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# A CO-PRODUCTION MODEL OF CODE ENFORCEMENT AND NUISANCE ABATEMENT

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by

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***Abstract:** In Baltimore, MD, communities are reducing "crime and grime" and developing comprehensive strategies for community revitalization and reclamation using principles grounded in "co-production" — the coordinated efforts of residents and government agencies, who share authority and responsibility for success. In the co-production model, community organizations take a very active role in deciding when to initiate legal action to abate a nuisance situation, defining the nature and source of the problems and developing a strategy to address the problems. Solutions typically require the extensive cooperation of local government as a partner in problem solving. In this chapter, the processes and theoretical underpinnings of the co-production model of health and safety code enforcement are compared and contrasted to other service delivery models. Co-production strategies appear to be particularly appropriate in the areas of zoning, day care, local traffic regulation, park and recreation facility maintenance, and law enforcement and public safety. Like other forms of civil remedies, co-production strategies have the potential for both abusing*

*the power the model provides and producing positive effects throughout the community.*

## INTRODUCTION

### **In Their Own Words**

"We don't have bullet holes anymore. Don't even have gun fire."

"My father, I remember a time when they (drug dealers) went after him for watching them. One of them told me, 'I'll kill him.' But I told him then he better kill me too, 'cause there's no way I'd let him get away with that. Now, my father has cookouts on the street."

"Remember that pop, pop, pop sound? Now, it be [sic] so quiet sometimes I have to go out and see if the street is still there."

*(Quotes from members of the Boyd Booth community at their Victory Celebration Supper)*

### **The Community Law Center**

Baltimore, MD communities are reducing "crime and grime" and developing comprehensive strategies for community revitalization and reclamation using principles grounded in "co-production" — the coordinated efforts of residents and government agencies, who share authority and responsibility for success. Assisted by the Community Law Center of Baltimore, the community organization takes a very active role in deciding when to use legal action to abate a nuisance situation, i.e., reduce crime and grime, and the appropriate remedy to seek. Additional support and technical services available to the community organization typically include: an organizer and ongoing technical support and training (typically provided by the Citizens' Planning and Housing Association [CPHA]); physical design and community planning services (generally supplied by the Neighborhood Design Center [NDC]); and an entity able to perform or coordinate construction work, e.g., a housing development corporation, a community development corporation or a

newly created community service crew. In some communities, a neighborhood contractor may be hired on a per-job basis. In others, the police are an initial and integral part of the effort, and in still others, they are "brought in."

These resources are combined to assist community residents as they define the problems and their immediate sources and causes, and seek a vision of what they want their community to be like. In defining the problem, it is not enough to say that a drug dealer operates out of a certain house. Before that problem can be addressed, one must know who (by name and detailed description) deals what, at what times during the day, to whom and exactly how. This is information best obtained by the residents. The police will need such information before they can get a search and seizure warrant. The lawyer will need to know this information as well as who owns the house, the owner's circumstances and what the community thinks is the appropriate remedy to the situation, before a civil lawsuit can be filed.

The second step is to develop a strategy to address the problems. That strategy will include many components, e.g., community mobilization, defensible space plans, securing and eventually renovating or demolishing vacant houses, removing drug dealers and drug buyers, and starting community-building and youth programs.

## **An Overview of the Law**

In working with communities, the Law Center has developed a body of law built upon common law nuisance. The fundamental premise is that people have a right to the reasonable enjoyment of their property without intrusion from unreasonable activities or conditions emanating from another property. Those unreasonable activities and conditions are a nuisance. Persons negatively affected have the right to seek a court-ordered abatement of the condition or activity causing the nuisance. Abatement is the correction or cessation of the problem.

Translated into everyday English: vacant lots and houses which are a breeding ground for rats, drug users and trash, are a nuisance; commercial signage and billboards without the proper permit in a residential area are a nuisance; open-air drug markets are a nuisance; and shootings, fear and constant police raids are a nuisance. The nuisance and code enforcement laws that form the basis of the Law Center's work in community comprehensive plans are presented in Appendix 2; a glossary of frequently used terms in Appendix 1.

Following are two hypothetical examples of conditions that are nuisances under the common law. Reference will be made to these examples throughout this chapter.

#### **The Vacant Lot**

#### **The 1300 Illegal Billboards**

##### ***The Owner***

A little old lady receiving Supplemental Security Income (SSI) has been in a nursing home for 15 years. Her family home used to be on this vacant lot. When the owner went into the nursing home, the house needed a lot of repairs. Once vacant, it was vandalized. Then, drug addicts used it as a shooting gallery. There was a major fire, set by a drug addict trying to keep warm, and the house was destroyed. Finally, the City demolished what was left.

Two related national corporations with small offices in Baltimore own approximately 1,300 "junior" billboards. The zoning code requires a permit to place a billboard or any other commercial signage. The owners only have permits for approximately 75 billboards,

##### ***The Problem***

The lot is overgrown with weeds and infested with rats and other undesirable creatures. In addition, it is used by drug dealers who stash drugs among the weeds and dump drugs when the police come. Home improvement contractors and others also dump on the lot. Now there are refrigerators, washing machines and old building materials with environmental hazards on the lot.

Many of the billboards advertise alcohol and cigarettes. Most are in low-income residential areas, in which it is highly unlikely a permit would have been granted had the company applied for one. Some billboards have been placed on buildings without the knowledge or consent of the owner of the property,

### **THE THEORETICAL BASIS: CO-PRODUCTION**

Community groups care little about ongoing theoretical debates regarding their role in community change. But to those who study community change, there are many different models by which to trace this

change. In the end, what matters to the community is that change has occurred. But, for professionals, the definitions and models can affect how money is allocated, and the way community groups are included or excluded from any process.

## **Enforcement Models**

Many different models have been developed to explain and analyze the effectiveness of the delivery of services through code enforcement. However, there are two basic models. The first is the *deterrence- or rule-oriented enforcement strategy*, which "...seeks to coerce compliance through the maximal detection and sanctioning of violation of legal rules" (Scholz, 1984:179). Discussion of this model, particularly as it applies to housing codes, can most easily be followed in law journals. For example: "The effectiveness of housing code enforcement, however, is a subject of debate among social scientists. While vigorous code enforcement should have a positive effect on housing quality, some articles suggest that vigorous enforcement leads to abandonment, demolition or substantial rent increases, resulting in a decrease in the supply of low-cost housing" (Ramsey and Zolna, 1992:605). Deterrence enforcement, the strict enforcement to the fullest extent of the law, pleases the intended beneficiary of the laws — the consumers of housing and the community residents — so long as costs are not increased beyond their affordability. Those who are the "actors" in deterrence enforcement are generally the government agency professionals and employees hired for enforcement activities.

Law students and professors have analyzed code enforcement activities in particular cities, coming to varying conclusions about the effectiveness of any given code enforcement system (Ramsey and Zolna, 1991). The emphasis in these analyses tends to focus on: (1) whether the "rules" (laws) are fair and constitutional; (2) whether there is an administrative mechanism to enforce the "rules"; (3) whether the mechanism effectively enforces the "rules"; (4) the role of the courts in the enforcement procedure; and (5) the effect on the housing stock. There are a number of stages in deterrence code enforcement, and coordination among agencies is often a problem. As noted by Miller (1983): "It is striking, nationwide, how little communication and cooperation exist among the code agencies, the prosecutors, and the courts" (p.349). It is often in this lack of coordination that deterrence enforcement breaks down.

The second basic code enforcement model is *the cooperative strategy*, which "...emphasizes flexible or selective enforcement that takes into

consideration the particular circumstances of an observed violation" (Scholz, 1984:180). For Scholz, cooperation is not an altruistic strategy but a way to "achieve higher utility in the long run by abstaining from temptations to maximize short term gains" (Scholz, 1984:181). He develops a model for a cooperative strategy that grows out of public choice theories. According to Mueller (1979), "public choice can be defined as the economic study of non market decision making...The basic behavioral postulate of public choice, as for economics, is that man is an egoistic, rational, utility maximizer" (p.1). Scholz (1984) used the "repeated prisoner's dilemma" to show that "the advantage of the combined strategy (deterrence and cooperation) over simple deterrence...increases with enforcement tradeoffs that reduce costs for cooperative firms, with diminishing returns that increase the advantages of cooperation, and with the degree to which the sanction structure favors cooperation over evasion" (p.219).

John T. Scholz (1991) implemented this cooperative model in his study of the Occupational Safety and Health Administration. His cooperative model was to challenge the traditional deterrence enforcement models in several ways. The first challenge — to the concept of a natural conflict — suggests that "both firms (that are regulated) and (the enforcement) agency can be better off if the agency forgoes legalistic enforcement of regulations that are inappropriate for a particular firm in return for extralegal efforts on the part of that firm to work toward the policy objective" (Scholz, 1991:115).

Scholz's second challenge was to the two-party formulation. This change is critical for communities involved with code enforcement. Scholz introduced into the policy equation the role of the policy beneficiaries — in this case, the employees of the regulated firm. But, in his study, the policy beneficiaries end up opposing cooperative enforcement strategies because they have no control over the flexibility and deal-making of the government agency: "If beneficiaries always assume that their opponents will soon control the enforcement bureaucracy...it appears unlikely that they would ever trust the bureaucracy with long-term discretion required for effective enforcement" (Scholz 1991:132). This finding is echoed by enforcement officials in cities across America. If they try to adopt a flexible attitude, community residents complain and charge them with failing to do their job appropriately. There is little doubt that the delivery of services — whether code enforcement, crime enforcement or the basic services of garbage collection — has been seen by community residents as ineffective. Code enforcement models must be viewed within the larger perspective of inefficient service delivery.

## **Problems with Traditional Service Delivery Models**

Systems analysis theoreticians and researchers have been attempting to understand the management and structure of cities and their agencies for many years. Rogers (1971) looked at service delivery systems by examining four parameters: "(1) the political setting or environment; (2) the organizational design [both planned and unplanned]; (3) the nature of the transactions among the participants; and (4) the outputs (p. 148). " His conclusions about the ability to effectively coordinate all these parameters for the delivery of services were bleak. He looked at the complexity purely from a systems approach.

Sharp (1986) takes a thorough look at the body of literature that points to a time of excessive demand for services and a rising sense of entitlement. This "overload" school suggests that "there is a growing consensus that governments in post industrial societies face heavy demands for solutions to all manner of problems that were not necessarily laid at their doorsteps in the past" and that these rising demands will create a situation in which "governments are stalemated from acting on competing demands or at which government's solutions modifies expectations downward" (Sharp, 1986:163-164).

But Sharp goes on to look at the research examining the ethic of self-reliance that permeates public opinion and action in this country. In our nation's older cities, there are decreasing resources that are totally unable to meet the rising demands. Sharp (1986), however, does not despair but moves on to examine alternatives arising in response to the overload.

## **Alternative Service Delivery Models**

The alternative service delivery models for local governments have included service rationing, privatization and "off-budget enterprises" (Sharp, 1986:182). Local governments are also lessening the provision of direct services through the development of user fees, voucher systems or special use districts.

### *Co-Production as a Promising Alternative*

"Co-production involves a mixing of the productive efforts of regular (a government agency) and consumer producers. This mixing may occur directly, involving coordinated efforts in the same production process, or indirectly through independent, yet related efforts of regular producers and consumer producers" (Parks et al., 1981:1002). Whitaker (1980) explains that "rather than an agent presenting a 'finished product' to

the citizen, agent and citizen together produce the desired transformation" (p.240). Although much of the research on co-production has been aimed at community safety efforts (Percy, 1978), the concept can apply as well to education, health care and crisis intervention. The Community Law Center's model for nuisance abatement is a clear indication that the co-production model also applies to code enforcement and nuisance abatement issues.

This co-production strategy fundamentally challenges the traditional economic "public choice" model by bringing the policy beneficiaries/consumers — in this case, the community residents of the affected neighborhood — into the equation as co-producers of services. Hence, the enforcement mechanism is transformed: it becomes both more flexible when in the mode of cooperative enforcement, and more effective in a deterrence mode when interests are indeed antagonistic and unresolvable. Scholz's (1991) difficulty with sabotage by the beneficiaries becomes transformed into something more than a consultative relationship or influence groups trying to be heard. As a co-producer of the services necessary for the abatement of nuisances in housing and crime, trust is reinforced, rather than undermined.

### **Co-Production in a Political Context**

Liebmann (1993), a Baltimore attorney, examined the co-production model in the context of effective models of democracy, asserting that "the size of contemporary municipalities is inconsistent with a significant degree of direct civic participation of the town-meeting model" (p.337) He further contends that "decentralization will not achieve the town meeting ideal of participatory democracy unless the community involved is extremely small" (p.339, quoting Yates, [1973]). Liebmann (1993) then examines the kinds of tasks that are prime candidates for use of the co-production model at the block, club or community association level. In his opinion, these include zoning, day care regulation, traffic regulation, schooling at the elementary level, park and recreational facility maintenance, and law enforcement, particularly as to property and nuisance crimes.

Liebmann's (1993) examination places into a theoretical context what the Law Center has seen in a practical context as it serves its clients. The Law Center's work started with the attorney-client relationship and evolved, rather organically, from that point. Co-production is centered on the understanding that the community organization is an equal partner in efforts to maintain and develop safe and secure communities. These organizations are not to be consulted, but are indeed to be an integral part of the planning and implementation of plans for



change, enforcement and problem-solving within the boundaries of the community.

## **CLIENT-DRIVEN REMEDIES**

### **Traditional Role of the Attorney with a Business Client**

No rational person undertakes a business enterprise in the U.S. without an attorney. The attorney is paid by the client. Both the attorney and client have a mutual interest in the business succeeding and growing. The first role of the attorney is to know the client's business thoroughly, so that he or she can know the legal issues involved and how best to address them. This is a proactive use of and response to the law to promote the client's interests. The attorney will provide legal counsel enabling the client to develop and go forward with his or her plans and to keep out of trouble. The attorney will represent the client in negotiations with third parties, and prepare legal agreements and contracts. The attorney will represent the client in litigation — both offensively as the plaintiff and defensively as the defendant when sued. When the law is an impediment to the success of the client, the attorney will assist the client in changing the law to promote the client's goals.

### **Attorney's Role When Serving Nonprofit Community Organizations Established to Promote Community Welfare**

The aforementioned attorney's role does not change when the client is a community organization seeking to promote the public welfare. The first requirement is getting to know the client's interests and business — its strengths and weaknesses, goals and resources, and development of realistic plans to obtain those goals. From that point forward, the role of the attorney follows the same pattern as with any business client. The attorney will:

- Help develop a comprehensive plan. This is discussed in detail in the section, "The Community Law Center's Experience in Baltimore."
- Provide legal counsel to enable the client to go forward with its plans and to keep it out of trouble. Community organizations have the same need for legal counsel as any other entity seeking to accomplish a goal. If the client wants to plant a community garden, it will need to establish the legal right to use the

*land*. If the client wants to have a parade, it will need a permit. If the client wants to open a day care center, it will need permits, zoning, state certification and a lease or ownership of a building. If the client wants to block off any alley to stop the escape route of drug dealers, it will need the approval of the local government and any other person with an interest in the land.

- Provide representation in litigation, both as plaintiff to further the client's goals and as defendant in response to possible lawsuits against the client. The client's goal, broadly stated, is the promotion of the welfare of its community. If a condition exists within the community that is detrimental to the community welfare, the client's interest is to have that condition remedied. This may be done by seeking to have the local administrative agency enforce the legal code, or the client may seek direct action on its own behalf. If there is a vacant lot that is repeatedly used as a dumping ground by certain small demolition companies, the community organization may notify the local government agency and request that it enforce the codes that prohibit dumping and maintaining unsanitary lots. Or, it may, after due notice is given to the parties, seek a court order in its own name requiring the owner to clean up the vacant lot and secure it against future dumping, and requiring the "certain small demolition companies" to do the clean-up or to pay for it to be done.
- Seek to change the law when it does not promote the client's interests, through a number of possible approaches. The client may want to prohibit certain behavior that would require a change in the law, e.g., prohibiting billboards in residential areas. Another approach is to expand the rights of the organization to directly use the law to reach its goals, e.g., for the organization itself to have the right to take the owner of the vacant lot to court.

### **Integrating the Role of the Attorney with the Co-Production Model of Health and Safety Code Enforcement**

The promotion of the public welfare through the use of the legal system has become the providence of the local and state government. The standards for what is not acceptable to the community have been embodied in legislative codes enforced by an administrative agency of

the government. The ultimate method of enforcement, in Baltimore and many other cities, is through a criminal charge in which the administrative agency seeks a fine against the owner or offender. The underlying theory is that this ultimate enforcement is a deterrence to such behavior.

The enforcement system may be planned and methodical, as in a property-by-property, block-by-block inspection system or an annual inspection of every rental dwelling unit. Given the dwindling resources available to local governments, this is rarely the approach. The enforcement system is more likely to be "complaint-driven," where local inspections and enforcement occur only in response to a complaint. Or, code enforcement may combine these two approaches — methodical inspection as to certain dwelling units, e.g., Section 8 subsidized units for which the U.S. Department of Housing and Urban Development requires an annual inspection, and complaint-driven inspection for all others. In all of these methods, the role of a community organization representing the interests of the residents is at best advisory. The community is at the mercy of the political will, resources and capacity of the local administrative agency. Even in a cooperative situation, community organizations all too often have to rely upon the "squeaky wheel" syndrome to get anything done.

If the community organization client should develop its own plan and strategy for removing and remedying nuisance situations, which typically are in violation of a code or statute, it still must rely upon local government support for implementation. In the vacant lot example, the client could attempt to remedy the problem by taking direct action itself or by seeking to have the local administrative agency enforce the codes. However, to take action in Maryland, , the community organization *must* have a property interest that is directly affected. Individual members who own property may seek a court remedy. But, without a property interest of its own, under Maryland common law the organization will not have standing to do so, unless there is explicit legislation giving it this right. Standing is the right of direct access to the courts and legal system on one's own behalf. If there is legislation granting the community organization standing, then the client may seek code enforcement itself:

### **Changes Implied by a Co-Production Model**

If the client (the community-based organization) has the *right* to seek direct civil enforcement of the law (standing) and the *capacity* to do so (an attorney), then it has more than an advisory role. It has the author-

ity to assume responsibility and develop a strategy that best uses available resources to obtain its goal — the promotion of the community welfare. The question then is, when should or must the client seek to work cooperatively with government agencies?

The general answer to that question is relatively easy. When the community organization does not have the capacity to implement or cause to be implemented *all* of the roles and actions needed to remedy the situation, then it must work cooperatively with other resources to accomplish its ends. Using the vacant lot example, if the owner cannot be made to clean the lot because she is an impoverished, little old lady in a nursing home on SSI and the persons doing the dumping cannot be located, *then* the community organization must have some other means at its disposal for accomplishing the cleaning and securing of the lot. If the organization itself has the capacity to do this, it only needs the authority of the law to effect the remedy. If it does not have this capacity, then it must have available to it some other entity that can pay for the cost of accomplishing the goal.

In the billboard example, enforcement consists of billboard companies not putting alcohol or tobacco ads in residential neighborhoods, or removing any that exist. It is within the capacity of the billboard company to do this. Therefore, the community organization does not need additional resources to accomplish its objective. In some situations, such as seeking to remove open-air drug dealing from the community, the activity is too dangerous for residents to directly take on the responsibility. If the only remedy is criminal enforcement, then the cooperation of the local agency, the police and the State's Attorney's Office is essential.

Traditionally, government agencies have had the responsibility and exclusive authority to enforce public codes. The residents of the community have been the beneficiaries of this service. When a community organization has access to the law and an attorney, co-production then entails a shared authority and responsibility with the local government agencies. Even with its new found authority, if the local governmental agencies do not work cooperatively in the venture, the community organization is, as a practical matter, still limited in what it can do on its own behalf. Acceptance of a co-production model has ramifications for the actions of local government agencies as well as for the communities they are chartered to serve.

If the local governmental agencies *do* work in a co-productive manner, then the "policy beneficiaries," i.e., the residents of the community needing code enforcement, and the traditional "service providers" are working together toward a mutual public policy objective. Moreover, in

the experience of the Community Law Center, community residents are very aware of appropriate "selective and policy-oriented\* enforcement as being more solution-oriented and preferable. That is to say, if the property owner is the proverbial "little old lady," community residents would be much more familiar with her status than would a distant government employee. Furthermore, they will receive much less criticism for taking a "firm" approach, if that is what is needed.

### **Developing the Law, Support Structures, Working Relationships and Bureaucratic Systems**

Code enforcement is, by its very nature, an interactive process dependent on governmental systems such as inspections, government records, the court system and a system of follow-up to ensure compliance with a court order. This is true whether it is a governmental agency or a community organization seeking enforcement. This necessary coordination is usually lacking even when enforcement is done solely by governmental agencies. The inspectors have difficulty communicating with the prosecutors, who are then removed from the problem and forced to rely upon the written record and the letter of the law. The courts have no relationship with the administrative efforts to enforce the code. When a court order is given, often there is no rational method of follow-through to ensure that it is implemented.

A community organization may be able to fulfill the roles of government agencies — inspection, verification, documentation and record keeping — but it is very difficult. Moreover, a court is much more likely to trust administrative or police records, and may require such records in addition to the well-documented records of community residents. By way of example, a tenant may thoroughly document serious code deficiencies in her dwelling when seeking rent escrow. However, in Baltimore City, a rent escrow will normally not be finally ordered until there is an inspection by a city official confirming those defects. One strength community residents *do* have is the ability to monitor whether the court order is ever actually accomplished. But, in the traditional system, no one ever asks them.

For a system of proactive code enforcement to succeed, all of these functions must be coordinated or there must be a dogged advocate — such as the attorney for the community organization — tracking a case through the system. In either case, a new method of doing the public's business is being developed. Whenever there is a new method, system or process being initiated, each and every step and person along the way must be developed.

## **Court Orders with No Means to Implement Them — Creating Support Structures**

Problem properties typically have problem owners who lack either the will or the ability to correct the problem. Therefore, if there is to be a remedy to the problem, under authority of the law, someone else must do it. With some exceptions, problem properties often do not have the market value to support the cost of code enforcement; this is particularly true of vacant and abandoned properties. For such a property, the cost of code enforcement cannot be covered by a lien on the property as the cost to correct the problem exceeds the market value of the property.

Court orders and the law alone will not solve the problem; someone must implement the remedy and "make things right." Since its inception, the Community Law Center has sought to develop the resources necessary to solve the problem. Consequently, the center created Save A Neighborhood, Inc. (SAN) as a separate legal entity to accomplish this task, and then procured the necessary funding. Once created, SAN took on a life of its own to assist community organizations enforce public codes and abate nuisances. It is the court-appointed receiver in vacant house cases, and maintains a fund and program available to neighborhoods seeking to secure vacant properties from drug dealers. In addition, SAN administers a series of "community service crews" that work on neighborhood clean-ups, graffiti removal and park maintenance. SAN is now preparing to be a court-appointed administrator in rent escrow cases to ensure that the court-ordered repairs are actually done, and to use the escrowed rents to pay for it. In most communities, some entity must fulfill the role of SAN to implement the court-ordered remedy.

## **Developing the Law and Court Procedures**

To seek a legal remedy to abate a nuisance, one must have standing. Normally, to have standing, a person must have a right to the reasonable use and enjoyment of a property — as either an owner or tenant. Situations and conditions that interfere with this right are a nuisance. But, if there is no property interest, under the common law there is no standing to seek abatement of the nuisance. An abatement is the cessation of or solution to the problem; it does *not* seek money damages for injuries or losses caused by the problem.

Most community organizations do not own real estate. Therefore, under Maryland common law, they do not have standing to seek abatement of nuisances. If community organizations are to have this right, it must be gained through legislation. One should first look to the state law to see what rights organizations have as representatives of their

members, and whether needed changes should be made on the state or local level.

### *Which Court Has Jurisdiction?*

The attorney's role is to seek the best and most effective way to gain standing for his or her client under existing state and local law and political and administrative circumstances. To fulfill this role, the approach of the Community Law Center has been to change the law as little as necessary, incrementally expand the rights of the community organization and stay in district court whenever possible. District court is the lowest level of court in Maryland. The procedures are simpler and one is able to obtain a hearing in a reasonable amount of time (in weeks), as compared to circuit court, which is the court of general jurisdiction and in which it may take years to get a hearing. The ability to effect a remedy within a reasonable time frame is essential to the community. However, the jurisdiction of the Maryland district court is limited. Except in the case of code enforcement, district court in Maryland does not have equity jurisdiction unless authorized by a specific statute. Abatement of a nuisance is an equity matter. Under Maryland law, any matter concerning the jurisdiction of district court must be statewide. Finally, in Maryland it is much easier for Baltimore City community organizations to deal with the City Council than the state legislature where there is a good deal of animosity toward the city.

As Appendix 2 demonstrates, what now exists is a mixture of state and local law and administrative policies that grant legal authority to community organizations to take legal action under a variety of circumstances. This represents an incremental development of the law. In each case, the Law Center has taken a few test cases to work them through the system and determine what administrative and judicial supports are needed. By way of example, the district court docket system is computerized, but does not have the capacity to register two different types of complaints in one proceeding. Nor, initially, was there a way for the computer system to register vacant house receivership cases; for the first two years these were all added to the docket by hand. To date, most of the Community Law Center's cases do not fit into the normal routine of the district court clerk's office and are handled by assigned clerks who know the process.

In and of themselves, these "nuts and bolts" details seem somewhat tedious. However, for the attorney trying to change the law, system and method of doing business for the public welfare, these details must be considered and can determine one's success.

## THE COMMUNITY LAW CENTER'S EXPERIENCE IN BALTIMORE CITY

The Law Center has looked to the principles of co-production to explain the theoretical structure of its work. This approach enables a community-based organization (representing the citizens) to develop comprehensive strategies to meet the neighborhood's needs and work cooperatively with city and state agencies to attain its goals.

The most basic principle of community revitalization is that *neighborhood residents know their neighborhood best*, and, therefore, should be intimately involved in planning and implementing revitalization efforts. They must be in charge of the development and implementation of their community's strategy to inhibit causes of urban decay such as vacant buildings, poorly lit alleys, and trash filled lots, and to control criminal behavior such as dealing or using drugs, displaying illegal billboards, serving alcohol to minors, and violating various city and state codes. To resolve these problems successfully, the community strategy must break the links among the causes of urban decay and crime, the subsequent socialization that fosters criminal behavior, and the processes permitting the criminal behavior to organize in a durable structure. The problems facing urban communities are multi-faceted; so, too, must be the solutions.

### Comprehensive Strategies

Co-production is an integral part of a comprehensive strategy. A comprehensive strategy is a method for community problem-solving. It is the continuous process of using a wide range of resources to combat community problems. It involves *action-oriented resource gathering* that provides community organizations with the means to take direct action to address problems, and improve the quality of life, the physical appearance, and the economic viability of their communities.

Comprehensive strategies will vary from neighborhood to neighborhood and will change over time. Each neighborhood's strategy must meet its changing needs. The strategies are solution-oriented. To be successful, they must: be inclusive and access the resources and talents that already exist in the community; be constructive and based on actions designed to revitalize some aspect or part of the community; and preserve the history and reclaim the perceived quality of life of the community they are designed to serve. The role of a comprehensive strategy in a crime control plan is described in Maryland Crime Control and Prevention Strategy, 1998 Edition (see Actions: Target Crime "Hot Spots" with a Comprehensive Strategy).



### *How a Community Organization Develops a Comprehensive Strategy*

The driving force in developing a comprehensive strategy for any neighborhood should be: *Think Big*. Be as inclusive and far reaching as possible. Community residents should be encouraged to make a list of anything and everything they want to see happen in their neighborhood.

Community organizations should work through the basic steps to develop a comprehensive strategy at their own speed. The more initial information-gathering and organizing that is completed, the easier it is to implement and monitor a strategy in the future. The seven basic steps are:

- Set boundaries and geographical target areas.
- Establish a collaborative process and include government agencies.
- Take stock of the resources and talents community members can provide and what needs to be found elsewhere.
- Think big and develop a vision for the future by setting long-range goals.
- Get focused: prioritize goals and objectives, and develop a reasonable and flexible schedule of events to work toward the goals.
- Implement the strategy through task assignment, monitoring, evaluation and feedback
- Evaluate and update: periodically step back and evaluate how the strategy is progressing, and make any changes that the community feels are necessary (U.S. Department of Housing and Urban Development, 1994:2-3).

Finally, after people have developed a vision for their neighborhood, collected as much information as they can and looked at the problem they want to tackle from all angles, they can begin to look for real solutions. The community organization needs to be involved in the remedy they have developed or selected every step of the way.

Baltimore residents have taken on this responsibility and created many successful comprehensive strategies — strategies shaped by collaboration and anchored in block-by-block participation. The sample below illustrates the activities and benchmarks a community might set up to combat an endemic problem — in this case, vacant housing.

### **Example: Comprehensive Strategy for Four Block Target Area**

- Priority:** Rehabilitating vacant houses
- Actions:** Organize block meetings, code a map to identify vacant properties and their status, recruit developer(s), board the properties, clean the block, locate the owners of the properties, get inspections and conduct code enforcement (receivership) actions
- Schedule:**
- May 1: Create strategy at community association meeting.
- May 2 - May 20: Organize block meetings for each block and get maps (one map for each block and one for the target area).
- May - June Hold block meetings to bring out residents of each block, code the maps, schedule clean-ups and boardings, and determine need for inspections.
- June - June Conduct initial clean-ups, boardings and meetings with potential developers. (These events could spark interest in other aspects of a comprehensive strategy, such as drug nuisance cases and defensible space plans. Develop additional subcommittees and schedules as needed to initiate work in the target area on these projects as well. Some projects, such as developing a youth program, may need to be postponed until other projects begin to be successful. The area should be made safe before the kids can come out to play.)
- June - July : Work with the community attorney to write contracts, locate property owners, and set up consent agreements.
- July: Begin receivership actions.
- October - March: Schedule court hearings and negotiations with owners.

- January - July :     Transfer case to receiver, hold an auction and transfer of title to developer.
- August:             Begin rehabilitation of property.

***Benchmarks:***

- Complete block meetings
- Complete map of target area
- Initiate clean-up and boarding
- Hold first greening event (e.g., tree planting, tire garden planting)
- Expanding participation, especially to include youths
- Find a developer
- Schedule district court hearings and appointments of receivers
- Hold ground breaking for construction of new homes

**The Law Gives Leverage in Conjunction with Other Activities**

The services of the Law Center equip community organizations with an array of "legal tools" allowing them to determine the remedies — solutions — and to take direct action to implement those remedies. Remedies are sustainable when civil cases are pursued together with other activities. Activities such as rallies, boardings, clean-ups, marches, and cookouts offer a visual and empowering method of calling attention to and reinforcing civil cases. They are a way for the community organization to make itself known, involve a lot of people in a positive activity, and put the drug dealers and property owners on notice. These activities provide a unified voice and often attract new members to the association. They can contribute to strengthening a sense of community and, ultimately, of hope.

For instance, a series of rallies or cookouts or children's games can be used to take back a drug corner, an alley or even a playground. A community organization does not have to have speakers or even posters. It can just use the space in a positive way. A march can be used to announce the posting of a drug house prior to filing a drug nuisance case, or simply to announce to the neighborhood that drug activity is no longer welcome. Boardings and clean-ups are a powerful way to change the physical appearance of a block or street. They also deprive drug dealers of the space to conduct their trade. Some communities hold

regular clean-ups and monitor boarded properties to maintain the new cleaner appearance of their neighborhood. Other activities that can be done in conjunction with boardings and clean-ups are getting children and youths to paint pictures on the boards, weeding the community garden and having a cookout at the end of the event to reward weary workers. The following case studies show how five community organizations created strategies and used civil legal remedies to effect systematic and sustainable change in their neighborhoods.

### *Southeast Baltimore: Butcher's Hill*

The members of the Butcher's Hill Community Association established that they had the right to board property themselves *and* get a judgment against the property owner for the cost of boarding the property. The problem that Butcher's Hill faced is common in many Baltimore neighborhoods. A vacant and abandoned house had become a base of operations for drug users and drug dealers. It acted as a magnet for criminal activity, drawing a steady stream of drug dealers and users to the block from a wide radius.

The Butcher's Hill residents notified the owner of the vacant drug property that community residents would board the property, if he did not. When the owner failed to respond, the community boarded the property using construction techniques specifically developed to keep the building secure from the drug crowd. "We cinder blocked the basement entrance, and boarded all the doors and windows with plywood anchored to a frame of 2 x 4's," explained a community resident. "We also cleaned the backyard and sealed the door to the backyard. This kept the property secure for months and helped get rid of most of the drug dealing from the corners."

The Butchers' Hill Association plans to use this tool to deal with other vacant drug houses in their neighborhood. "We know now that we don't have to sit by and plead with someone else to keep the property secure," said one community resident. "We can do it ourselves, and we plan to do so."

The success of the Butcher's Hill strategy captured the attention of the Southeastern Police District and surrounding neighborhoods. Five more neighborhoods are implementing comprehensive strategies. Two communities worked to raise money to fund a Law Center staff attorney and paralegal, and the police department appointed a community services officer to collect police evidence for civil actions. That is co-production. There is joint planning, joint sharing of task allocation and joint responsibility for implementing the action plan.

### *West Baltimore: Carrollton Avenue*

One of the first drug nuisance cases in Baltimore City was undertaken by the Carrollton Association. The property in question was being used by the local drug trade as a location to purchase and use drugs. The association and its community attorney met with the Western District police. Community residents began collecting detailed evidence for the police to do a search-and-seizure — or "drug raid" — at the properties. The actual drug nuisance abatement cases filed on behalf of the community association were built upon the police evidence in the search-and-seizure warrants. After the cases were filed, the association held a march. They were joined by the mayor, various police officials and the press as they traversed their neighborhood chanting and singing. The event culminated in the posting of the property by the mayor and the community attorney.

Shortly after this event, the Carrollton Association and its attorney entered into negotiations with the owner of the property. At the hearing, a consent order was entered in which the owner promised to evict the tenants involved with the drug activity. One of the tenants agreed to enter a drug treatment program. The association has been monitoring the property, which has been vacant but quiet ever since.

The success of this case prompted the Carrollton Association to get more involved in drug nuisance cases. Members began keeping observation logs and communicating regularly with the police. They decided to target a block on the main street in their neighborhood. Police search-and-seizure warrants indicated that three houses in this block were used by the same drug crew. All three drug nuisance cases were filed simultaneously to increase the impact of the strategy. Consent orders were entered into with the owners of all three properties, and the tenants involved in the drug activity were evicted. The association monitors the properties and reboards them when necessary to make sure that they remain secure.

The drug nuisance properties on Carrollton Avenue have remained vacant. There is still a major drug apartment building. There is a continuing story.

### *West Baltimore: Franklin Square*

The Franklin Square Community Association was one of the first organizations to develop a comprehensive strategy. The focus of its strategy was to stop the open-air drug dealing and set up regular community activities for neighborhood residents. Violent crimes decreased by 44%

over the last four years. The association has set up a senior center, a recreation center, a community center and a summer youth program.

Residents noticed that one corporation owned many problem properties in their neighborhood. Consequently, when they filed suit for a drug nuisance at one property, their attorney also developed a very broad consent order requiring that improvements be performed at all of the properties owned by the corporation, and that representatives of the corporation attend community meetings and support community events.

The Franklin Square Community Association also pioneered the block-by-block approach. They selected a six block target area, held block meetings, and developed coded maps for each block that included their anti-crime, housing, lighting and greening strategies. They then prioritized the blocks and have been working block by block pursuing drug nuisance cases, planting gardens, planning playgrounds, boarding vacants and developing youth programs. The Franklin Square Community Association has been forging a co-productive relationship with the city and with the Western District police station.

### *Southwest Baltimore: Boyd Booth*

Like Franklin Square, the small neighborhood of Boyd Booth was one of the first to implement a comprehensive strategy. In the early 1990s, this community seemed to be disintegrating under the pressure of an open-air drug market. The local press described Boyd Booth as a battleground, and the neighborhood social worker described the lives of the children as hopeless. Boyd Booth's residents, however, proved that they are far from powerless or hopeless. Over the last three years, this neighborhood has been the scene of a dramatically effective community-based effort to reduce drug-related violent crime. Violent crime has dropped 55% in Boyd booth since 1992, and narcotics-related calls for police service and arrests each have dropped over 90%.

These statistics only hint at the overall improvement in the quality of life in Boyd Booth. The local press now lists it as one of Baltimore's safest neighborhoods. Moreover, at a recent community party the residents spoke of their sense of power and how much safer they feel. To create this amazing change, the people of Boyd Booth pooled their resources. They worked with a part-time organizer, a community attorney, a community paralegal, the Southwestern Police Drug Enforcement Unit, a task force of city agencies and surrounding community associations established by the mayor, the Victory Outreach drug abuse treatment program, the largest employer in the community (a hospital), and several local funders.

To deny drug dealers the space to operate their open-air market, the community association conducted self-help boardings of vacant properties, drug nuisance abatement cases, clean-ups and a defensible space program. The defensible space program involved putting up lights, fencing off foot alleyways and vacant lots, and removing public telephones. The members of the association also communicated intolerance for drug dealing by holding vigils: on 17 consecutive Friday nights they put up signs and held community events in public spaces. Most recently, they have established a youth program and set up a Youth Council with the surrounding neighborhoods.

### *Southwest Baltimore: Forest Heights*

The Forest Heights Tenants Council faced a more unique problem than the preceding neighborhoods. Their low-income townhouse development had become a thriving drive-through drug market. Research on cars seen in the area revealed that people were coming from across the state to purchase drugs in Forest Heights. The apartment complex is just two blocks from a major interstate highway. The Tenant Council developed a comprehensive strategy to tackle this problem. It decided to focus on the primary drug site — the main road that winds in a "U" shape through their neighborhood.

The Tenant Council recruited new members and started inviting the development manager and a Community Law Center attorney to their meetings. The council also extended open invitations to nearby shop owners. As the collaborative process developed, members of the council began to specialize: one worked on youth programs, another led rallies and vigils, others distributed fliers.

After its capacity was established, the council set four goals. First, make the community drug-free. Second, hold regular meetings and community events. Third, create a youth center and programs for neighborhood youths. Fourth, plant a community garden.

To make the community drug-free, the Tenant Council scheduled regular community meetings, established a drug subcommittee, and planned several rallies and vigils. The council worked with the police to collect information about raids conducted in the area and with the management company to evict tenants involved in the drug trade. As the rallies and vigils were held, residents of the community became more mobilized. The management company hired private security guards and agreed to evict tenants involved in drug-related activities. If they had not, the Law Center attorney would have brought legal action to force them to do so. The subcommittee kept observation logs and

shared information regularly with Southwestern District Police, who raided the key problem properties. The President of the City Council's Office started a letter-writing campaign directed at the registered owners of cars seen in the area based on license plate numbers received from the Tenant Council.

As a result of these activities, drug dealing went down in Forest Heights 90% in a year and a half. Today, private security still patrols the development and the Tenant Council is developing new ways to work together with the police to catch the remaining dealers. An annual flea market, community day, back-to-school event and holiday party are held in the neighborhood. Funds were also raised to plant a community garden.

## CONCLUSION AND IMPLICATIONS

### **What Issues Are Co-Production Code Enforcement Friendly?**

Not every problem that troubles a community can be solved either by direct citizen action or through a co-production strategy. However, communities are pushing the limits of their abilities. Those areas that seem particularly appropriate for a co-production approach include: zoning; day care; local traffic regulation and street closing; park and recreation facility maintenance; and law enforcement or public safety.

Traffic regulation is closely tied to the comprehensive plan for combating open-air drug markets and drive-through drug traffic. The Neighborhood Design Center works closely with many communities, the Law Center, and the Citizens Planning and Housing Association to help communities understand "defensible space" and how traffic flow, pedestrian traffic, and green/open space affect crime and grime in their communities. This planning is being implemented in many communities as part of a comprehensive strategy. These communities are then seeking grants for implementation of their plans.

The maintenance of parks and recreation facilities is one of the biggest challenges facing communities in cities with a declining tax base. It is often one of the first areas to receive cuts. The effect on the day-to-day quality of life is immediate and dramatic. Youth programs close, forcing more young people out on the street and into a criminal lifestyle. Many communities are organizing regular clean-ups of open spaces, working with nonprofit organizations to plant and maintain urban



gardens and to create youth programs. This work is very volunteer-intensive, but also very rewarding. The impact is also immediate.

The role of community groups in law enforcement has been discussed in many books and articles. There is a growing movement of citizen-based groups participating in organized activity to extend the eyes and ears of the police, and to maintain a presence on their neighborhood streets. In Baltimore, these are known as "Citizens on Patrol" or "Peace Patrols." Similarly, people are being trained to collect and transmit evidence regarding the use and distribution of drugs in their community.

The experience in Baltimore shows that when a problem affects the quality of life of residents and is, by its very nature, destroying the fabric of the community, it is an issue that the residents are most qualified to address. However, many of these problems require a co-productive response involving residents and government agencies.

### **Private Enforcement of the Public Welfare: The Down Side — Potential Abuse and Vigilantism**

Once community organizations have power, will they abuse it? Will the petty vendetta or the "not in my back yard" syndrome be the guiding force? With any type of authority, this may happen. However, it has not been the experience of the Community Law Center.

There are a number of checks that discourage the petty complaints. The very first hurdle is the requirement of a group decision to go forward. In the experience of the Law Center, there is a great deal of discussion on the remedy — or solution — to the problem. For example, in cases where there is drug dealing out of a house, the question is, how can we get the 22 year old, drug dealing son out of the house but not force the mother and four-year-old grandchild to move? These questions involve real people and do not have easy answers. In low income neighborhoods that are not transient, residents have known each other for years.

The second check is the court. Courts dismiss complaints that do not have merit. If the case is filed in district court, pretrial activities and costs are very limited. If it is a case without merit, the burden on the defendant is minimal and it will be dismissed quickly.

The third check is the attorney. In Maryland, all corporations, including community associations, must be represented in court by an attorney. These are not cases for money damages. Rarely can a community organization pay a normal attorney's fee. Attorneys will not take

questionable cases for free. And, should they do so, there are sanctions that can be imposed against them for filing frivolous litigation.

### **Community Enforcement of the Public Welfare: The Up Side of Code Enforcement and More In Low-Income Communities**

Neighborhood residents, participating through their community organizations in a co-production model of code enforcement and nuisance abatement, produce a very positive ripple effect. Not only are problems remedied, but the ancillary effects for the community can be profound. Decisions are made. Action is taken. There is a result. It is an occasion for community-building, empowerment and celebration. People march together, cook out together, and laugh and cry together. It is community-building.

Change occurs in the monthly meetings held by the residents with the community police officer, city inspectors, and community lawyer to evaluate implementation of the community's plan. If it works well, local government is viewed as a partner in problem-solving. If it does not work well, the community has explicit documentation and can go up the chain of command for accountability. If it still does not work well, the community can at least get on with its business and do what it can; it is not powerless and totally dependent.

There is also a change in people's view of the law. Residents of low-income neighborhoods typically see the law in a very cynical way. Rarely is it seen as a positive force to improve the quality of life in their neighborhood. Rather, the law is something used against the individuals, as in non-payment of rent or a debt or criminal violation. Alternatively, it is something to which one may resort for a windfall when in a car accident or because of a work-related injury. Or, in the case of public nuisances, the law often is not enforced in their neighborhood, e.g., in the form of illegally placed billboards or dumping of trash; in these cases the law is just ignored. However, when community organizations have the authority and capacity to use the law to further the welfare of their community, people's perception of the law is profoundly changed.

For those of us who live and have lived in the neighborhoods of Baltimore, it is not a huge surprise that co-production is evolving and being tested in our neighborhoods. Baltimore's citizens are fiercely loyal to their neighborhoods. Generations grow up and live in the same neighborhood — sometimes on the same block. But, over the last 30 years, the sense that they can control and determine the quality of life in these communities has ebbed to a desperately low level.

Like many older cities, Baltimore has lost a significant portion of its population in the last 40 years. However, for those who have stayed — who have either had no alternative or whose loyalty has outweighed fear — there is renewed determination to recreate our communities. And this creativity is being linked with resources. It is a time for new models. Co-production is one model that fits in this community, and that will offer lessons for us all.



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## APPENDIX 1: GLOSSARY

*Abatement of a nuisance*: the cessation or correction of a nuisance. For example, the abatement of the vacant lot nuisance could include one or all of the following: cleaning the lot, fencing or otherwise securing the lot so it cannot be used as a dump or by drug dealers, and ceasing dumping on the lot.

*Equity*: justice administered according to fairness in a particular situation as opposed to strictly formulated rules. Equity applies only to civil law cases and the judge must follow general principles, but it affords a great deal of discretion as to the remedy granted.

*Jurisdiction*: the scope of authority and power granted to a court to hear and decide cases, including: subject matter limitations, proper parties, geographic limitations and remedies that may be granted

*Nuisance*: an offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance, especially a continuing or repeated invasion or disturbance of another's right, or anything that works to hurt, inconvenience or damage. {*Rankin v. Harvey Aluminum*, 226 F. Supp. 169, 175.

*Standing*: also know as the "*standing to sue doctrine*," means that a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution to that controversy. That "stake" *must already be recognized or granted* by the law or rules of procedure of the court at the time the law suit is filed.

## Appendix 2

### SUMMARY OF CIVIL LEGAL REMEDIES

<b>Law</b>	<b>Plaintiff</b>	<b>Defendant</b>	<b>Requirements</b>
<p><b>Common Law Nuisance</b> Seeking court order for abatement of nuisance</p>	<p>Person or entity negatively affected and with a property interest</p>	<p>Property owner and possibly the person causing the nuisance</p>	<ul style="list-style-type: none"> <li>• Common law, common sense notice to defendant and attempts to remedy without litigation</li> <li>• Plan for abating the nuisance and monitoring the property for compliance</li> </ul>
<p><b>Self Help Nuisance Abatement</b> A common law nuisance abatement used to secure vacant properties and lots</p>	<p>Neighboring property owner with standing, or community association</p>	<p>Property owner</p>	<ul style="list-style-type: none"> <li>• Plaintiff's property must be adversely affected by the nuisance</li> <li>• Reasonable — at least two weeks, notice to owner by regular and certified mail</li> <li>• Abatement without damage to property.</li> <li>• Records and receipts</li> </ul>
<p><b>Drug Nuisance Abatement</b> Any drug-related nuisance at any type of property; the remedy can be very broad (Md. Ann. Code, RP sec. 14-120.)</p>	<p>Community association, local prosecutor or civil attorney for the political subdivision</p>	<p>Property owner, tenants and occupants causing the nuisance. Occupants may be limited to the drug dealers at the plaintiff's option.</p>	<ul style="list-style-type: none"> <li>• Police evidence or detailed observation logs maintained by neighbors</li> <li>• Statutory prior notice to defendants</li> <li>• Plan for abating nuisance and monitoring property for compliance</li> <li>• Witnesses - police and/or community residents</li> </ul>

<b>Law</b>	<b>Plaintiff</b>	<b>Defendant</b>	<b>Requirements</b>
<p><b>Vacant House Receivership Case</b> Code enforcement to rehabilitate vacant property with out-standing violations notices from the city. (Baltimore City Building Code, 1994 edition, sec. 123.6 et seq.)</p>	<p>Community association</p>	<p>Property owner, tax sale certificate holder or any other parties with property interest</p>	<ul style="list-style-type: none"> <li>• City Department of Housing and Community Development has "designated" community organization to stand in its shoes</li> <li>• Developer with financing and commitment to renovate the property</li> <li>• Receiver - almost always, Save A Neighborhood, Inc.</li> <li>• Vacant building notice and violation from the Dept of Housing</li> <li>• Ten day notice to owner of intent to file a Show Cause Order for appointment of a receiver</li> </ul>
<p><b>Community Bill of Rights</b> Abatement of a nuisance on private property that is a violation of a city code. (Md. Ann. Code, RP sec. 14-123)</p>	<p>Incorporated, tax-exempt community association</p>	<p>Property owner (and possibly the person causing the nuisance)</p>	<ul style="list-style-type: none"> <li>• Community association with geographic boundaries, with 40 households, composed of at least 25% of adult residents who pay dues and in existence for two years.</li> <li>• 60-day notice to owner and appropriate city agency</li> <li>• Community residents must build the case</li> </ul>