

# No One Leaves: Community Mobilization as a Response to the Foreclosure Crisis in Massachusetts

---

*Nicholas Hartigan\**

## INTRODUCTION

Each Thursday in Massachusetts, hundreds of landlord-tenant disputes are scheduled for trial in district or housing courts.<sup>1</sup> Landlords are usually represented, but the vast majority of tenants facing eviction do not receive the assistance of counsel at any stage in the proceedings.<sup>2</sup> Nationwide, at least 80% of the civil legal needs of low-income Americans are not being met.<sup>3</sup> Moreover, 50% of eligible people seeking assistance from Legal Service Corporation-funded programs in areas in which the programs provide service are turned away for lack of program resources.<sup>4</sup> These statistics are exacerbated by recent cuts in legal service programs by cities, states, and even law schools in the midst of the current economic crisis.

Faced with fewer resources and increased need, legal service providers are forced to triage clients, accepting only those cases that meet the provider's conception of its organizational mission to the exclusion of other potentially worthy cases. Legal service organizations have historically struggled to reconcile their own scarce resources with a desire to serve a larger segment of their often politically disempowered service populations. A growing body of literature suggests that, to impact communities on a grander scale, legal service providers must engage in efforts to address legal and nonlegal problems through coalition building with nonlegal organizations.<sup>5</sup> Starting in January 2008, law students at the Harvard Legal Aid Bu-

---

\* J.D., Harvard Law School 2009.

<sup>1</sup> Editorial, *When the Wolf is at the Door*, BOSTON GLOBE, Feb. 4, 2008, at A14; Marc Rotter, *Allocating Scarce Resources: An Empirical Study of the Effect of Representation on Boston Housing Court and Its Implications for the Provision of Legal Services* (May 2008) (unpublished manuscript, on file at the Harvard Legal Aid Bureau).

<sup>2</sup> Editorial, *Justice Isn't Recession-Proof*, BOSTON GLOBE, Dec. 27, 2008, at A12.

<sup>3</sup> LEGAL SERVICE CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA 13 (1st ed. 2005).

<sup>4</sup> *Id.* at 8.

<sup>5</sup> See GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 441 (2000) (highlighting the parallels among "critical lawyering theory," "new poverty law scholarship," "representational narrative scholarship," "reconstructive poverty law," "the theoretics of practice movement," "political lawyering," "community lawyering," and "collaborative lawyering,"—the term he prefers because of its emphasis on a problem-solving partnership with clients); see also Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992); Lucie E.

reau (“HLAB”)<sup>6</sup> and WilmerHale Legal Services Center (“LSC”),<sup>7</sup> their clinical instructors,<sup>8</sup> legal service attorneys at Greater Boston Legal Services (“GBLS”),<sup>9</sup> and community organizers at City Life/Vida Urbana (“City Life”)<sup>10</sup> began a coordinated effort to prevent post-foreclosure evictions in Boston, unofficially called the “Foreclosure Taskforce.” At the outset, the group primarily focused on effecting change by litigating post-foreclosure evictions through the collaborative efforts of the Foreclosure Taskforce. While there was a general alliance with City Life, the focus of the campaign was simply to provide litigation assistance to those facing immediate eviction, as opposed to engaging in larger community-mobilizing efforts more characteristic of City Life. After a semester of work, however, it became clear that, to make a significant impact, a campaign would have to mobilize the community long before tenants arrived in court. To this end, Dave Haller, Tony Borich, and I created No One Leaves, an organization affiliated with City Life and composed of hundreds of students and community volunteers dedicated to informing occupants of foreclosed properties of their post-foreclosure rights through direct canvassing of every foreclosed home in Boston.<sup>11</sup> Together, the Foreclosure Taskforce, No One Leaves, and City

---

White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994).

<sup>6</sup> HLAB is the oldest student-run legal services organization in the nation. HLAB operates a year-round legal services practice with approximately fifty student-attorneys, eight clinical instructors, and one administrator. All law students in HLAB commit to participating in clinical work for two full years, generally handling between three and five individual cases at a time, though a number of students voluntarily handle many more than five cases. During the summer months, approximately fifteen full-time legal interns replace the regular student staff and handle all of the casework. About half of the student-attorneys and clinical instructors focus specifically on housing law issues. The main student actors during this period for HLAB were Dave Haller and Nicholas Hartigan.

<sup>7</sup> LSC is a general practice community law office founded nearly thirty years ago as a clinical practice program for Harvard Law School students. LSC was the largest in-house clinical placement of Harvard Law School, handling up to 1200 cases each year in thirteen diverse clinical practices. The main student actors during this period for LSC were Tony Borich and Eric Herrmann.

<sup>8</sup> Clinical instructors are the supervising attorneys for each of the respective clinical programs. The supervising attorneys active with the Foreclosure Taskforce during this period of time at HLAB were Managing Attorney/Faculty Director David Grossman, Liz Nessen, Pattie Whiting, J. Verner Moore, and Lee Goldstein. The supervising attorneys active with the Foreclosure Taskforce during this period of time at LSC were Maureen McDonagh, Rafael Mares, and Esme Caramello.

<sup>9</sup> GBLS is New England’s largest legal services organization. The attorneys most involved with the Foreclosure Taskforce at this time were Zoe Cronin and Stefanie Balandis.

<sup>10</sup> City Life is a grassroots community organization that has worked for decades to promote racial, social, and economic justice in Massachusetts. Since 2007, City Life has increasingly focused its energy on preventing foreclosures and subsequent evictions. To this end, the organization created a Bank Tenant Association composed of community members, both tenants and former owners, living in foreclosed homes, which has been a vocal force in this effort.

<sup>11</sup> Dave Haller is a 2009 graduate of Harvard Law School and was a member of HLAB from 2007–2009. He worked on every aspect of the Foreclosure Taskforce and No One Leaves. Tony Borich is a 2009 graduate of Harvard Law School and was a member of LSC during his 3L year. In his 2L year, he led the canvassing efforts for the Foreclosure Taskforce.

Life became a powerful force to prevent the spread of blight from post-foreclosure evictions and abandoned homes.

I present the work of the Foreclosure Taskforce and No One Leaves as a case study of an evolving coordination of legal advocacy and grassroots activism in the context of issues related to affordable housing. The law students, legal service attorneys, community organizers, and community members that composed these groups collaborated using case-specific advocacy and group-based transactional approaches to oppose post-foreclosure evictions. The formation and structure of their efforts were based on the particular needs and resources of the Boston area in the wake of the foreclosure crisis, but similar collaborations could be effectively employed in other areas. The Foreclosure Taskforce and No One Leaves can serve as models for community-based advocacy regarding foreclosures. This case study intends to inspire law school clinical programs in their creative efforts to address problems facing impoverished members of local communities.

Part I briefly situates this case study in the broader context of poverty law practice operating under the constraint of scarce resources. Part II examines the personal and practical motivations behind the start of the Foreclosure Taskforce and our focused-case-representation model of advocacy. Part III focuses on the creation and structure of the Foreclosure Taskforce. Part IV examines the development of a mobilization lawyering model of advocacy through the creation of No One Leaves. Part V looks at the creation and structure of No One Leaves. Part VI reflects on the challenges, victories, and plans for the future action of the Foreclosure Taskforce and No One Leaves.

## I. CONCEPTIONS OF POVERTY LAW PRACTICE

Scarcity of time, resources, funds, and political capital force legal service programs to select their cases carefully based on the characteristics of individual cases or the type of advocacy activity a client's particular legal problem requires.<sup>12</sup> Legal service providers can choose among four types of advocacy activities that, while often overlapping in practice, constitute distinct choices about provider priorities.<sup>13</sup> For the purposes of this article, I will describe these lawyering activity models as "individual case representation," "focused case representation," "law reform," and "mobilization."

"Individual case representation" describes work that is solely focused on benefiting an individual client. Under this model, advocates spend the bulk of their time preparing for hearings or trial for the benefit of their indi-

---

He was the Technology Director of No One Leaves, creating and overseeing the two databases that were crucial to the canvassing effort.

<sup>12</sup> See Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978).

<sup>13</sup> Paul Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2499-2503 (1999).

vidual client. Legal service programs engaged primarily in individual case representation tend to select the most critical cases from the larger pool of eligible clients.<sup>14</sup>

“Focused case representation” describes individual case work chosen not simply to benefit the individual client involved, but also to confront a broader social or legal concern within the program’s client community.<sup>15</sup> Focused case representation can be a more efficient use of limited program resources, because it enables advocates to effect institutional change that positively impacts even those who cannot secure individual council.<sup>16</sup>

“Law reform” refers to focused advocacy that strives to effect structural change through a small number of cases or legislative actions. Law reform efforts consist of impact litigation, legislative action, or administrative advocacy designed to achieve broad change.<sup>17</sup>

Finally, “mobilization lawyering” seeks to reshape the substance and processes of legal advocacy by supporting community-based activism and promoting a substantive version of social justice.<sup>18</sup> Clients are not viewed as isolated victims, but as members of broader classes of individuals experiencing similar inequalities. Advocates attempt to redress the imbalance in political, economic, and social power through political community organizing and empowerment as well as more traditional forms of representation such as litigation and legislative advocacy.<sup>19</sup> Under this framework, poverty law practice should build sustainable relationships with community members

<sup>14</sup> *Id.* at 2500–01.

<sup>15</sup> *Id.* at 2501.

<sup>16</sup> *Id.* at 2501 (citing Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1536–38 (1995)).

<sup>17</sup> Students at HLAB (most prominently Tim Hoitink, Marc Rotter, and Eamon Lorincz), under the supervision of Lee Goldstein, wrote legislation that would prevent no-fault evictions from post-foreclosure homes, which could potentially have prevented many of the problems discussed below. This legislation was passed unanimously as home rule petitions by the Boston City Council and other Massachusetts cities, including Worcester and Lawrence, and is currently before the state legislature as part of the Massachusetts Alliance Against Predatory Lending (“MAAPL”) package of foreclosure legislation. Jennifer McKim, *Council Backs Foreclosure Protections*, BOSTON GLOBE, May 21, 2009, at 8; see Massachusetts Alliance Against Predatory Lending Legislation Fact Sheet, [http://www.maapl.info/uploads/MAAPL\\_FactSheet4in1-200907.pdf](http://www.maapl.info/uploads/MAAPL_FactSheet4in1-200907.pdf). However, I will not discuss this legislative effort further due to space constraints.

<sup>18</sup> Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 68–73 (2000).

<sup>19</sup> Tremblay, *supra* note 12 at 2502–03. Traditional litigation models are often criticized for creating an atmosphere where only the attorney’s voice matters and clients must depend on their attorneys for action, preventing clients from being empowered by the experience of impacting bureaucracy. See, e.g., JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* 148–49 (2005); Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, (Austin Sarat & Stuart Scheingold, eds., 2006). As a result, the lawyer’s work can reinforce the status quo and perpetuate the powerlessness that lies at the heart of problems facing impoverished communities. Paul Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 127 n.11 (1992). For further reference regarding those responsible for these critiques, see *id.* at 125–26 nn.8–11.

and local leaders with the goal of empowering communities to engage with bureaucratic processes to solve their own problems for the benefit of both current and future community members.<sup>20</sup>

## II. MOTIVATION FOR CHANGE—HLAB'S DECISION TO PURSUE FOCUSED-CASE-REPRESENTATION

In early 2007, HLAB's housing practice primarily utilized the individual case representation model.<sup>21</sup> This model was preferred because HLAB was aware that most unrepresented tenants actually are able to successfully avoid eviction—thus the organization decided to utilize its limited resources to provide full representation to those clients in extreme situations, in which assistance could really change the outcome for the individual client. Intake priorities thus generally supported taking cases in which the individual's legal situation was critical, eviction threatened to terminate a tenant's housing subsidy, or litigation seemed necessary to secure long-term sustainable housing.<sup>22</sup> These factors focused on the well-being of the individual client with little consideration of any broader strategy of focused representation or mobilization. Although HLAB had at times experimented with focused case representation, the relatively rapid turnover of student-attorneys made such efforts difficult to maintain, and individual case representation became the default lawyering model.

In the fall of 2007, some HLAB members began to doubt that the current approach was the most effective way to confront the issues facing our clients. When speaking at an HLAB roundtable, Dave Haller discussed a successful housing settlement he had achieved after weeks of filing answers, counterclaims, discovery requests, and motions to compel and dismiss. The agreement allowed his client to maintain her housing, forced the landlord to make repairs, and waived her rent for months. Although this was an extremely successful settlement, Dave could not ignore the fact that on the same day his settlement was signed, numerous unrepresented tenants in similar circumstances had agreed to payment plans or vacancy agreements without concessions from represented landlords. Dave believed that, with the

---

<sup>20</sup> LÓPEZ, *supra* note 5, at 37; Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359 (2008).

<sup>21</sup> HLAB students and instructors had also been using other modes of lawyering in their housing practice. These other modes included HLAB students representing many tenant associations and often bringing multiple cases against the same landlord, a program of law reform (including a long effort to enact landlord-tenant collective bargaining legislation), and mobilization lawyering (including significant collaboration with City Life on, among other things, an anti-displacement zone in Mattapan). Interview with David Grossman, Managing Attorney & Faculty Dir., Harvard Legal Aid Bureau (Nov. 15, 2009).

<sup>22</sup> Generally, to become a client of HLAB, a tenant schedules an intake interview to discuss the facts of her case and provide relevant personal information. Students then present potential tenant cases at biweekly intake meetings attended by students and clinical instructors. The intake committee then votes to accept or reject each presented case.

same investment of work hours he had spent on his single case, he might have been able to help considerably more people utilizing a different approach, perhaps one akin to the Attorney for the Day program.<sup>23</sup> Even if each individual client did not receive the same level of representation under a program like Attorney for the Day as she would receive under HLAB's current model, the overall impact on the housing market could increase.<sup>24</sup> While the notion of fully shifting HLAB's practice to this limited representation model was summarily rejected, the idea of attempting to focus our work to reach a larger community had considerable appeal. HLAB wanted to identify the larger issues confronting our client community and to develop a program of advocacy accordingly.

During this same time period, the depth of problems that the foreclosure crisis would cause the residents of Boston was becoming clearer. Foreclosure deeds, the final step in the foreclosure process, nearly tripled between 2005 (1092 foreclosure deeds) and 2006 (3086 foreclosure deeds),

---

<sup>23</sup> The Attorney for the Day program is organized by the Volunteer Lawyers Project and the Real Estate section of the Boston Bar Association. Through this program, volunteer attorneys from law firms throughout Massachusetts provide advice to landlords and tenants in Boston Housing Court every Thursday when eviction cases are being heard. The Boston Bar Association and Volunteer Lawyers Project run periodic training for interested attorneys, who are then free to attend court any week to staff the Attorney for the Day program and provide legal assistance to tenants (and landlords) who arrive unrepresented at Housing Court. Traditionally, volunteer attorneys staff a table in the hallway outside the courtrooms in Boston Housing Court. Tenants can approach the table, explain their individual situations, and ask questions. The volunteer attorneys attempt to negotiate settlements with landlords, help clients write and file motions, and even argue motions or try cases for their clients.

In Boston Housing Court, landlords and tenants can attend mediation with a Housing Specialist, a court employee with expertise in housing regulations, before seeing a judge. *See* MASS. GEN. LAWS. ch. 185C § 16 (2009). In practice, most cases not heard by a judge are negotiated in the hallway, but the service is available. Interview with David Grossman, Managing Attorney & Faculty Dir., Harvard Legal Aid Bureau (Oct. 11, 2008). The volunteer attorneys can represent clients during these mediations and use forms drafted by the Massachusetts Law Form Institute, GBLS, LSC, and HLAB. If the mediation is unsuccessful or the other party refuses to attend mediation, the volunteer lawyer can represent her client in court. *See infra* note 47 and accompanying text.

During the school year, HLAB and LSC alternate weeks in which they are responsible for acting as the primary staffers of the Attorney for the Day tenant table.

<sup>24</sup> A student attorney at HLAB will spend well over twenty hours each week working on her individual "full representation" cases, each of which lasts for months. In a single morning as Attorney for the Day, each student is often able to resolve one to two cases through motions to dismiss and settlements. Instead of conducting extensive discovery, filing motions, and preparing for trial, the students could process and settle cases in court in substantially less time. The effectiveness of this sort of limited representation has been much debated. *See e.g.*, Robert Bickel, *Limited Legal Services: Is it Worth It?*, 39 COLUM. J.L. & SOC. PROBS. 331, 339 (2006); Michael Millemann et al., *Rethinking the Full-Service Legal Representational Experiment: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1178 (1997).

and then dramatically increased to 7653 foreclosure deeds in 2007.<sup>25</sup> In December 2007 alone, 683 foreclosure deeds were filed.<sup>26</sup>

Boston neighborhoods like Dorchester, Hyde Park, and Mattapan, which had higher concentrations of both minorities and multi-family properties, were disproportionately impacted. Multi-family properties accounted for nearly half of the 7653 foreclosure deeds filed in 2007.<sup>27</sup> In Suffolk County, half of the 1449 foreclosure auctions and subsequently Real Estate Owned (“REO”)<sup>28</sup> properties were multi-family.<sup>29</sup> On a unit, rather than property, basis, the 8087 properties accounted for an estimated 12,644 units, of which approximately 58% were in multi-family properties. The National Low Income Housing Coalition estimated that as many as 46% of the affected units were renter-occupied, suggesting an impact on more than 5816 tenant families in the fifteen months before March 2008.<sup>30</sup>

Banks that owned multi-family REO properties implemented a policy of evicting all occupants of foreclosed homes before marketing them for

<sup>25</sup> Press Release, The Warren Group, Foreclosures in Mass. Rise 150% in 2007; December Sees Largest Increase Since August, According to the Warren Group (Jan. 23, 2008), available at <http://www.thewarrengroup.com/portal/Solutions/PressReleases/tabid/190/newsid751/104/Default.aspx>.

<sup>26</sup> Rising delinquencies and foreclosures can, in large part, be traced to the rise in subprime lending during the first half of the decade. See Eric Rosengren, President & Chief Executive Officer, Federal Reserve Bank of Boston, Address to South Shore Chamber of Commerce: Early Lessons from Recent Financial Turmoil (Mar. 6, 2008), available at <http://www.bos.frb.org/news/speeches/rosengren/2008/030608.htm>; see also ECON. & PUB. POL’Y RESEARCH UNIT, U. MASS. DONAHUE INST., HOUSING MARKET: A STATEWIDE AND REGIONAL ANALYSIS 83–84 (2008), available at <http://www.mass.gov/Ehed/docs/dhcd/media/thestate-ofmahousingm.pdf>. Race appears to play a large role in the decision to offer a homebuyer a subprime loan, even when income is not a factor. See JAMES CAMPEN, CHANGING PATTERNS XIV: MORTGAGE LENDING TO TRADITIONALLY UNDERSERVED BORROWERS AND NEIGHBORHOODS IN BOSTON, GREATER BOSTON AND MASSACHUSETTS, 2006, at 6–9 (2008), available at <http://www.gaston.umb.edu/articles/CP14-Feb08%20Report.pdf> (Massachusetts Community and Banking Council’s most recent annual assessment of mortgage lending in the state reported that when borrowers are grouped by both race/ethnicity and income, the high APR loan share (also called HAL loans, a proxy for subprime) for African Americans and Latinos is substantially higher than the HAL loan share for whites in the same income category. In fact, the disparities tend to be greater at the higher income levels—a pattern that is repeated in national trends.). Kristopher S. Gerardi & Paul S. Willen, *Subprime Mortgages, Foreclosures, and Urban Neighborhoods* 15 (Federal Reserve Bank of Boston, Public Policy Discussion Paper No. 08-6, 2008), available at <http://www.bos.frb.org/economic/ppdp/2008/ppdp0806.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> REO is a class of property owned by a lender, typically a bank, after an unsuccessful sale at a foreclosure auction. The financial institution will set the opening bid at a foreclosure auction for at least the outstanding loan amount and will legally repossess the property if no bidders are willing to pay a higher price. As soon as the financial institution repossesses the property, it is listed on the institution’s books as REO and categorized as a nonperforming asset. Banks will then go through the process of evicting any remaining occupants and offering the property for sale. Eric Lipton, *Homeowners’ Hard Times Are Good for the Foreclosure Business*, N.Y. TIMES, Apr. 6, 2009, at 11.

<sup>29</sup> NAT’L LOW INCOME HOUSING COALITION, FORECLOSURE IN MASSACHUSETTS: PROPERTIES, UNITS, AND TENURE 1 (2008), available at [http://www.worcesteractivist.org/files/NLIHC.MA\\_data\\_5.09.08.pdf](http://www.worcesteractivist.org/files/NLIHC.MA_data_5.09.08.pdf).

<sup>30</sup> *Id.* at 2.

sale.<sup>31</sup> This policy led to the displacement of hundreds of tenants and the proliferation of vacant properties in neighborhoods like Dorchester, Hyde Park, and Mattapan. The dramatic drop in housing prices left vacant properties on the market for months, further depleting property values, destroying the housing stock, and endangering the residents of the neighborhood.<sup>32</sup> Reduced property values prevented other distressed homeowners in the neighborhood from refinancing or selling their homes, leading to more foreclosures. Moreover, foreclosed properties “[would] become prime targets for squatters, vandals and thieves, who sometimes [would] set them on fire to gain access to copper pipes inside the walls.”<sup>33</sup> Tenants in foreclosed homes also could be forced to live without heat or hot water.<sup>34</sup> Properties that had housed multiple families for years were destroyed in months. Often absentee landlords owned these properties, so the foreclosure and subsequent evictions affected only the tenants, who had nothing to do with the failed mortgage.<sup>35</sup>

Legal service attorneys witnessed the effects of this eviction policy in Boston Housing Court each week during the spring and summer of 2007, as Deutsche Bank, Bank of New York, and other holders of REO properties increasingly appeared as plaintiffs to evict former owners and tenants.<sup>36</sup>

---

<sup>31</sup> Jennifer McKim, *More Being Foreclosed Into Homelessness*, BOSTON GLOBE, Apr. 22, 2009, at 1; Eric Herrmann, *Why Won't the Banks Take Rent? Legal Services' Efforts to Prevent Post-Foreclosure Displacement* (May 2008) (unpublished manuscript, on file at the Harvard Legal Aid Bureau).

<sup>32</sup> See ECON. & PUB. POL'Y RESEARCH UNIT, U. MASS. DONAHUE INST., HOUSING MARKET: A STATEWIDE AND REGIONAL ANALYSIS 83–84 (2008), available at <http://www.mass.gov/Ehed/docs/dhcd/media/thestateofmahousingm.pdf>.

<sup>33</sup> Abby Goodnough, *Hard Times for New England's 3-Deckers*, N.Y. TIMES, June 19, 2009, at A1. See also Ric Kahn, *Opportunity Knocks*, BOSTON GLOBE, Aug. 10, 2008, at 1.

<sup>34</sup> In the first post-foreclosure eviction case I handled, my client was living in a home without heat and hot water. There were also four inches of sewage covering the entire basement of the property.

<sup>35</sup> Jennifer McKim, *Forgotten in Foreclosures, Renters Forced to Live in Decaying Homes*, BOSTON GLOBE, Feb. 3, 2009, at A1.

<sup>36</sup> Interview with David Grossman, Managing Attorney & Faculty Dir., Harvard Legal Aid Bureau (Oct. 11, 2008). Massachusetts General Laws chapter 186, § 13A became effective on November 29, 2007. MASS. GEN. LAWS ch. 186, § 13A (2007) (“Upon a foreclosure of residential real property pursuant to chapter 244, a tenant, occupying a dwelling unit under an unexpired term for years or a lease for a definite term in effect at the time of the foreclosure by sale, shall be deemed a tenant at will. Foreclosure shall not affect the tenancy agreement of a tenant whose rental payment is subsidized under state or federal law.”). Individuals with valid leases became tenants at will of the financial institution following foreclosure. These financial institutions had the same obligations as landlords to maintain the property to conform to the State Sanitary Code. Tenants facing eviction could bring the same defenses for violation of the implied warranty of habitability and breach of quiet enjoyment. At the same time, Massachusetts General Laws chapter 186, § 13 was amended to include a provision that “[a] tenancy at will of property occupied for dwelling purposes shall not be terminated by operation of law by the conveyance, transfer or leasing of the premises by the owner or landlord thereof or by foreclosure.” Following this amendment, a tenant at will prior to the foreclosure remains a tenant at will following the foreclosure auction, maintaining the same rights and defenses to eviction against the financial institution who purchased the property at auction. Judicial interpretation has generally not included former owners as protected by either of these statutes. *Mirza v. Silva*, No. 98-SP-05492 (Boston Housing Ct. filed Feb. 3, 1999) (Massachusetts Gen-



These were no-fault evictions; the banks were not looking for rent or alleging that the occupants did anything wrong—the banks simply wanted the properties vacant, claiming that this was a necessary first step to selling the property. When dealing with unrepresented tenants, bank attorneys often refused to consider allowing the families to remain in the homes and would only discuss how much time and money the tenants needed to vacate.<sup>37</sup> For unrepresented tenants, banks' limited offers in this regard were inadequate.

In light of the dramatic effect that these evictions and subsequent vacancies had on Boston neighborhoods, HLAB decided to focus its efforts on preventing post-foreclosure evictions. Given the generally poor condition of multi-family REO properties and the availability of defenses against eviction based on such conditions, most of these evictions would have been preventable if tenants had merely filed the requisite forms to secure representation.<sup>38</sup> Banks often refused to accept or even request rent, so any tenant who could demonstrate damages from breach of quiet enjoyment or a violation of the implied warranty of habitability<sup>39</sup> that exceeded what was owed to the bank would have a superior right to possession, allowing her to halt her eviction and hold the bank liable for damages to the property.<sup>40</sup> Moreover, we believed that if we could increase the banks' litigation costs to the point at which tenant eviction was no longer cost-effective, banks would likely stop this incredibly destructive practice. However, we knew that litigating cases only for the few tenants who actively sought legal services assistance would

---

eral Laws ch. 239, § 8A does not apply to former owners when bad conditions already existed at time of foreclosure); *Deutsche Bank Nat'l Trust Co. v. Gabriel*, No. 09-SP-001908 (Boston Housing Ct. filed July 22, 2009) (former owners "not entitled to assert affirmative defenses or counterclaims in . . . summary process action"); *Accredited Home Lenders v. Jennings*, No. 08-SP-001212 (Boston Housing Ct. filed June 6, 2008) (former owners "not entitled to the protection of G.L. c. 239, sec. 8A").

<sup>37</sup> Interview with David Grossman, Managing Attorney & Faculty Dir., Harvard Legal Aid Bureau (Oct. 11, 2008). See also Herrmann, *supra* note 31.

<sup>38</sup> Landlord-tenant law in Massachusetts provides tenants with a number of avenues to defend against evictions, most which stem from the condition of the home. Tenants can use any violations of the State Sanitary Code that rise to the level of violating the implied warranty of habitability or breach of quiet enjoyment as defenses or counterclaims against their landlord. See MASS. GEN. LAWS ch. 239, § 8A (2007). Upon receiving the summons and complaint, tenants have a number of procedural rights that postpone their trial date and allow them to prepare to fight the evictions in court. For years, GBLS and other legal service providers in the Boston area have hosted weekly clinics where they help tenants fill out and file answers, discovery requests, and requests for a jury trial. These procedural and substantive defenses provide tenants with real leverage to prevent their displacement and secure long-term affordable housing in compliance with the State Sanitary Code. If tenants fail to file any paperwork before coming to court, they face the very real threat of eviction that Thursday. Despite the drastic consequences of failing to file responsive documents, only a very small minority of unrepresented tenants file any responsive pleadings. See Marc Rotter, *Allocating Scarce Resources: An Empirical Study of the Effect of Representation on Boston Housing Court and Its Implications for the Provision of Legal Services* (2008) (unpublished manuscript, on file with the Harvard Legal Aid Bureau).

<sup>39</sup> In general, multi-family REO properties were in dire condition. Landlords falling behind in their mortgages neglected repairs and banks refused to make repairs to occupied homes post-foreclosure. Proving damages was rarely difficult.

<sup>40</sup> See MASS. GEN. LAWS ch. 239, § 8A (2007).

not be sufficient to achieve this broad effect. Rather, tenants would need to file responsive pleadings, request jury trials, and fight every step of the way en masse.

Given the extent of the problem, we began to discuss a joint solution with similarly concerned students and instructors at LSC. We sought to identify an advocacy model that could be implemented immediately and would be practical given participants' time and resource constraints. We chose a program of focused case representation—we would contact every potential defendant before court and host weekly clinics to ensure that every tenant who appeared in court to fight post-foreclosure eviction would have representation or attorney advice that would enable her to fight foreclosure herself.

### III. FOCUSED REPRESENTATION—THE FORECLOSURE TASKFORCE

Although the student-attorneys and instructors involved with this project at HLAB and LSC viewed post-foreclosure evictions as an especially compelling problem that required intervention, we could not commit the entire housing practices of both organizations to this single issue. Thus, to increase the scale of our efforts, the groups sought coalitions with other Boston legal service and grassroots organizations. In December 2007, GBLS and City Life joined HLAB and LSC in what then unofficially became known as the "Foreclosure Taskforce."<sup>41</sup> Legal service attorneys from HLAB, LSC, and GBLS ran two clinics each week, provided full or partial representation for defendants in post-foreclosure eviction cases, and provided legal assistance and support at weekly City Life meetings. At the clinics, we focused solely on post-foreclosure evictions, explained the eviction process, completed responsive pleadings, and conducted intake interviews for possible acceptance of cases for full representation. Following each clinic, we tried to ensure that every occupant of a foreclosed home had legal and community support throughout litigation.

Each Tuesday, a member of the Foreclosure Taskforce would travel to Boston Housing Court and the district courts in Dorchester, Roxbury, West Roxbury, and East Boston to obtain the list of upcoming eviction cases at each court.<sup>42</sup> To increase turnout at clinics, we contacted every defendant on these lists twice. As our initial contact, we sent letters describing our organi-

---

<sup>41</sup> It is important to note that HLAB, LSC, and City Life had been collaborating on anti-foreclosure since the spring of 2007. There had not been collaboration on pro se clinics, but students and instructors from these organizations were collaborating on a number of other actions.

<sup>42</sup> Eviction day in most Massachusetts courts is Thursday. Cases are entered in court on the Monday of the week preceding the trial date (ten days before). By Tuesday, the list of new cases for the following Thursday is available at each court. Defendants have until Monday of the week of trial (three days before the trial date) to file responsive pleadings. Failure to file, generally, will waive a tenant's right to jury trial and discovery requests, but a tenant may still present defenses. *See* MASS. UNIF. R. SUMM. PROCESS 3.

zations and our reasons for contacting the defendants, and encouraging them to attend a clinic before their court date.<sup>43</sup> We stressed the fact that they had rights that would enable them to fight the eviction and that merely filling out the requisite paperwork dramatically increased their ability to stay in their homes for months, if not years. As our second contact, student canvassers visited the defendants' homes every Thursday to explain the post-foreclosure eviction process and make a personal plea for them to attend a clinic in order to improve their chances of successfully fighting eviction.

HLAB and LSC students ran a three-hour clinic on Friday mornings at the LSC offices in Jamaica Plain, a neighborhood bordering those most affected by the foreclosure crisis. The clinic was designed to help tenants represent themselves successfully; we used our time with clients to teach them about the court process and empower them to take on the banks.<sup>44</sup> While these clinics were run and staffed by student-attorneys, clinical supervisors reviewed every document with the student-attorney and defendant. We helped tenants complete answers to complaints, discovery requests, and any motions to dismiss that could be raised based on defects in notices to quit or summons and complaints.<sup>45</sup> Either the tenants or LSC filed original versions of these documents with the relevant court, while copies were sent to the banks via FedEx.<sup>46</sup>

A combination of full and limited in-court representation of tenants living in foreclosed homes comprised the final element in the work of the Foreclosure Taskforce. Tenants who did not attend a clinic or could not be taken as full clients by HLAB, LSC, or GBLS could still receive representation through the Boston Bar Association's Attorney for the Day Program, which allowed attorneys to provide advice, negotiate settlements, and even argue substantive motions for pro se tenants.<sup>47</sup> The attorneys collaborated exten-

---

<sup>43</sup> The letter was created by HLAB, LSC, and GBLS and was written in English and Spanish. It identified all three organizations and gave instructions for attending a clinic or contacting any of the organizations.

<sup>44</sup> Clinics are generally collaborative, with each participant actively filling in her own paperwork under the guidance of the clinic leader. This collaborative effort engages the participants and allows them to take ownership of the process. One portion of the answer to a complaint requires the tenant to list all conditions of disrepair in the home, and many participants are often embarrassed or just forget about any number of serious issues when first asked. Within minutes, however, the cracked kitchen floor and mice in one tenant's house might remind another tenant of the leaky ceiling in her bathroom, which might remind another tenant of the broken windows in her living room. By the end of this period, the tenants all have completed their paperwork and have built a sense of camaraderie—an essential element of the clinic experience.

<sup>45</sup> For a description of a similar LSC clinic in some detail and analysis of the outcome data gathered, see Neil Steiner, *An Analysis of the Effectiveness of a Limited Assistance Outreach Project to Low-Income Tenants Facing Eviction* (1997) (unpublished manuscript, on file with the Harvard Legal Aid Bureau).

<sup>46</sup> District court cases were transferred to Boston Housing Court when the Attorney for the Day Program ensured representation of some sort.

<sup>47</sup> A standing order of the court allows a two week continuance for advocates from the Attorney for the Day table to take a case for full representation if the parties are unable to mediate a suitable agreement. This gives tenants two opportunities to secure full representa-

sively regarding strategies, arguments, and the general treatment of cases. This comprehensive approach prevented bank attorneys from intimidating or misleading unrepresented tenants who were unfamiliar with the judicial system.

#### IV. RECOGNIZING THE UNMET NEED AND THE CREATION OF NO ONE LEAVES

By the end of the 2007–2008 academic year, the Foreclosure Taskforce contacted tenants, hosted clinics, and litigated every post-foreclosure eviction in Boston Housing Court for four months. Although clinic attendance rarely exceeded 25% of the nondefaulting defendants in court in any given week,<sup>48</sup> the collaborative effort had come together quickly and enjoyed marked success. Those tenants who arrived in court received legal assistance either through a full-representation agreement or the Attorney for the Day program. Numerous clients from HLAB, LSC, and GBLs had their cases dismissed, and many won extremely large settlements.<sup>49</sup> In addition, because a limited number of law firms represented banks in these evictions, in only a few months the united front of the Foreclosure Taskforce established baseline settlement values against the repeat players in these cases.<sup>50</sup>

---

tion—at clinics and at Attorney for the Day. It also ensures that tenants do not have to negotiate in the shadow of an immediate eviction trial. Students from HLAB and LSC would stand in the back of the courtroom as cases were being called at the beginning of the day. The standard practice in housing court if both parties appear is to send them to a Housing Specialist for mediation before allowing them to see the judge. As defendants in post-foreclosure eviction cases leave the courtroom to go to mediation, they are approached by the waiting student who explains the Attorney for the Day program and asks if they would like to speak to a lawyer. The vast majority of defendants gladly accept this invitation. This outreach effort is important because the program itself does not always appear accessible. There are just two tables in front of the courtroom—one with a small sign reading “Landlord Assistance” and one with a small sign reading “Tenant Assistance.” In the mass of people in court on Thursday mornings when dockets are routinely over 150 cases long, many tenants desperate for legal assistance never approach the table.

<sup>48</sup> Overall, around three to five families from foreclosed homes would attend clinics each week, while an average of eight to ten defendants appeared in court, and an average of ten to fifteen defendants were defaulted for their failure to appear in court. Attendance was increased by the personal interaction between canvassers and tenants who might have been skeptical of a form letter offering lawyering assistance. In the fall of 2009, there was an average of only one to three defaults a week. Interview with David Grossman, Managing Attorney & Faculty Dir., Harvard Legal Aid Bureau (Nov. 15, 2009). In previous years, LSC sent letters to every defendant in Boston Housing Court and held weekly clinics at various times and on various days. The small changes did little to change the poor response rate at those clinics, but it seemed that the personal interaction from canvassing made some impact.

<sup>49</sup> One family of tenants was actually able to purchase the triple-decker home for the fair market value, hundreds of thousands of dollars less than the foreclosure auction price. Multiple families settled cases for values over \$50,000. Jennifer McKim, *Still There, Foreclosed No Longer*, BOSTON GLOBE, May 11, 2009, at A1.

<sup>50</sup> Settlements in foreclosure cases generally require the tenant to waive her claims against the bank and vacate the property by a certain time in exchange for a sum of money. If a case were to go to trial and a jury were to find the bank liable for damages because of the condition of the property, the tenant would be awarded possession and the bank would face large damages. The judge could find that under the Consumer Protection Act of Massachusetts, MASS.

Bank attorneys came to anticipate our routine demands of \$50,000 to \$60,000. They openly admitted that, even without factoring in damages, possession would cost \$20,000.<sup>51</sup> Moreover, the Attorney for the Day Program served a gate-keeping function by ensuring that agreements with pro se tenants stayed within a fair range by reviewing such agreements at the Attorney for the Day table. In only four months, with participation from a sufficient number of tenants, the cost of evictions was significantly increased and a baseline value for settlements was established.

Despite these successes, the ultimate goal of our work—to change the way banks did business by increasing litigation costs—had not been achieved. The disproportionate impact of foreclosures on multi-family properties in working-class areas persisted in 2008, and banks continued to evict almost every occupant in these homes.<sup>52</sup> In Boston, three-family properties made up 21% of the foreclosed property in 2008, despite the fact that they comprised only 14% of the housing stock.<sup>53</sup>

---

GEN. LAWS ch. 93A, the damages awarded by the jury should be doubled or tripled. The tenant's attorney would be awarded attorney's fees for a violation of the tenant's quiet enjoyment, and the court could even order the bank to make all necessary repairs. *See* MASS. GEN. LAWS ch. 239, §8A (2007); ch. 186, §14; ch. 93A, §9. After all these expenses, the bank would have to file a new eviction action and litigate the new case fully if they still wanted the property vacant. The potential for this drawn-out and expensive process motivates high settlements for tenants living in poor conditions to dismiss their cases and vacate the property. *Id.*

<sup>51</sup> This value is a general estimate of the costs associated with attorneys' fees, court costs, and repairs that would be necessary to evict tenants after multiple rounds of litigation. Most of these cases were scheduled for two to three day jury trials, and the parties generally assumed that the bank would be found liable for breach of quiet enjoyment, entitling the tenant's attorneys to payment of attorneys' fees. Without even looking at the amount of damages, \$20,000 seemed like a fair estimate of the cost of possession.

<sup>52</sup> Foreclosures doubled in Massachusetts in the first half of 2008 compared to the previous year. Press Release, The Warren Group, Mass Foreclosure Deeds Surge in First Half of 2008; Petitions Ease in June Because of Right-to-Cure Law, July 31, 2008, *available at* <http://www.thewarrengroup.com/portal/Solutions/PressReleases/tabid/190/newsid751/916/Default.aspx>. The so called Right to Cure legislation that took effect in May 2008, forcing lenders intending to foreclose to give delinquent borrowers ninety days to pay off loan defaults, did little to slow the onslaught of foreclosures, and by July the number of foreclosure deeds had already exceeded the total number recorded for all of 2007. Press Release, The Warren Group, Foreclosure Deeds In Massachusetts Push Past 2007 Level, Sept. 2, 2008, *available at* <http://www.thewarrengroup.com/portal/Solutions/PressReleases/tabid/190/newsid751/1173/Default.aspx>. By the end of 2008, there would be a 62% increase in the number of foreclosure deeds compared to 2007, resulting in a total of 12,430 lost homes. Press Release, The Warren Group, Massachusetts Foreclosures Soar 62% in 2008, Jan. 21, 2009, *available at* <http://www.thewarrengroup.com/portal/Solutions/PressReleases/tabid/190/newsid751/2206/Default.aspx>.

<sup>53</sup> Goodnough, *supra* note 33. Similarly, in Lynn, three-family homes made up 22% of the foreclosures despite comprising only 9% of the housing stock, and, in New Bedford, three-family homes comprised 16% of the housing stock but 32% of the foreclosures. These statistics probably understate the actual effect of foreclosures on triple-deckers, because those converted into condominiums were classified in a separate category. During the height of the housing boom in the early part of this decade, condominium conversions of triple-deckers in neighborhoods like Dorchester were lucrative undertakings. *See, e.g.,* Gail Ravgiala, *Second Act for Triple-Deckers*, BOSTON GLOBE, July 9, 2006, at H1. Condominiums are counted in a separate category that makes up 48% of foreclosed properties in Boston in 2008, and a high percentage of those located in areas like Hyde Park, Mattapan, and Dorchester are likely used as rental housing in triple-deckers.

We identified a primary barrier to our efforts: banks' "Cash for Keys" programs. The Cash for Keys programs implemented by banks permitted real estate brokers to offer occupants small sums of money to leave a home quickly—say, by either the end of the month or in thirty days.<sup>54</sup> These programs compelled a majority of residents to leave their homes without ever going to court, rendering our current program unable to assist the majority of affected tenants. Between January 2007 and March 2008, the more than 730 REO multi-family properties in Suffolk County accounted for 1874 units individually affected by foreclosure.<sup>55</sup> We believed that every bank with REO property was evicting its occupants, so there should have been between twenty-two and thirty-four evictions from multi-family properties alone each week over this sixty-four week period. The actual number of newly filed court cases was not nearly as high. Although there were twenty to twenty-five cases before Boston Housing Court and the five district courts each week, eight to fifteen of these defaulted for failure to appear.

Much of this discrepancy was due to real estate brokers' efforts to force tenants out before the legal process commenced. Brokers were hired to clear and sell REO properties almost immediately after these properties were listed as REO assets.<sup>56</sup> These brokers were generally not paid until the properties were sold, and the banks did not monitor the tactics brokers used to vacate these properties. As a result, the Cash for Keys pitch was often intimidating, misleading, and it was delivered to tenants who were unaware that their unit had been foreclosed. Brokers would approach a tenant, inform her of the foreclosure and state that she was an unlawful occupant whose only choices were to be evicted from her home with nothing or accept a relatively small lump sum and move out by the end of the month.<sup>57</sup> If this was the tenant's only information about the foreclosure process and her rights, the small lump sum could seem like a good deal.<sup>58</sup> We realized that

---

<sup>54</sup> Opening offers were generally in the range of \$500–\$1000.

<sup>55</sup> NAT'L LOW INCOME HOUSING COALITION, *supra* note 29 at tbl. 1–2. Using the property type data provided by the Warren Group, NLIHC created single and multi-family categories and developed unit estimates for each property type. *See id.* at app.

<sup>56</sup> *See* Eric Lipton, *Homeowners' Hard Times Are Good for the Foreclosure Business*, N.Y. TIMES, Apr. 6, 2009, at 11.

<sup>57</sup> This generic account of a Cash for Keys offer is based on countless conversations with tenants that took place in court, at City Life meetings, and during regular canvassing trips. On occasion, brokers have left voicemail messages saying, for example, "If you do not contact me within one week, you will be evicted," but the majority of misrepresentations and intimidation tactics are made in person.

<sup>58</sup> In reality, Cash for Keys is almost never a good deal for a tenant in a foreclosed home. To bring a summary process action for no-fault evictions, banks had to give a full rental period's notice (e.g., if the notice to quit is served on May 15, it will not expire and allow the bank to bring an eviction action until June 30). *See* MASS. GEN. LAWS ch. 186, § 12 (2007). By requesting a jury trial, months can be added to the litigation timeline. During this time, banks did not request or accept rent from tenants, and there have been no reported decisions that hold bona fide tenants responsible for back rent owed from before an eviction action in court. Colleen Walsh, *Law Students Lend a Legal Hand*, HARV. GAZETTE, May 21, 2009, available at <http://news.harvard.edu/gazette/story/2009/05/law-school-students-lend-a-legal-hand/>. As a result, even if a tenant is unable to win any damages, she will likely live in the

until we developed a strategy to engage occupants before brokers approached them, we could not effectuate our vision of a comprehensive tenant movement.

Meanwhile, City Life was engaging in a number of activities designed to pressure banks to change their policies by raising awareness about the ways in which post-foreclosure evictions were affecting neighborhoods. Until this point the Foreclosure Taskforce assisted City Life by providing legal services to community members at weekly meetings, but had not been actively involved in mobilization efforts. When the Foreclosure Taskforce first affiliated with the organization, City Life meetings were relatively intimate affairs with around fifteen to twenty attendees each week.<sup>59</sup> The meetings featured presentations about the legal process and opportunities for tenants to build solidarity by discussing their fears about eviction and their common struggles to stay in their homes. Additionally, City Life and HLAB co-planned protests outside Bank of America branches and Deutsche Bank-sponsored golf tournaments.<sup>60</sup> HLAB and City Life organizers actively co-planned “eviction blockades” in which community members would chain themselves to a property to prevent the constable from levying on the execution.<sup>61</sup>

City Life’s engagement in public acts of protest significantly raised its profile in the community. Its successful prevention of multiple evictions through blockades garnered substantial press coverage.<sup>62</sup> Movement participants began to view themselves as capable of effecting change, and the organization’s message captured the imagination of growing numbers of community members. By the spring of 2008, City Life and affiliated organizations were canvassing homes, holding public rallies, and speaking at hearings regarding legislation specifically designed to ameliorate the effects of foreclosure on Boston’s low-income communities. City Life became the primary forum for tenants facing post-foreclosure eviction; participants were

---

home for months, rent free. Looking only at the financial costs, for Cash for Keys to be a good deal the amount paid would have to exceed the monthly rent in a tenant’s new apartment times the number of months it would take to get from the Cash for Keys acceptance date to the actual move-out date after eviction.

<sup>59</sup> Students and supervising attorneys from HLAB and LSC as well as attorneys from GBLS attended every City Life meeting. About an hour and twenty minutes into every meeting, City Life organizers would announce that anyone who needed to see a lawyer should take a number and see the next available attorney in the adjoining room. The attorneys in attendance would take separate cubicles and see the interested individuals. Questions during this period ranged from requests for further explanation about specific parts of the foreclosure and eviction process to questions about how to get water service restored. The attorneys would answer questions about the legal process, refer people to organizations that could help them, and help them fill out pro se motions where necessary.

<sup>60</sup> Richard Zombeck, *Activists Protest Deutsche Bank Golf Tournament*, HUFFINGTON POST, Sep. 9, 2009, [http://www.huffingtonpost.com/richard-zombeck/activists-protest-deutsch\\_b\\_280605.html](http://www.huffingtonpost.com/richard-zombeck/activists-protest-deutsch_b_280605.html).

<sup>61</sup> Brian Ballou, *In Roslindale, a Dream Foreclosed*, BOSTON GLOBE, Sep. 26, 2008, at B1.

<sup>62</sup> See Megan Woolhouse, *Activists Help Condo Owner Fight Eviction*, BOSTON GLOBE, July 16, 2008, at B1; Binyamin Applebaum, *Homeowner Gains a Reprieve From Eviction*, BOSTON GLOBE, Jan. 24, 2008, at D1.

coming to meetings before their court proceedings commenced and using the information gathered at these meetings to resist Cash for Keys overtures from brokers.

In some ways, the Foreclosure Taskforce's strict focus on the court process and litigation actually detracted from the power of City Life's growth and impact. City Life's strategy preached victory through the combination of the legal shield from Foreclosure Taskforce attorneys and the sword of public action. Because there was little that lawyers could do for former owners in court,<sup>63</sup> the blockades and efforts to sway public opinion were former owners' best chances to stay in their homes. Thus, City Life's success relied on a critical mass of volunteers created by the continued engagement of its members. However, many tenants ceased to participate in City Life events after securing representation.<sup>64</sup> The Foreclosure Taskforce needed to develop a strategy that would complement City Life's project of building strength through numbers: we would work to inform every occupant of a foreclosed home of her post-foreclosure rights before brokers could intimidate her or offer Cash for Keys and would also connect her to City Life's activities.

#### V. THE TRANSITION TO MOBILIZATION LAWYERING—NO ONE LEAVES

Upon returning to school in September 2008, Tony Borich, Dave Halter, and I decided to create "No One Leaves," a separate, affiliated organization to implement our version of the mobilization lawyering model.<sup>65</sup> The success of canvassing every Thursday the previous year had convinced us that an expanded effort with a greater number of volunteers could also be successful. Canvassing required little to no funding, which was important because we had limited financial resources.<sup>66</sup> Canvassing could be done without any legal training, which greatly increased our pool of potential volunteers. Most importantly, it was something that could begin immediately and required no direct supervision from any outside administrator. We be-

---

<sup>63</sup> See *supra* note 36.

<sup>64</sup> We supported this exodus unintentionally by taking cases immediately after meeting with potential clients at clinics. Clinics were ostensibly designed to provide tenants with the information and confidence necessary to represent themselves in court, but, in practice, the vast majority of cases in the winter and early spring 2007 were accepted for full representation immediately after the clinic. Tenants could receive the letter inviting them to the clinic on Wednesday, attend the clinic on Friday, and be accepted for full representation at HLAB's regular Friday afternoon intake meeting, all before even having the opportunity to attend a City Life meeting.

<sup>65</sup> City Life volunteers, attorneys, and law students with the Foreclosure Taskforce had become increasingly efficient at running clinics, working as Attorneys for the Day, and dealing with banks. This increased efficiency freed up a substantial amount of student time that could then be devoted to expanding the reach of the Foreclosure Taskforce.

<sup>66</sup> Without monetary resources, ideas like sign campaigns, larger direct mailings, or even the use of billboards in affected areas were not feasible.



lieved we could create a program that would reach every foreclosed home in the city of Boston.

No One Leaves expanded the work of City Life by infusing more volunteers into the program and systematizing outreach.<sup>67</sup> Starting in fall 2007, City Life volunteers had canvassed homes scheduled for foreclosure auctions or listed under “Petitions to Foreclose” in *Banker & Tradesman* magazine on a monthly basis. The City Life volunteers were not able to keep up with the number of foreclosures, and many of the homes were not reached. No One Leaves volunteers could ease the burden on City Life volunteers, who were busy fighting their own foreclosures or evictions.<sup>68</sup> To operate the weekly, city-wide canvassing program as smoothly as possible, we designed a system for assigning and distributing properties, organized a base of volunteers, and crafted a uniform message for canvassers.

We first divided the city into sectors so that even small groups of volunteers could effectively canvass on a weekly basis. We created a database, breaking Boston into twenty-three manageable zones and then used ArcGIS software to create maps that identified individual foreclosed properties. Our map covered Dorchester, East Boston, Hyde Park, Jamaica Plain, Mattapan, Roxbury, South Boston, Roslindale, and West Roxbury.<sup>69</sup> Each week, the list of properties scheduled for foreclosure auctions was entered into the database and coded so that ArcGIS software could map the locations onto Google Maps. A second database was then created so that canvassers could enter pertinent information from their trips, including whether the property was abandoned, to whom they spoke when they arrived at the property, and whether the occupants were willing to be contacted by City Life. Canvassers were expected to consult this database before each trip. Each week, they would canvass both new properties and previously listed properties where we had not yet spoken to all affected occupants. Both databases were con-

---

<sup>67</sup> These canvasses were successful in that subsequent City Life meetings were generally more crowded than those in previous weeks; participants in canvasses uniformly reported positive interactions.

<sup>68</sup> We determined at the outset that canvassing at the auction stage was the most effective plan. It would be almost impossible to cover all the homes at both the auction and petition stages. A petition to foreclose is the first step in the foreclosure process. The document serves to notify interested parties through publication of a legal notice in local newspapers that the lender has asked for authority to foreclose the mortgage. Mortgaged properties are publicly sold at a foreclosure auction after a decree of a court or the lender’s exercise of a power of sale in a mortgage. Announcements of the auction are run in a newspaper, advertising the date and time of the foreclosure auction. Warren Group, *About Warren Group Foreclosures*, <http://www.warrengroupforeclosures.com/fcsub/help/about.asp> (last visited Nov. 19, 2009). A significant percentage of owners that receive petitions to foreclose never actually reach the foreclosure stage, and months often pass before the foreclosure actually occurs. Because a key part of the message to tenants is that they no longer have to pay rent when the property is foreclosed, canvassing early in the process would be unnecessarily destructive to existing landlord-tenant relationships.

<sup>69</sup> These areas had the vast majority of foreclosures in the city; we did not include the few foreclosures in neighborhoods such as Back Bay, North End, Fenway, Downtown, South End, Charlestown, Allston, Brighton, and Beacon Hill due to capacity considerations.

tinually updated to provide canvassers with accurate maps. After six weeks, a property would be removed from the map for canvassing, but would remain on the larger database.

Boston's numerous colleges and universities provided a large base of volunteers. We were confident that the foreclosure crisis's increasingly high public profile would inspire enough volunteers to enable us to cover the entire city. We attended student activity fairs at fifteen different schools and wrote e-mails to clubs, professors, and administrators at various schools, requesting classroom space or sponsorship. We strove to identify two to three leaders at each school who could commit to organizing their volunteers each week so that each school could have an autonomous No One Leaves wing, taking responsibility for its specified zones without our regular involvement. We held follow-up meetings at eleven schools where we explained our program and asked for serious commitments from potential leaders. Each participating school was assigned a number of contiguous zones and a school's selected "Zone Coordinators" were responsible for ensuring that their zones were covered each week and that information from the canvassing trips was entered into the database.

After spending the bulk of September and October 2008 recruiting volunteers and creating an effective system, we were ready to begin.<sup>70</sup> During the last weekend in October, over eighty students wearing red No One Leaves shirts visited over 100 homes in our first canvass.<sup>71</sup> Canvassers left English and Spanish fliers in red bags when people were not home. Double-sided fliers featured an explanation of City Life on the front and a more substantive discussion of tenants' post-foreclosure rights on the back. The back of the flier also contained a phone number for the Foreclosure Taskforce so that occupants could contact us with questions about their legal

---

<sup>70</sup> One Saturday near the end of October, canvassers from every school came to Harvard for training. We explained how the foreclosure crisis was affecting the lives of renters and owners in areas like Dorchester, Hyde Park, and Mattapan. City Life organizers explained their role in the organization, and clinical instructors from LSC explained the legal process facing tenants and former owners in foreclosed homes. We also went over the basic door-to-door interactions and participated in a number of role-playing exercises.

<sup>71</sup> My experiences as a door-to-door salesman in college led me to believe that those in matching uniforms, or even matching t-shirts, are taken more seriously by potential customers. While we have no empirical evidence that these shirts helped us gain the trust of residents, multiple tenants remarked that they "saw those red shirts everywhere." The red shirts helped to brand the movement.

rights.<sup>72</sup> Canvassers almost unanimously reported positive interactions with the occupants of these homes.<sup>73</sup>

We were able to maintain a promising pace during the first few months of the organization, and we canvassed every zone at least twice a month between October and December 2008.<sup>74</sup> In January 2009, City Life committed to a separate, monthly mass canvass by community volunteers, ensuring that every zone was covered three times each month.

Between September 2008 and May 2009, over 950 foreclosure auctions were scheduled in the zones covered by No One Leaves.<sup>75</sup> Student canvassers reached every home two to three times in the six weeks following its public listing. We spoke with hundreds of tenants and former owners, explained their post-foreclosure rights and introduced them to City Life. We also helped large numbers of tenants who had received notices that their water or heat would be shut off.<sup>76</sup> By May 2009, No One Leaves consisted of hundreds of student volunteers from thirteen schools. With the support of City Life, No One Leaves ensured that every occupant of a foreclosed property in Boston had the chance to learn her rights before she faced the banks or their brokers.

---

<sup>72</sup> The Foreclosure Taskforce voice mailbox was actually the main number for HLAB. Canvassers were not expected to be legally trained (and the vast majority were not), so technical legal questions or serious issues, like a lack of water at the property, were referred to the mailbox. When anyone called HLAB and said they had an issue with foreclosure, they were transferred to the mailbox. Dave Haller called them back within 24 hours, providing us with another opportunity to make contact with the community and increase the understanding of the rights of tenants following foreclosure.

<sup>73</sup> Each door-to-door interaction followed a similar script. Canvassers introduced themselves as community volunteers working with an organization called City Life/Vida Urbana. They informed the occupant that the property had been listed as scheduled for a foreclosure auction. Owners generally were aware of the process, and canvassers would spend the rest of the interaction explaining the process that follows a foreclosure, highlighting the successes of City Life in helping owners get their homes back after foreclosure, and explaining the importance of informing tenants once a property was foreclosed so that they could join with the owners in the fight to keep their home. In contrast, often tenants were first informed about the foreclosure from canvassers. Canvassers would briefly explain the foreclosure and post-foreclosure process, reassure tenants that they had rights to fight the coming evictions, and inform them that there was an entire organization of community members and lawyers dedicated solely to helping them with this fight. Finally, canvassers warned tenants that it was not in their best interest to accept Cash for Keys offers. Every interaction ended with an invitation to attend City Life meetings and a request for contact information so that we could reach the tenants in the future.

<sup>74</sup> When students left for winter holiday, many of the zones were not covered completely. When students returned in January, they immediately canvassed these areas.

<sup>75</sup> This data comes from the No One Leaves database, with individual foreclosures entered based on information in Banker and Tradesman Magazine.

<sup>76</sup> After foreclosing on an occupied home, banks often fail to transfer to themselves utility accounts from the name of the former owner. When bills go unpaid, tenants have to confront the utility company to prevent their water, gas, or electricity from being shut off.

## VI. WHERE ARE WE NOW?

The work of the Foreclosure Taskforce and No One Leaves will continue. There have been over 250 new post-foreclosure eviction cases in Boston Housing Court between February and May 2009, demonstrating that our efforts have yet to fundamentally alter banks' business models. Yet, our model has achieved success in many other ways. Since the kickoff of No One Leaves in October 2008, weekly City Life meetings have become standing-room only. In the fall of 2009, City Life moved into an office with a larger conference room to accommodate the meetings that drew more than 95 people on a weekly basis.<sup>77</sup> City Life has continued to increase its protests and visibility in the community and has become so effective at mobilizing its forces that it has not had to go forward with an eviction blockade since October 2008.<sup>78</sup> By becoming involved in City Life, tenants have the opportunity to gain ownership over the anti-eviction movement and advocate for themselves. By joining in canvassing efforts, community members actively recruit their neighbors and work together to fight the stigma of foreclosure. City Life and HLAB have recently established an alliance with Boston Community Capital, a community bank that is helping maintain neighborhoods by buying foreclosed properties and selling them back to the former owners or tenants at affordable prices.<sup>79</sup>

As a result of our joint efforts, months pass between the time when No One Leaves first contacts a resident in a foreclosed home and the time at which eviction proceedings actually commence. Furthermore, the volume of cases taken up by City Life, the Foreclosure Taskforce's litigation process, or the Attorney for the Day program has built tenants' negotiating capital. Most tenants are staying in their homes or leaving only for large settlements. Multiple cases have even settled for between \$70,000 and \$100,000, increasing the cost of litigation for the banks.<sup>80</sup>

Banks are increasingly willing to enter into tenancies with holdover tenants. Fannie Mae and Freddie Mac, with pressure from legal service organizations in Connecticut, have openly instituted a policy against evicting tenants.<sup>81</sup> Other private banks are agreeing to accept Section 8 Housing Assistance Payments (HAP) vouchers for Section 8 Tenants and allowing them

---

<sup>77</sup> Interview with David Grossman, Managing Attorney & Faculty Dir., Harvard Legal Aid Bureau (Nov. 15, 2009).

<sup>78</sup> The lack of evictions is also clearly related to the tremendous work of lawyers in the Foreclosure Taskforce over this same period.

<sup>79</sup> See McKim, *supra* note 17.

<sup>80</sup> In the first case to actually go to a jury verdict, the tenant, who had lived in a home without heat or water for months, was awarded over \$50,000 in damages. Meghan Irons, *Vindication After Eviction Ordeal*, BOSTON GLOBE, Dec. 28, 2008. This value was due to be doubled or tripled under MASS. GEN. LAWS ch. 93A, § 9 when the parties agreed to a settlement.

<sup>81</sup> Kelly Evans, *Fannie Mae to End Tenant Evictions in Foreclosures*, WALL ST. J., Dec. 15, 2008, at A5.

to stay in their homes to avoid a costly legal battle.<sup>82</sup> Multiple tenants have been able to purchase their homes at extremely low prices because of the threat of litigation; one bank actually settled a case by selling the home in question to the tenants for \$1 and provided them with \$60,000 to make repairs.<sup>83</sup> Even former owners, to whom the court continues to afford few defenses, have gained negotiating power through this process. The community has growing confidence that it can win this struggle—an amazing transformation from the state of affairs just two years ago.

Despite these successes, we still strive to achieve a reality in which no one leaves her foreclosed home. We still believe that this reality is possible and that we can change the way banks do business by raising the cost of litigation, but we have more work to do.

Some families will move from these homes no matter what we do. Banks often refuse to make repairs to occupied REO properties, forcing the tenants to choose between staying in miserable conditions and leaving for small settlements. The prospect of living rent free and receiving a large settlement cannot motivate some families to stay in unsafe homes on streets with multiple abandoned properties. The majority of families who leave foreclosed homes, however, are not forced out by the substandard conditions. Most are either unaware of their rights or are unconvinced that the fight to stay in their home is worthwhile. Despite visiting every foreclosed home three times in a month, we fail to reach and convince a large number of occupants.

The ultimate success of the Foreclosure Taskforce and No One Leaves hinges on whether our work can stimulate communication among neighbors, owners, and organizations outside of the legal sector so that our message reaches people before they are personally affected by the crisis. Too often, our canvassers are the first people to tell tenants that a home has been foreclosed. Many of the homes we canvass are occupied by three or four families who may have little to no communication with the occupants of other units. Even with multiple visits, it is difficult to reach every resident of a

---

<sup>82</sup> See, e.g., McKim, *supra* note 17; Press Release, Office of the Press Secretary, The White House, Reforms for American Homeowners and Consumers: President Obama Signs the Helping Families Save Their Homes Act and the Fraud Enforcement and Recovery Act, May 20, 2009, available at <http://www.whitehouse.gov> (follow “Press Briefings” hyperlink; then search for “Helping Families Save their Homes”).

<sup>83</sup> See *FDIC v. Martinez*, No. 1:09-CV-10340-RWZ (D. Mass. filed 2009).

multi-family property.<sup>84</sup> Thus, we need to find additional ways to engage these residents in a public fight against post-foreclosure evictions.<sup>85</sup>

Our focus in 2009–2010 is to work with City Life to deliver our message to a still broader group of people in order to break the stigma around foreclosure and increase communication about the issue in the community. Toward this end, No One Leaves is planning a yard-sign campaign for spring 2010.<sup>86</sup> We want everyone in a foreclosed home to put large red No One Leaves signs on their lawns and in their windows. The goal is to demonstrate how widespread occupied REO properties are in communities in Boston. Everyone notices the boarded-up, abandoned home that was foreclosed eight months earlier, but most people in the community do not know that other occupied homes on the same street have been foreclosed as well. Residents in foreclosed homes often report feeling isolated because they think no one else is facing the same struggle. The sign campaign could demonstrate to these individuals that they are not alone and convince them that fighting to stay in their homes is important for the entire community.

Additionally, No One Leaves will seek to engage more community-based organizations like churches, community centers, and schools to find alternative forums through which to inform community members of their post-foreclosure rights. While many people cannot make the Tuesday night meetings at City Life, we can find ways to get them the same information through organizations that they already trust.<sup>87</sup> Ideally, these alliances will

---

<sup>84</sup> Often, canvassers are forced to canvass at the same time each week to take advantage of an available automobile, which can lead to us consistently missing the same residents. In trying to respond, we designed a number of zones accessible by public transportation to be small enough to canvass on foot. However, while it is theoretically possible to spend three hours walking from house to house in January and February, canvassers generally prefer to wait until a car is available. Also, because the majority of our canvassers are college and graduate students, few have cars. As a result, on a weekly basis, we might have fifteen to thirty volunteers unable to participate because of lack of transportation. This was the biggest limitation that we faced in 2008–2009. With access to just five more cars each week, we could dramatically increase our efficiency and canvass at different times of the week to access residents who are consistently not home on weekends.

<sup>85</sup> We know that face-to-face contact is essential. Tenants and owners are much more likely to attend City Life meetings if they speak to canvassers and get a sense of the structure and legitimacy of the movement. We realize that no flier or letter, no matter how well crafted, can replace human interaction.

<sup>86</sup> In May 2009, No One Leaves was recognized as a student organization by Harvard Law School, finally providing us with the resources necessary to expand our efforts beyond mere canvassing. Harvard Law School is providing No One Leaves with a budget of over \$1200 for the 2009–2010 academic year. Interview with Danielle Tenner, Student Attorney, Harvard Legal Aid Bureau (Sep. 12, 2009). This money will be used for yard signs, aides for recruiting students, and Zipcars for volunteers. With these resources, we can expand our activities beyond going door-to-door.

<sup>87</sup> It should be noted that there has always been a significant effort by LSC and HLAB to contact religious, governmental, and community organizations. For years, the students and instructors at these organizations have been part of coalitions with various community organizations. Recently, we formed new alliances with organizations like Project Hope, which hosted a community meeting that brought over fifteen residents of foreclosed properties into City Life. We expect that alliances with other organizations can be similarly successful.

allow us to add enough volunteers to resume pre-foreclosure canvassing focused on reaching defendants in upcoming court cases. Foreclosure Taskforce Clinic attendance was higher when canvassers were able to personally invite people and explain the importance of completing the necessary paperwork before court. By resuming canvassing at this stage, we can get even more tenants to attend the weekly clinics and further increase the cost of litigation for banks.

Finally, the Foreclosure Taskforce and No One Leaves will attempt to expand beyond Boston to areas that are facing similar difficulties in the wake of the foreclosure crisis, like Worcester and Brockton. By expanding this program we hope to make legislators, community members, and banks more aware of the harmful effects of post-foreclosure evictions on neighborhoods throughout Massachusetts. No One Leaves and City Life will provide a baseline of support to allow canvassing operations to function smoothly from day one. Expanding to other areas will require that we recruit more canvassers, create more databases, and, most importantly, build strong community contacts so that our work can organically support the needs of residents in these areas. In addition, we must ensure that there is legal support for these tenants in court and a community to support them during the months between the foreclosure auction and the eventual court appearance.<sup>88</sup> While we cannot expect to find organizations like City Life in every community, there must at least be an anchor organization in each area so that residents have a local point of contact after canvassers have visited their units.<sup>89</sup>

At a minimum, partnering legal service providers need to host clinics to inform residents of their rights and help them fill out the necessary paperwork to fight the evictions. As in Boston Housing Court, every bank will be represented by counsel during the eviction proceedings. Ideally, there should be some method for providing limited assistance for tenants and former owners that cannot be represented by legal service providers. Because legal service organizations have limited capacity, there should be a list of private attorneys trained in post-foreclosure housing law. Most importantly, there should be a strong alliance between the legal service attorneys and the anchor organization to ensure that residents are able to access attorneys in emergency situations. Through true cooperation between local anchor organizations and legal service providers, the model that has been so effective in Boston can be expanded statewide.

---

<sup>88</sup> City Life refers to these two essential aspects of the movement as “the sword” and “the shield.” The legal defense serves as the shield for residents facing eviction, while the community organization fosters solidarity and acts as the sword to foster change. Merely canvassing without these aspects would not effectively help the residents in these homes.

<sup>89</sup> Ideally, this anchor organization should hold periodic meetings to explain the eviction process and provide some political understanding about why a focus on staying in homes and saving neighborhoods is important. The meetings should not merely be informational, but should provide a forum for attendees to come together.

## CONCLUSION

The foreclosure crisis introduced challenges to the communities serviced by HLAB and LSC, but also presented unique opportunities to address an evolving problem. This effort was motivated and driven at all times by students' desire to help a larger segment of the community. Many more people were helped by the focused representation of the Foreclosure Taskforce and the mobilization lawyering of No One Leaves than would have been possible under the traditional individual case representation model. We still have not achieved our goals of engaging every occupant of a foreclosed home and fundamentally changing the way banks do business. However, by uniting legal work with community organizing, we have been able to engage the community and stimulate independent action. Moreover, the relationships we have fostered will allow us to more effectively address future crises and challenges to our service community.