day hearing on the PIC. PUP and CLS briefed the councilman and his staff ahead of time and helped him select witnesses and draft questions. At the hearing, testimony was heard from officials of the state and federal departments of labor, the chairman of the PIC board, the president of the PIC, and the PIC's chief operating officer, as well as an assortment of community groups and training providers, including PUP and several of its allies. Committee members asked the PIC many of the same questions that PUP had been asking for months. For example, the PIC was asked why it had a policy of not allowing participants to transition into community college. The PIC gave its standard response, which was to say "the regulations won't let us." The councilman then interrupted the PIC's testimony and asked the federal and state labor department officials to come forward, asking them whether regulations precluded the PIC from sending participants to community college. When both responded "no" and made clear that most other PICs utilize community colleges as their primary training resource, the PIC witnesses were forced to agree to "look into it." A similar exchange took place with respect to the question of why PIC did not conduct follow-up surveys that examined job retention longer than 90 days after training ended. When the PIC president responded that federal rules require 90 days follow-up, the councilman was able to utilize the federal official to show that the PIC could do longer-term studies if it so desired.

While the May hearing functioned as a public introduction to the struggle between PUP and the PIC, the November hearing in city council chambers represented the public vindication of PUP and the downfall of the PIC. The latter hearing produced almost instantaneous results, with PIC staff and policy changes occurring rapidly within the next several weeks. The months of fact-finding and preparation that preceded these hearings, together with attention to their theatrical elements, made for events certainly as dramatic and effective as courtroom victories.

## 2. Media Work

Without question, the success achieved by PUP in its campaign to reform the job training system of Philadelphia was due largely to an effective relationship with the press. A number of factors made this happen. Among these were the reputation and credibility of both PUP and CLS; relationships with individual reporters; an awareness of how interest areas are organized on particular newspapers; an understanding of what makes for a good "story"; and a few lucky breaks.

Reporters, once interested, can do their own investigation on a subject to supplement information supplied to them. This happened here, with a local reporter deciding to interview nursing-home operators in order to corroborate our charge that nurse-aide jobs had high turnover and did not require \$4,000 training programs. /72/ After the May 1994 public hearing, Philadelphia's two major newspapers both tried to outdo each other, each assigning reporters for follow-up stories and each publishing editorials on the "dramatic saga of PIC and PUP." /73/ Fortuitously, an NBC news producer picked up on the activity in Philadelphia and included a segment about the JTPA grievance challenging the PIC's trade school contract in a national story about job training for jobs that do not exist.

## 3. Finding Key Allies

Even before the PUP campaign got off the ground, CLS had developed relationships with people in the training community, including community-based organizations and unions. These relationships began through efforts to develop evidence in fraud cases against trade schools and in student loan workshops designed to assist current participants in training programs. /74/ These relationships expanded as training providers taught us about the problems in the PIC system. Although many of these organizations were hesitant to join in public criticism of the PIC for fear of jeopardizing their own PIC contracts, they were able to play an important behind-the-scenes role in the PUP campaign. Also key to the ultimate success of the campaign was the existence in Philadelphia of model programs with vision and with success records to which PUP could point with confidence.

Alliances in the political arena were also critically important. As the PUP campaign developed, so did our understanding of the relationships between the PIC staff and its board, the state and federal regulators, the unions, and the city administration. Meetings

with the different players were carefully planned and choreographed. These meetings functioned to provide us with more information and to provide new forums in which to press our case. Meetings with officials from the Department of Labor gave us a clearer idea of just how much local discretion existed, while also giving them new insights into how the JTPA system actually functioned at the ground level. Meetings at the state level taught us how performance standards work and revealed tensions between the Philadelphia PIC and the state, which PUP was able to use to its advantage. Various players in the city administration, previously disinterested in the PIC and its practices, also proved to be extremely friendly and helpful in adding to the mounting pressure on the PIC.

#### 4. The "Settlement Agreement"

As of this writing, much has been achieved. PIC officials have resigned or been fired, replaced in one case by one of our key allies from the training community. The mayor has made some positive additions to the PIC board. Community college is now an acceptable placement for program participants. Trade schools with high loan-default rates have been excluded from PIC contracts. /75/

In January 1995, PUP was invited to a meeting with the PIC's management staff. What it found was a transformed PIC. The attitude of defensiveness and paranoia had been replaced with a new spirit of cooperation and innovation. PIC staff members seemed eager to impress PUP with their creativity and openness to new ideas. Rather than responding to suggestions for improvement with the repeated refrain that "the regulations won't let us," PIC's president confidently announced that she would get waivers to any regulations that stood in the way. Similarly, the "20-hour rule," had suddenly evaporated as a barrier to sending PIC participants to community college.

Besides being open to PUP's suggestions, PIC staff members had some of their own. They had already begun negotiations with a Philadelphia hospital to develop a training program that would first train PIC participants as nurse aides and then allow them to continue in school in a nursing program while they worked part-time. They were making new efforts to complete a more comprehensive study of the Philadelphia labor market. They were looking at overhauling the assessment and referral process to ensure that applicants and participants were referred to training that was appropriate to their skill levels and interests. And they were negotiating with the community college to develop a program to enable PIC participants to attend community college.

PUP confirmed these developments in a lengthy follow-up letter to the PIC's president. /76/ The letter serves as a kind of "settlement agreement," which, much like a litigation-produced settlement, will form the basis for future monitoring and enforcement work.

## IV. Rethinking Intake

As you read this, you may think "this is interesting, but student loan and job training cases do not come into my office." However, client demand is perceived through the prism of your own assumptions. If you construct an intake system to service particular client problems, clients with such problems will request the service. The questions clients are asked at intake are shaped by the intake categories your program has created and by your own areas of expertise. Many of the clients already coming to your program may have student-loan and job-training issues that are not being identified. By changing the questions, you may begin to uncover some of the many victims of bad job training in your community.

To illustrate the point, consider how the following client might be serviced by legal services intake.

Maria, a 28-year-old mother of three, comes into the office with an eviction notice. A standard landlord tenant interview reveals that she fell behind on her rent when she lost her job as a home health aide three months ago. When you ask how she lost her job, she is evasive. She got sick, she tells you. But with more probing, you find out there is an abusive boyfriend. He beat her so badly three months ago, she needed stitches in her face. When she was out of work for a week, they hired someone else to replace her. She wants to end the relationship, but he keeps coming around. You advise her about a protection order.

You ask about unemployment compensation (UC). She says she applied and was turned down. You ask about her current source of income, and she tells you she went back on welfare, but they are charging her with an overpayment because they claimed that she didn't report her income when she first started working.

You open her file and provide Maria advice, counseling, and representation with respect to her domestic violence problem, her UC application and her welfare overpayment, in addition to the landlord tenant case she originally came in about.

Clients do not self-identify all their legal problems and part of the function of an intake interview is to uncover other problems that we may be able to help resolve through advice and/or representation. Sometimes new issues are uncovered easily -- questions about income quickly reveal issues about public benefits. Some issues, such as domestic violence, may require more probing. But, in general, the questions asked by legal services advocates have traditionally tended to focus on immediate threats to the bare necessities of survival: the eviction notice, the abusive boyfriend, the denial of public benefits. We ask about our clients' worst nightmares, but not about their hopes and dreams. We ask about their daily struggles to cope with the crises of poverty, but not their long-term plans for escaping poverty.

Here is what you did not find out about Maria:

Maria dropped out of high school when she was 16 to have her first child. Since then she has relied on welfare, except for a few brief periods when she held low-wage jobs, none

of which lasted more than six months. She wants desperately to get a decent job so she can get off welfare; she talks of wanting to set a good example for her children and to raise them in a safe and healthy environment. Now that her children are all in school, she wants to go back to school herself, because she knows her lack of education puts her at a disadvantage in the job market. Her dream is to become a nurse.

Her first attempt at furthering her education was two years ago when she enrolled in a medical-assistant course at the ABC Career Institute. She had been planning to go to a GED program, but had met a recruiter for the ABC school who told her she didn't need a GED and that she could take its six-month medical-assistant course and come out already qualified for a high-paying job. She took the course and worked hard but at the end was unable to find a job. Employers were not impressed with her certificate from ABC, and she discovered that she had not learned all the skills that employers expected of a medical assistant. Now she has a defaulted student loan.

She learned her lesson about trade schools, so this time she went to the community college to find out about enrolling in an associate's degree RN program. She found out she could not pay the tuition because her defaulted loan makes her ineligible for a Pell grant. She was discouraged until another friend told her she could get free training at PIC. She went there a week ago and was enrolled in a five-month nurse-aide course. The PIC counselor gave her the impression that if she worked hard as a nurse aide, she could someday get promoted to become a nurse.

If a legal services office treats only the crises in Maria's life -- by stopping her eviction, obtaining legal protection against her abusive boyfriend, and ensuring that she receives the maximum public benefits possible -- we are helping her maintain survival, but we are not addressing the central struggle in her life, the struggle to obtain decent employment and to escape poverty. To succeed in that struggle, Maria needs access to quality-education opportunities. She needs advice about her student loan: whether she might be eligible for a discharge and how to reestablish eligibility for financial aid. And she needs to be counseled about her educational choices -- why trade schools and student loans should generally be avoided; how the same courses are available at community college for less money; how a job as a nurse aide may not be a stepping stone to a nursing career; and why it is important to get the remedial education she needs first and then consider enrolling in a nursing program, at a community college or elsewhere. On a broader scale, Maria and others like her need a PIC that has the expertise about job markets, training resources, and career ladders to give her real career counseling and help her access the education they need to fulfill their dreams.

By changing the questions you ask on intake, you will discover that there are many Marias coming through your office every day. Even with a minimal commitment of resources -- simply by providing much-needed information -- you can make a significant contribution toward smoothing their path toward decent education and employment.

## **V. Conclusions**

### **A. Access to Higher Education**

Wages for workers with no more than a high school diploma have been steadily declining for decades, while those with college degrees are holding their own or increasing. /77/ With the disappearance of manufacturing jobs overseas and the decline of labor unions, higher education is increasingly becoming a necessary prerequisite to employment that pays a living wage. /78/ Although job training programs are generally packaged with rhetorical missions that reflect these economic facts, in operation they frequently tend to steer participants away from higher education and career-oriented objectives back to the same inadequate employment options which are the very basis of the problems of poverty and welfare dependency. /79/

A number of factors cause this mismatch between economic reality and program operation, the most obvious being the current governmental fiscal environment. Another factor is the prevalence of student loan defaults among the poor, which, combined with a lack of accurate information among both those in default and the well-meaning educators and training bureaucrats who advise them, has led to misinformed choices concerning educational options. Yet another factor is the ideological orientation of local and state decision makers, on whose shoulders rest the discretion to define the substance of job training. Even when the law has expressly made higher education an allowable option -- as in the case of the JOBS program /80/ -- the actual availability of higher education has depended in large part on the subjective attitudes of local and state bureaucrats. /81/ Unfortunately, legal services organizations have not tended to place higher-education issues among their advocacy priorities, and this, too, has played a role in making the higher-education option unavailable to welfare recipients and other low-income people. /82/

As the nature of government and its obligation to those in need undergo radical redefinition, legal services priorities must be redefined. Higher education should not be regarded as a luxury. For many clients it is a life-or-death matter, and advocacy priorities should reflect this fact. We must identify with the struggle for quality educational opportunity and take a stand against worthless "job training" and education profiteering, just as we identified with the struggle for an adequate and fair welfare system.

Undoubtedly, the notion of economic opportunity still carries with it considerable popular support, even amidst the current clamor to dismantle the welfare system. For generations of Americans, higher education has been the route to that opportunity. With the deterioration of the unskilled job market and the imminent collapse of the safety net, higher education has become a necessity. While issues of education and training have shrunk in importance next to the immediate crises of finding jobs and dealing with child care, the long-term fight for a humane society remains. In this larger context, education and training are at the very heart of legal services clients' search for economic survival, self-esteem, and full participation in the so-called American Dream.

## **B. *Knowing Job Markets***

Low-income people need accurate and useful information about available jobs and the kind of training that is needed to get those jobs. Educators and training officials also need this information in order to match education and training dollars with actual jobs. However, the assumption that relevant job market information is readily available, let alone being used, is of questionable validity. On the contrary, a vast knowledge gap underlies the job training infrastructure. Until this gap is addressed, meaningful improvements in the education and training services available to our clients will be hard to achieve.

Perhaps the most shocking discovery in our job training work is how little the so-called "experts" know about where the jobs are and how to get them. Vocational schools get public money to train people for jobs that do not exist. Training bureaucracies administer contracts and implement program rules with little connection to the long-term employment results actually obtained by trainees. Individuals in need of reliable information and advice for making career decisions get this "help" from salespeople working for schools, from bureaucrats trying to fill slots in programs of dubious value, and from advertising. The national job training "system" is a system that cannot be "reformed" by block granting or consolidating program money. /83/

## **C. *Nonlitigation Roles for Advocates***

Among the lessons we have learned from our job training advocacy is a renewed sense of the mission of legal services and our responsibility to direct our resources to the core issues facing our clients as people living in poverty. We have also learned that impact work involves activities other than filing class actions. Particularly in the current environment, where judges are loathe to impose obligations on government and legislators are eager to rid the statute books of entitlements, we cannot allow "litigation handles" to drive our advocacy decisions. Priorities must be shaped according to our clients' most pressing needs, not according to the most promising legal theories or litigation strategies.

Through the work described in this article, we have found new roles to play on behalf of our clients. This is the lawyer as community educator, as legal advisor and tactician, as ghostwriter, as broker for change, not instead of lawyer as litigator but in addition to. It is important work; it is impact work; and it can be fun.

### Footnotes

/1/ See Irv Ackelsberg, Barbara Bonifas, Brad Caftel, Maurice Emsellem, Bristow Hardin, James Head, Mary Ellen Hombs, Elizabeth Imholz, Steve Savner, and Paul Weckstein, *Opportunities for Legal Services Advocacy on Jobs, Employment, Education, and Training Issues*, 27 *Clearinghouse Rev.* 983 (Jan. 1994). A primer on jobs, employment, education and training has been produced, portions of which will appear in

an upcoming issue of Clearinghouse Review.

/2/ William Greider, *Better Workers or Better Jobs?*, *Rolling Stone*, Apr. 15, 1993, at 28.

/3/ E.g., when former Gov. Casey of Pennsylvania created a training program consisting of three weeks of training expressly designed to produce one day of work for general assistance recipients whose benefits had been slashed to two months every two years. See Rose DeWolf, *Detoured: 'Bridge' Programs to Take Older People from Welfare to Work Are Often Dead Ends*, *Philadelphia Daily News*, Mar. 16, 1995, at 31.

/4/ For an excellent summary of data concerning welfare cycling, see *Teflon Jobs: Welfare Reform and What Happens When Jobs Don't Stick in Family Matters* (Center for Law and Social Policy 1994). See also LaDonna A. Pavetti, *The Dynamics of Welfare and Work: Exploring the Process by Which Women Work Their Way Off Welfare* (Malcolm Wiener Center for Social Policy, John F. Kennedy School of Government, Harvard University 1993); Roberta Spalter-Roth et al., *Welfare That Works* (Institute for Women's Policy Research, Washington, D.C. 1995); Irene Skricki, *Unheard Voices: Participants Evaluate the JOBS Program* (Coalition on Human Needs, Washington, D.C. 1995); Mark Greenberg, *Beyond Stereotypes: What State AFDC Studies on Length of Stay Tell Us About Welfare as a "Way of Life"* (CLASP 1993); *Welfare Mothers Find Jobs Easy to Get but Hard to Hold*, *N.Y. Times*, Oct. 24, 1994, at 1.

/5/ The Community Women's Education Project (CWEP), a community-based welfare-to-work provider in Philadelphia, has been conducting anonymous surveys of incoming students since 1988. The data collected show dramatic "cycling" through both jobs and training programs. E.g., a recent survey of a class of 34 students revealed that 33 students had worked a total of 106 jobs and that 21 had attended a total of 35 training programs. Of the 21 with prior training, 16 were in default on student loans totaling \$32,437. The data from previous years are similar. Simple frequency analysis indicates that 96.2 percent of their students since 1988 have had previous employment and 63 percent have already been through a job training program. For more information concerning this study, contact CWEP at (215) 426-2200. For some relevant national data, see Skricki, *supra* note 4 (12 percent of all Job Opportunities and Basic Skills (JOBS) Training Program participants are in default of student loans).

/6/ Greider, *supra* note 2, at 29.

/7/ The experience existing within legal services concerning the substance of job training derives principally from the few lawyers in the field, usually consumer specialists, who have sued fraudulent trade schools and who have sought student loan relief for the victims of such scams. See, e.g., *Rosario v. Livaditis*, 963 F.2d 1013 (7th Cir. 1992), cert. denied, 113 S. Ct. 972 (1993); *Rodriguez v. McKinney*, 156 F.R.D. 112 (E.D. Pa. 1994); *Tipton v. Secretary of Educ.*, 768 F. Supp. 540 (S.D. W. Va. 1991); *Gonzalez v. North Am. College of La.*, 700 F. Supp. 363 (S.D. Tex. 1988). See generally National Consumer Law Center (NCLC), *Unfair and Deceptive Acts and Practices* Sec. 5.9.13 (3d ed. & Supp. 1994); Carol Crocca, Annotation, *Liability of Private Vocational or Trade*

Schools for Fraud or Misrepresentation Inducing Student to Enroll or Pay Fees, 85 A.L.R. 4th 1079 (1991).

/8/ 20 U.S.C. Secs. 1070 et seq.

/9/ Under Title IV they are designated as "proprietary institutions of higher education." 20 U.S.C. Sec. 1088.

/10/ For a history of the development of the trade school industry, see Kenneth W. Babcock, Proprietary Trade Schools: A History of Fraud and Abuse, Legal Services Section News, State Bar of California (Fall 1993)

/11/ In some states the use of the name "college" for anything other than a degree-granting institution is prohibited. See, e.g., 22 Pa. Code Sec. 73.173(g). Where it is not illegal, the use of the "career college" designation has proliferated.

/12/ E.g., in FY 1988, proprietary school students accounted for \$2.6 billion, or 30 percent, of all "Stafford" loans and \$1 billion, or 61 percent, of all "Supplemental" loans for that year. See Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, Abuses in Federal Student Aid Programs, S. Rep. No. 102-58, 102d Cong., 1st Sess. 3 (Clearinghouse No. 50,820) [hereinafter Nunn Report]. This 1991 report, along with the four volumes of hearing transcripts and exhibits which accompany it, is the most authoritative source for acquiring an understanding of the methods and the scope of the national trade school scandal.

/13/ During 1993 -- the most recent year for which data are available -- proprietary schools received approximately \$3.5 billion in grants and loans (\$1 billion in Pell grants and \$2.5 billion in guaranteed student loans). College Board, Trends in Student Aid: 1984 to 1994 (1994). Since then, Pell funding has remained relatively level while loan volume has expanded significantly. In contrast, the 1994 federal budget levels for Job Training Partnership Act (JTPA) title IIA (disadvantaged adults) and for the JOBS program (job training and supportive services for AFDC recipients) were at about \$1 billion each. Note that the \$2.5 billion figure cited above represents new loans that were issued by private lending institutions, not the federal government. The current federal expense attributable to student loans is the interest subsidies and default costs of outstanding loans. Federal default costs exploded during the 1980s as the result of proprietary trade school fraud and abuse. See Nunn report, supra note 12, at 1 -- 2.

/14/ One of the first studies concerning the training being purchased with Title IV assistance was a March 1993 report on cosmetology training prepared by the Office of Inspector General of the Department of Education. This report concluded that \$1 billion was being spent annually to produce 96,000 licensed cosmetologists and projected that by the year 2005 between two and three million licensed cosmetologists in the United States would be competing for 750,000 jobs. The authors posed a question that has rarely been asked in the context of Title IV-funded vocational training: "The emphasis of that system is the enrollment of students in educational programs, but should we not be at least as

concerned with the educational and vocational outcomes for those students?" Office of Inspector General -- Audit, Title IV Funding for Vocational Training Should Consider Labor Market Needs and Performance Standards, Management Improvement Report No. 93-03 (Clearinghouse No. 50,805)

/15/ Five thousand dollars is roughly the sum of the maximum Pell grant (\$2,200 -- 2,400) and Federal Family Education Loan (FFEL) (\$2,625) available per academic year. Course length is routinely "stretched" so as to meet the minimum clock-hour requirements for Pell or FFEL funding. See Nunn Report, supra note 12, at 12 (citing example of security guard training that could be 4 to 60 hours in length stretched to a program 300 to 700 hours long in order to obtain Title IV funds).

/16/ In its report analyzing the near collapse of the student loan program, the Senate Permanent Subcommittee on Investigations stated: [The guaranteed student loan program], particularly as it relates to proprietary schools, is riddled with fraud, waste, and abuse, and is plagued by substantial mismanagement and incompetence. . . . [U]nscrupulous, inept, and dishonest elements . . . have flourished throughout the 1980s. [They] have done so by exploiting both the ready availability of billions of dollars of guaranteed student loans and the weak and inattentive system responsible for them, leaving hundreds of thousands of students with little or no training, no jobs, and significant debts that they cannot possibly repay. While those responsible have reaped huge profits, the American taxpayer has been left to pick up the tab for billions of dollars in attendant losses. Id. at 6. See also Michael Winerip, Looting Student Aid: Public Money, Private Gain, N.Y. Times, Feb. 2 -- 4, 1994, at A1 (\$3 to \$4 billion annually lost to waste, fraud, and loan defaults, more than 10 percent of Education Department's total annual budget).

/17/ In 1978, the Higher Education Act was amended to allow students without high school diplomas or GEDs to obtain student loans to attend proprietary schools, as long as the school certified that the student had an "ability to benefit" from the training. See Middle Income Student Assistance Act, 20 U.S.C. Sec. 1091(d). This aspect of student loan eligibility has been rife with fraud and abuse, as trade schools, eager to maximize enrollments, have used the "ability to benefit" provision to admit virtually any student they could recruit. Certifying that a student has an "ability to benefit" generally requires showing that the student has passed an admissions test, but schools have devised myriad ways of making such tests meaningless, including everything from falsifying student answer sheets to setting extremely low passing scores. For more information on the "ability to benefit" requirement and on abusive admissions testing practices by trade schools, see Alan M. White, New Relief for Trade School Victims: Discharging Student Loans based on False Certification of Ability to Benefit (Clearinghouse No 50,200).

/18/ See Association of Independent Colleges and Schools, Summary of Operating Ratios: AICS Business Schools (1989) (aggregate financial statement derived by adding the total institutional revenues and expenses as voluntarily supplied by member schools). This figure is consistent with individual school figures viewed by the authors in discovery proceedings.

/19/ Commissioned sales were finally prohibited by the 1992 Higher Education Act amendments. See 20 U.S.C. Sec. 1094(a)(20).

/20/ Accreditation is frequently cited by trade school victims as having been a significant factor in deciding to enroll. However, accreditation itself is almost useless for evaluating the quality and the success record of a vocational program. Trade schools obtain accreditation from entities different from those that accredit colleges and universities. Trade school accrediting bodies tend to be glorified trade associations which only several years ago were forced to sever themselves from their parent lobbying organizations. For a description of some of the abuses which have plagued trade school accreditation and of the U.S. Department of Education's ineffective regulation in this area, see Nunn Report, supra note 12, at 15 -- 21, 26 -- 28.

/21/ See CWEP study, supra note 5.

/22/ See Skricki, supra note 4.

/23/ Interest accrual and collection charges as high as 40 percent ensure that low-income borrowers can never fully repay a substantial student loan debt. A principal benefit of the new Direct Loan Program is that the duration of the obligation is capped at 25 years. See 20 U.S.C. Sec. 1087e(d)(1)(D); 34 C.F.R. Sec. 685.209(d)(2). The Higher Education Act was amended in 1991 to authorize the Department of Education and state guaranty agencies to garnish the wages of student loan defaulters without first obtaining a court order. 20 U.S.C. Sec. 1095a. For a more detailed discussion, see NCLC, supra note 7, Sec. 5.9.8A.1.

/24/ See NCLC, supra note 7, Sec. 5.9.9.

/25/ Lenders and guaranty agencies are required to report student loan delinquencies to credit reporting agencies as a condition of maintaining the all-important federal guaranty. See 20 U.S.C. Sec. 1080a(a).

/26/ Although no known studies document this, discussions with community-based loan counselors and with community revolving loan funds have convinced the authors that student loan default represents a substantial -- and, possibly, the most frequent -- reason for the denial of mortgages to low-income, minority applicants. To the extent these defaults reflect victimization rather than a poor credit record, educating financial institutions sincerely interested in making credit available to low-income people about the origins of these student loan obligations is essential.

/27/ See 20 U.S.C. Sec. 1091(a)(3) (default renders individual ineligible to participate in any program under the Higher Education Act).

/28/ For a full discussion on the discharge of student loans in bankruptcy, including recent changes in the Bankruptcy Code which enable debtors to obtain future student

loans, as well as grants, see NCLC, supra note 7, Sec. 5.9.12.

/29/ Under the FFEL system, state and nonprofit guaranty agencies act as servicing and collection agents for the Department of Education. When a loan goes into default, the guaranty agency purchases the loan from the lender and takes control over the collection process.

/30/ 20 U.S.C. Sec. 1078-6(b); 34 C.F.R. Sec. 682.401(b)(4)(i).

/31/ See NCLC, supra note 7, Sec. 5.9.7.

/32/ 20 U.S.C. Sec. 1087(c). Prior to 1992, student loan obligations could be discharged for three reasons: death, bankruptcy, or total and permanent disability. In the 1992 reauthorization, Congress preserved these preexisting grounds for loan cancellation and added these two new grounds, the "closed school" and "false certification" discharges.

/33/ See 34 C.F.R. Sec. 682.402(d)(2)(closed school), Sec. 682.402(e)(2)(false certification).

/34/ While the new right to discharge went into effect on the enactment date -- July 23, 1992 -- regulations did not come out until April 1994. Efforts to enforce the statute prior to the Department of Education's regulatory action proved relatively unsuccessful. See *Williams v. National Sch. of Health Tech.*, 836 F. Supp. 273 (E.D. Pa. 1993), affirmed, 37 F.2d 1491 (3d Cir. 1994) (Clearinghouse No. 50,243). In the case of the false certification discharge, the Department has encouraged further delays by first advising guaranty agencies to await further guidance before acting on applications for discharges, see September 1994 Dear Colleague Letter at 5 (Clearinghouse No. 50,810), and then, apparently, deciding not to provide such further guidance.

/35/ See NCLC, supra note 7, Sec. 5.9.12A.4. The Department of Education is helping the guaranty agencies identify schools and closing dates. The agencies are charged with determining which borrowers are eligible for the discharge and with communicating this to potentially eligible individuals. 34 C.F.R. Sec. 682.402(d)(6).

/36/ See NCLC, supra note 7, Sec. 5.9.12B. The false-certification discharge could potentially reach a far larger group of clients in default. However, continued Department of Education resistance to its implementation means that legal services involvement will remain a key factor in whether this congressionally mandated relief program reaches its intended beneficiaries. The problem arises particularly in the area of "ability to benefit" testing. In order for a student without a high school diploma or GED to be eligible for title IV aid, the school must certify to the Department that the student has an "ability to benefit" from the training. This generally requires the school to administer a test. In efforts to maximize enrollments, many schools have engaged in systematic fraud in the administration of such tests. The Department has interpreted the false-certification discharge to cover cases of improper or fraudulent "ability to benefit" (or ATB) testing, but proving such cases is somewhat difficult. Individual borrowers are unlikely to know

or remember much about the details of what test was given or how it was administered, let alone the validity of the test or the passing score. In the case of schools engaged in systematic testing improprieties, legal assistance is essential. Through reviews of student files (in closed school cases, files are often in the custody of other schools or a government agency), interviews with former students and employees, and a familiarity with the ATB tests most commonly used, advocates can develop cases with the potential to yield loan forgiveness for large groups of clients. For a general explanation of how to do a false-certification case based on improper ATB testing, see White, *supra* note 17. For an example of an individual classwide application based on the fraudulent testing practices of a particular school (PTC Career Institute), see *In re False Certification Discharge Applications* (Clearinghouse No. 50,659).

/37/ This program was instituted by the Budget Reconciliation Act of 1994, Pub. L. No. 103-66, as an amendment to part C of Title IV, which had authorized a demonstration program for direct lending. By 1998, at least 60 percent of student loan volume will be direct loans. 20 U.S.C. Sec. 1087c(a)(2).

/38/ See 34 C.F.R. Sec. 685.215.

/39/ Under the "income contingent repayment plan" available under the Direct Lending Program, indigent borrowers can qualify for monthly payments of zero. See 34 C.F.R. Sec. 685.209(b)(1)(ii).

/40/ Clearinghouse No. 45,565 (English) and 46,065 (Spanish).

/41/ E.g., *Do You Have a Defaulted Student Loan? A New Law May Offer Help* (a flyer by Community Legal Services) (Clearinghouse No. 50,835).

/42/ See 29 U.S.C. Secs. 1501 et seq. and 20 C.F.R. Secs. 628 et seq. For an overview of the JTPA, see National Employment Law Project (NELP), *A Legal Services Advocate's Guide to the JTPA Program* (1993) (Clearinghouse No. 50,815).

/43/ JOBS is a program established by the Family Support Act of 1988. See 42 U.S.C. Secs. 681 et seq. and 45 C.F.R. Secs. 250 et seq. For an overview of the JOBS program, see Mark Greenberg, *JOBS Program: Answers and Questions* (CLASP 1992) (Clearinghouse No. 48,300).

/44/ For a collection of commentaries from practitioners and policy analysts on recent proposals for reforming federal job training policy, see *Making Sense of Federal Employment and Training Policy for Youth and Adults -- Volume II, Expert Recommendations to Create a Comprehensive and Unified System* (National Youth Employment Coalition and American Youth Policy Forum, Washington, D.C., 1995).

/45/ For a discussion of the private-right-of-action issue under JTPA, see NELP, *supra* note 42, at 19 -- 20.

/46/ 29 U.S.C. Secs. 1511 -- 13.

/47/ The JOBS statute mandates coordination of the JOBS program with the JTPA program, 42 U.S.C. Sec. 683(a)(1), (c), and explicitly permits states the option to administer the program through the private industry councils (PICs), 42 U.S.C. Sec. 685(a).

/48/ In 1994, the Philadelphia PIC spent more than \$50 million in job training funds. In addition to funds it receives for economically disadvantaged adults under title IIA of JTPA and under the JOBS program, the PIC also receives funds for training dislocated workers under title III of JTPA, 29 U.S.C. Secs. 1651 et seq. (also known as EDWAA) and for youth programs under titles IIB and C of JTPA, 29 U.S.C. Secs. 1630 et seq.

/49/ This letter and other materials from the Philadelphia Unemployment Project (PUP)'s campaign are available from the Clearinghouse, No. 50,830.

/50/ 29 U.S.C. Sec. 1515(a)(1). See NELP, *supra* note 42, at 21 -- 27.

/51/ There are administrative law analogues for arguing that meaningful public participation implies public access to all relevant facts. See, e.g., *Virgin Is. Hotel Assoc. v. Virgin Is. Water & Power Auth.*, 464 F.2d 1272 (3d Cir. 1976) (public hearing requirement which entitles interested persons to present their views and evidence is meaningful only if there is prior dissemination to the public of all relevant facts on which agency relies); *Moore-McCormack Lines, Inc. v. United States*, 413 F.2d 568 (Ct. Cl. 1969) (reversal of rate decision when government failed to reveal studies and analyses underlying its conclusions); *Consumer Educ. & Protective Ass'n v. Southeastern Pa. Transp. Auth.*, 563 A.2d 565 (Pa. Commw. 1989) (invalidating mass transit fare increase adopted without allowing discovery prior to public hearing on the fare proposal when state statute required hearing to allow for public comment and questioning).

/52/ See 29 U.S.C. Sec. 1553(c)(2).

/53/ The Job Training Coordinating Council is appointed by the governor, pursuant to 29 U.S.C. Sec. 1532 and 20 C.F.R. Sec. 628.210. Its duties include reviewing the job training plans submitted by PICs around the state and making recommendations to the governor regarding approval of such plans.

/54/ 29 U.S.C. Sec. 1575(a). The statutory language is somewhat ambiguous, mandating only that JTPA recipients maintain "records . . . sufficient to permit the preparation of reports required by [JTPA] and to permit the tracing of funds," 29 U.S.C. Sec. 1575(a)(1), and that they make such records accessible to the public, excepting only disclosures which "would constitute a clearly unwarranted invasion of privacy" or "trade secrets, or commercial or financial information, obtained from a person and privileged or confidential." *Id.* Sec. 1575(a)(4). While the statutory mandate refers only to "recipients" (meaning states, not local PICs), the regulations explicitly make the public-access requirement equally applicable to PICs (referred to as the "subrecipients"). 20 C.F.R. Sec.

627.463.

/55/ 20 C.F.R. Sec. 627.420(j).

/56/ 29 U.S.C. Sec. 1515(a)(1).

/57/ 65 Pa. Con. Stat. Sec. 66.1.

/58/ JTPA requires each PIC to establish a grievance procedure that provides for a hearing and an appeal to the state. 29 U.S.C. Sec. 1554; 20 C.F.R. Sec. 627.502. Copies of the grievance and briefs are available from the Clearinghouse, No. 50,649.

/59/ JTPA requires that the "[t]raining provided . . . shall be only for occupations for which there is a demand in the area served." 29 U.S.C. Sec. 1551(d)(1). Similarly, the JOBS statute requires PICs to "identify . . . the types of jobs available or likely to become available in the service delivery area," 42 U.S.C. Sec. 685(e), in order to ensure that training is "realistically geared to labor market demands and . . . produce[s] individuals with marketable skills." 42 U.S.C. Sec. 686(a)(2). Both JTPA and JOBS contain specific requirements with regard to assessment and referral. See 29 U.S.C. Sec. 1604(a); 20 C.F.R. Secs. 628.510 -- 530; 42 U.S.C. Secs. 682(b)(1); 684(a); 45 C.F.R. Sec. 250.41.

/60/ JTPA imposes performance standards on PICs, which in turn monitor the performance of their contractors in accordance with these standards. In this case, the Philadelphia PIC was counting as a successful placement a job paying \$6 per hour with benefits or \$7.50 per hour without benefits.

/61/ PUP members were outraged that dislocated workers were being given vouchers of \$7,500 to take to the college or training program of their choice, while the "economically disadvantaged" were told to choose from a limited menu of short-term training options. Thus, one of the rallying cries of the PUP campaign became the demand for equal treatment of dislocated and disadvantaged workers.

/62/ A number of studies link college education, even for only one or two years, with increased income. See generally Center for Women Policy Studies, *Getting Smart about Welfare: Postsecondary Education Is the Most Effective Strategy for Self-Sufficiency for Low-Income Women* (1995); Marilyn Gittell et al., *Building Human Capital: The Impact of Post-Secondary Education on AFDC Recipients in Five States* (Howard Samuels State Management and Policy Center, City University of New York 1993); Arloc Sherman, *College Access and the Jobs Program* (CLASP 1990).

/63/ See Robert Reich, *The Work of Nations* 213 (1992).

/64/ This has already been recognized in the vocational-education context, where the Perkins Act requires vocational programs at high schools and community colleges that receive federal funds to integrate vocational and academic education and to teach "all aspects of the industry." 20 U.S.C. Sec. 2323(a)(3)(B).

/65/ 29 U.S.C. Sec. 1516.

/66/ See 59 Fed. Reg. 35381 -- 89 (July 11, 1994).

/67/ By not measuring employment's relatedness to training, the performance standards fail to separate those who would have found employment anyway from those who actually benefited from training. See *Preparing for the Workplace, Charting a Course for Federal Postsecondary Training Policy* 132 (National Research Council 1993) (distinguishing between "outcome-based" performance standards, which simply measure the employment rate after training, and "impact-based" performance standards, which compare the group trained to a control group and measure the difference in employment between the two groups). For an excellent critique of JTPA and JOBS performance standards, see Diana M. Pearce, *Making Welfare Work: Performance Standards in Welfare Reform* (Women and Poverty Project, *Wider Opportunities for Women*, May 1994).

/68/ Because the performance standard is an average wage rate, it creates some incentive to obtain high-wage placements to the extent such placements bring up the overall average. At the current low rate of \$6 per hour, however, that incentive is minimal. Placements in jobs paying more than \$6 per hour only provide a payback to the extent that the PIC is also placing trainees in very low-paying (less than \$6 per hour) jobs.

/69/ The PIC staff members lacked the expertise necessary to evaluate these claims and, moreover, seemed unaware of their inexpertise. E.g., in making the decision to contract for medical-assistant training in 1992 (the subject of the grievance filed by CLS), PIC staff members consulted no experts in the medical field about the demand for medical assistants in the local economy or the qualifications needed for such a job. Instead, they hired as a "consultant" the former director of one of the worst trade schools in Philadelphia.

/70/ Importantly, while advocates played a key role in developing this understanding, the clients themselves participated in this process as well. A significant part of the research involved face-to-face meetings with federal and state officials who were asked directly such questions as, "Is there anything in the JTPA program rules that prevent the Philadelphia PIC from sending people to a community college?"

/71/ 45 C.F.R. Sec. 250.78(a).

/72/ Anthony S. Tywman & Rose DeWolf, *Is Training on Track?*, Philadelphia Daily News, Sept. 2, 1994, at 4. A collection of press clippings about the PUP Campaign is available from the Clearinghouse, No. 50,825.

/73/ See *The Dramatic Saga of PIC and PUP*, Philadelphia Daily News, May 31, 1994, at 26; *Conflicts over Training: Just What Is PIC in Business for?*, Philadelphia Inquirer, June 2, 1994, at A16.

/74/ E.g., in order to prove that a school's admissions testing or credentials were defective, or that a training objective was improper, we had to learn about appropriate professional benchmarks from legitimate educators in the field.

/75/ This new policy was drawn from the Higher Education Act amendments excluding schools with high default rates from title IV eligibility. See 20 U.S.C. Sec. 1085(a)(2).

/76/ The February 7, 1995 settlement letter is available in the collection of PUP material from the Clearinghouse, No. 50,830.

/77/ See Lawrence Mishel and Jared Bernstein, *The State of Working America 1994 -- 95* (Economic Policy Institute 1995) (since 1979, real wages of entry-level male and female high school graduates have fallen 30 percent and 18 percent, respectively); Reich, *supra* note 63, at 203 -- 6.

/78/ Reich, *supra* note 63, at 213; Sylvia Nasar, *Statistics Reveal Bulk of New Jobs Pay over Average*, N.Y. Times, Oct. 17, 1994, at A1.; Howard Goodman, *College Graduate Widen Gap on Income*, Philadelphia Inquirer, Apr. 27, 1995, at A1.

/79/ According to the statutory language, job training under JTPA and JOBS is supposed to promote "occupational development, upward mobility, development of new careers," 29 U.S.C. Sec. 1551(d)(2), and independence from welfare in the "long term." 42 U.S.C. Sec. 681(a).

/80/ See 42 U.S.C. Sec. 682(d)(1)(B); 45 C.F.R. Sec. 250.46.

/81/ A 1993 study of the implementation of the higher education option in nine states' JOBS programs showed that the inclusion and implementation of college opportunities has varied from state to state and within states from county to county according to the ideological orientations of the state and local bureaucrats. Marilyn Gittell & Sally Covington, *Higher Education in JOBS: An Option or an Opportunity? A Comparison of Nine States* (Howard Samuels State Management and Policy Center, City University of New York 1993).

/82/ The Gittell study specifically found that welfare rights and legal services organizations played only a marginal role in the development of bureaucratic attitudes toward higher education in the nine JOBS programs studied. *Id.* at 42.

/83/ The central innovation is the idea of individual training vouchers provided to participants through "one-stop" career centers. In fact, the current system is already largely voucher based. The Pell grant program is a voucher program, and many PICs have been moving toward the use of individual vouchers and away from contract-based training. The central problem will continue to be the absence of reliable information and of a training infrastructure built around such information, a problem that will not be solved by changing the names of PICs or job centers to "one-stops" or, worse, by turning

over the function to private enterprise.