THE CONTRACT BUYERS LEAGUE AND THE COURTS: A CASE STUDY OF POVERTY LITIGATION*

JEFFREY M. FITZGERALD
La Trobe University, Victoria, Australia

The Contract Buyers League (C.B.L.), a group of middle-aged black people claiming to have been over-charged and exploited in the purchase of their homes, emerged on Chicago's west side during the winter of 1967-68. From 1968 to 1971 C.B.L. gained considerable publicity and support for its claims by the use of such tactics as picketing, withholding housing payments, and resisting attempts at eviction. In addition, the members of C.B.L. have had a complicated set of encounters with the legal system which continue at the time of writing (August 1974). This paper uses the most significant of these encounters to explore in a more theoretical way certain aspects of litigation involving poor and minority groups.

I. A BRIEF HISTORY OF THE CONTRACT BUYERS LEAGUE AND ITS LITIGATION

It is necessary to provide a very brief account of C.B.L., the people who constituted it and an overview of the relevant litigation. Fuller descriptions have previously been published (McPherson, 1972; Macnamara, 1971).

A. Migration, Housing and Law Prior to C.B.L.

Most of the people who became members of C.B.L. were born in the rural south, many the children of small share-croppers. They migrated to Chicago during and after the Second World War, attracted by the new demand for unskilled labor.

Increasing migration during the 1950's combined with a high birth rate to produce considerable pressure on housing for blacks (McEntire, 1970:II). Like other Northern cities, Chicago was segregated *de facto*, with a small area of generally run-down

* This paper is based upon my unpublished Ph.D. dissertation which was submitted to Northwestern University in 1972. This study was made possible by a Russell Sage Foundation residency fellowship. The cooperation of many members of the Contract Buyers Leaque and their advisors and lawyers is gratefully acknowledged, as is the collaboration of James Alan McPherson, and the encouragement of Richard Schwartz.

housing available for rental by blacks. Because of the demand, even this was very expensive (Duncan, 1959; McEntire, 1960:50). By the mid-1950's, however, an increasing number of these migrant families had saved enough money for a down payment on a home. The majority of the members of C.B.L. bought old homes on the west side of Chicago containing two to four flats. A smaller group purchased new single-family dwellings on the south side of Chicago. Each of these situations must be examined separately.

1. Block-Busting

In purchasing the old homes on the west side, the buyers were "assisted" by a group of speculators who chose sections of the city to "turn" from white to black occupancy. One of these "block busters" described the process as follows (Vitchek, 1962):

> "Now we speculators and brokers, both white and Negro, went to work. One paid several Negroes with noisy cars to begin driving up and down the street a few times a day. He also paid a Negro mother who drew Aid-to-Dependent-Children to walk the block regularly with her youngsters. Another arranged to have phone calls made in the block for such people as "Johnie Mae". Sometimes calls would consist only of a whisper, a drunken laugh or a warning—such as "They're coming."
>
> I didn't participate in these vicious tactics. Few large speculators do . . . I just use psychology. I began my work in this case by sending a postcard to everyone in the block.
>
> . . . . The cards said, "I will pay cash for your building." That was all except for my phone number. The word "cash" was the key. It assured homeowners they could get out quickly and reminded them that their neighbours could too. Then a canvasser and I headed for the block to repeat the offer in person."

This was obviously harsh on the white families, but it came to have even more drastic consequences for the black families who bought such homes. This can be illustrated by one case which is quite typical of thousands of transactions on the west side.[1] In May, 1958, the original owner sold it for $14,500 to a real estate speculator. The white owner was paid with $2,500 of the speculator's own cash, and $12,000 provided by a Savings and Loan Association on the security of a mortgage on the property. One month later, the speculator sold the property to Mr. and Mrs. Y, a black family, for $24,000. (In many cases the black families did not know that the speculator himself was the vendor—they were led to believe that the original white owners were selling to them.) Mr. and Mrs. Y. paid a $3,000 down payment and con-

1. The figures quoted in the text are based on a specific case. Some alterations have been made to hide the identity of the buyer concerned. The effect of these alterations has been to understate the profit made by the speculator in the actual case.

tracted to pay the balance of $21,000 over a 25-year term. Moreover, being denied a mortgage, they were forced to accept the inferior rights and protections of a terms contract of sale. At the time the buyers took possession, the speculator had received $500 more than his initial outlay. Over the succeeding twenty-five years he was to receive a further $21,000 in principal repayments and $15,125 in interest—a total of $36,125. His outstanding obligations to the Savings and Loan Association under the mortgage were to amount to $12,000 principal, and $3,872 interest—a total of $15,872. In summary, for his initial cash outlay of $2,500 for one month, the speculator stood to gain $20,753 ($36,125- $15,872) over 25 years. The foregoing case is typical of the sales of old homes to C.B.L. members and will be referred to as the "basic situation."[2] Speculators operated in various parts of Chicago during the 1950's, but apparently their profits on each transaction were modest during the early part of the decade, increasing to the magnitude just described by 1958, and remaining there during the early 1960's.

2. New Houses

Most C.B.L. members who purchased new single-family homes did so on the south side of Chicago. They purchased them from a group of inter-related companies which built new standard design homes on vacant lots. At times, some members and supporters of C.B.L. and others such as reporters, have suggested that the "overcharge" of new home buyers was similar to that of the old home buyers. It is not possible to ascertain the exact position yet as the builder's own "defense" is not yet revealed. However, expert witnesses for the buyers have testified in court to the following costs, receipts and profits.[3]

	Sales to Black Buyers on the south side of Chicago.	Sales to White Buyers in other areas
Average Sales Price	$ 25,172	$ 22,644
Average Direct Costs	$ 18,246	$ 18,779
Average Gross Profit	$ 6,926	$ 3,865

One of these expert witnesses also:

> demonstrated that on average the . . . prices charged (to the black buyer) exceeded the fair market value of the homes by

2. Speculators had been involved in other parts of the U.S.A. in "turning" properties from white to black occupancy for at least 10 years prior to the above case. Vose (1959: 110ff), for example, reports that a white had acted as a "straw purchaser," and made a more modest profit, in the transactions which led to the Supreme Court's outlawing of restrictive covenants in *Shelley v. Kraemer* (1948).

3. This evidence is summarized in the opinion of the Court of Appeals in *Clark v. Universal Builders Inc.* (1974:15 and 20).

> $6,508, or 34.5%. (Another) expert witness . . . was of the opinion that on the average . . . prices exceeded fair market value by $4,209, or 20.6 per cent.

The builders of these new homes obtained outside mortgage finance to cover the greater part of the $18,246 direct cost. Their profits were spread over the life of the terms contract on which the buyer was purchasing the property.

3. The Contract Squeeze.

All contract buyers faced the combined strain of high monthly payments and denial of equity from those payments. For example, in the west side case cited above, the payment was $175, more than 50% of the husband's normal wages. Buyers took in tenants, wives were forced to work, and husbands often took second jobs in order to meet these payments. (Many west side buyers had to meet additional heavy expenses involved in maintaining older houses.) Many buyers felt that these expedients interfered with their family lives. Many came to feel resentful of their situation. The pressure on them to keep up their payments, however, was intensified by the threat of eviction proceedings. They had been sold the property on a "terms contract," not a mortgage. It was usual for such terms contracts to contain a provision to the effect that *no equity* would be built up even though the buyers paid regularly under the contract. Under Illinois law *a contract buyer who defaulted on payments was subject to eviction* under the Forcible Entry and Detainer Act.[4] (This law was commonly referred to as the "Eviction Law" or the "Forcible Act", and has been applied to contract buyers, tenants and trespassers.) Under this law a buyer is given a 35 day period in which to cure all defaults[5] or be brought to court to be ordered evicted. Until 1972, if a buyer chose to go to court he could raise no defenses such as fraud or duress, but only that he had paid all moneys owing in full[6] (*Reid v. Arceneaux*, 1964). Upon being ordered evicted he had five days in which to file notice of appeal and a cash bond which was usually set at $3000 or more.[7] If he did not do this he could obtain a further short stay of process in which he could pay all arrears and penalties.[8] Failure to do one of these meant eviction. Eviction also seemed to entail the extinction of any property interest of the buyer.

4. Ill. Rev. Stat. ch. 57 (1967).
5. Ibid. § 3.
6. Ibid. § 5.
7. Ibid. §§ 19 and 20.
8. Ibid. § 13.

These eviction proceedings were often not intended to secure the actual eviction of the defaulting buyer. Rather, the court action, or the threat of court action, was an important device for persuading a buyer in arrears to mend his ways. The operation of the courts in such circumstances, and the roles regularly played by judges, lawyers and litigants during such proceedings, will be referred to hereafter as the "forcible pattern" which is discussed below. Individual buyers found themselves involved in this pattern prior to the founding of C.B.L. in 1968. A very large number of buyers became involved in this pattern when they engaged in a protracted payment strike in 1968-69.

Many individual buyers had felt frustrated and disappointed with their contracts before the founding of C.B.L. Some simply abandoned their houses. Others approached lawyers with the request that a "loophole" be found. In the period 1958-62, at least one lawyer attempted quite vigorously to arouse the interest of the legal profession and of civic leaders in what he termed "land contract sales in Chicago: security turned exploitation" (Satter: 1958). He also brought in the Illinois courts a test case aimed at improving the lot of buyers (*Coleman v. Goran*, 1960). But his efforts failed. During the mid 1960's thousands of individual families struggled on as best they could.

B. C.B.L.—Organization and Strike

The situation of the buyers changed dramatically in 1967, when a Jesuit seminarian and a small group of white college students decided to live in the black area on the west side of Chicago. After pursuing some other causes for several months, they almost accidentally stumbled upon some of the major details of the basic situation of the west side buyers. They determined to help find some remedy. After a painful beginning, a group of buyers was organized to "confront" some speculators. They began picketing the speculators' offices and making visits to their families and neighbors. Under this pressure, one speculator agreed in March 1968 to renegotiate the terms of all his contracts. This victory (which proved to be largely illusory) received a great deal of publicity, and the numbers of buyers who joined the movement, now called "C.B.L.," increased substantially.[9] So did the number of white supporters, and the contributions to the group. Hundreds of buyers spent most of 1968 in collective picketing and pamphleteering. Long and unfruitful negotiations were con-

9. Included among those joining at this stage were a group of the persons who had purchased the new homes on the south side of Chicago.

ducted between the speculators and a group of lawyers who had volunteered to assist the buyers. In December 1968, hundreds of buyers began a well-publicized payment strike, which continued on and off until mid-1970. They pledged to deposit with C.B.L. all monthly payments until the speculators agreed to renegotiate the contracts.

The payment strike had several important consequences. In the first place, several law firms responded to it by agreeing to file in the local federal district court two major civil rights class actions on behalf of 3,000 contract buyers (*Baker v. F. & F. Investment,* 1969, and *Clark v. Universal Builders Inc.*, 1969). These suits sought relief from the prices and other terms of the contracts. *Baker* concerned the old homes on the west side, and *Clark* concerned the new homes on the south side. The speculators, on the other hand, also resorted to the courts and attempted to use the forcible pattern to end the strike. The members of C.B.L. resisted the forcible pattern for more than a year—both in the courtroom itself, and by quite dramatic and well-publicized resistance to evictions of striking buyers.

During April of 1970, the superior forces of the evicting authorities prevailed. The back of the strike was broken. Subsequently, the courts accepted C.B.L.'s contention that the past application of the eviction law had been illegal and unconstitutional. By the time the strike had ended, several hundred buyers had renegotiated the terms of their contracts and C.B.L. claimed that the average total savings of principal and interest was $14,000. A large number of other buyers simply left their homes and used the money saved during the strike to make a down payment on a new home which they financed with a mortgage. Such buyers were dismissed from the federal civil rights law suits. Hundreds of other buyers came to pin their hopes solely on these law suits. By the end of 1971, it appeared as though many other buyers had given up all hope of any real success and had virtually opted out of the law suits by accepting token re-negotiations of the outstanding contract balances.

The C.B.L. organization itself suffered a steady decline once the payment strike was broken. During 1971 the number of active members and supporters declined to such an extent that by December 1971 only a handful of loyal members were attending meetings of the group.

C. The Litigation of C.B.L.

Members of C.B.L. have been involved in two major sets of litigation: two civil rights class actions and cases involving the

Illinois Forcible Entry Law. The balance of this article involves an analysis of this litigation. At this stage it is necessary only to provide an overview of each set.

The civil rights actions were filed early in 1969 (*Baker v. F. & F. Investment*, 1969, and *Clark v. Universal Builders Inc.*, 1969). In May 1969 the trial judge rejected the defendants' motions to dismiss and ruled that the buyers had good legal grounds for complaint and would succeed if they could prove their allegations (*Contract Buyers League v. F. & F. Investment*, 1969). During the remainder of 1969 and throughout 1970 and 1971, the buyers' lawyers and a large non-legal staff worked to prepare these cases for trial. The work involved was enormous. One lawyer has estimated that the total fee which would be charged to a normal client for this work would be several million dollars. The lawyers' problems in preparing these cases were seriously compounded by the effects of the payment strike and the attempts to resist eviction.

During April and May of 1972, the case involving the new homes on the south side was tried. It was dismissed by the trial judge on May 22, 1972 without calling on the defendants to present their case. He said:

> . . . counsel for the plaintiffs have not painted a pretty picture of the defendants, but that picture is a picture of exploitation for profit, and not racial discrimination.

The buyers' lawyers appealed, and on July 26, 1974, the 7th Circuit Court of Appeals reversed the decision and remanded for new trial (*Clark v. Universal Builders Inc.*, 1974). The buyers' lawyers are also still preparing for trial in the west side case involving the old homes.

C.B.L.'s involvement with the Illinois Forcible Law commenced with eviction proceedings against striking buyers in 1969. They attempted to use one of these as a test case challenging the constitutionality of the Illinois Eviction Law (*Rosewood Corp. v. Fisher*, 1969). This was lost in the Cook County Circuit Court in May 1969. A declaratory suit was filed in August 1969 in the same court seeking to have the law reinterpreted in a way more favorable to buyers (*Alexander v. Hamilton Corp.*, 1969). This, too, was decided against the buyers, who then made an unsuccessful attempt to persuade federal judges to declare the state eviction law unconstitutional. In early 1970 *Rosewood, Alexander*, and literally hundreds of individual eviction cases were removed on appeal to the Illinois Supreme Court, which was asked to determine the constitutionality of the state's eviction law. In late April 1970 it decided some of these issues in the

buyers' favor (*Rosewood Corp. v. Fisher*, 1970). Finally, in November 1972, (well after the payment strike was over) it decided the remainder of the issues substantially in favor of the buyers (*Alexander v. Hamilton*, 1972).

II. THE METHODS AND SCOPE OF THE STUDY

The methods of participant observation were used in this study. The author became a participant in July 1969 when he was asked to assist in the legal work involved in the attack on the constitutionality of the Illinois eviction law. He spent a substantial amount of time between September 1969 and March 1970 so employed. During this time he gained the confidence of some of the other lawyers working for the buyers, the non-legal staff of C.B.L. and of the litigation team, and some buyers and supporters. From March 1970 until January 1972 he did some collateral legal work for individual buyers. During this period, he conducted literally hundreds of informal conversations with lawyers, nonlegal helpers, buyers and supporters. Formal interviews lasting up to four hours each were conducted with 25 buyers, 14 lawyers, 8 non-legal helpers and some supporters. The author attended many of the buyers' meetings held on the west side of Chicago during 1970 and 1971, and listened to tapes of some meetings held before this time. He participated in parties and socials held by the buyers and by the non-legal helpers. He also observed court proceedings involving the buyers on approximately thirty occasions. Finally, in mid-1971, he analyzed the documents in C.B.L.'s files and in court files in the two civil rights suits. Since leaving Chicago, the author's information has been restricted to some letters, newspaper clippings, extracts from court transcripts, court judgments, and the verbal report of a non-legal helper who visited him in 1973.

As with many participant-observation studies, this study did not aim to test any hypothesis. Rather it was intended to develop empirically grounded theoretical propositions in the style of Glaser and Strauss (1968). Common sense and an outlook acquired through contact with current sociology of law inclined the writer to regard as relevant such factors such as the subject matter of disputes, their monetary and other values, the wealth and power of respective disputants, duration of disputes in and out of courts, methods employed by disputants in and out of courts and the rhetorical uses made of various rules and laws. These were taken as sensitizing leads, to be followed to the extent that they yielded productive observations.

In the main, the observations which appeared to be most significant focused on the quality of representation. This involved examining the different roles which can be played by lawyers, and their impact upon different types of relationships between lawyers and clients. These roles must also be related to the attitudes which lawyers and clients have toward the various components of the legal system.

III. STYLES OF LITIGATION AND REPRESENTATION

As the study proceeded, it seemed productive to distinguish first, between routine legal representation and innovative legal representation; and second, between litigation involving individuals and litigation involving organized groups. These distinctions represented in Figure I generate a simple classification of four styles of litigation.

FIGURE I

	Individual Litigant	Organized Group Litigant
Routine representation	1	2
Innovative representation	3	4

No real distinction between boxes 1 and 2 can be illustrated from this study, so in the analysis both of these will be treated together under the title of "Routing."[10] Litigation which falls into box 3 will be discussed under the title of "Innovative-individual," and litigation which falls within box 4 is discussed under the title "Innovative-organized."

A. Routine Litigation: Strategy and Realism

The forcible pattern provides an excellent example of routinized litigation—litigation taking an adversary form but in which the action and outcome is largely a product of the bureaucratic and organizational pressures on the court.[11] In such a situation there are considerable pressures on the lawyers and the litigants to behave and to relate in predictable ways. To explore this suggestion, it is necessary to elaborate a little on the steps taken

10. Rothwax (1969:140) makes one important distinction between litigation in the two boxes. This is that an organized group, unlike an individual, may be able to file so many actions that even routinized treatment of them becomes impossible. This can force key procedures to be reformed to the advantage of the organized group.
11. Blumberg (1970) provides a masterly description of such litigation in the lower criminal courts of a large metropolitan center.

by a speculator in forcible proceedings in the Circuit Court of Cook County against an allegedly defaulting buyer.

1. The Limits on Action

In the first place, although the speculator's claim of nonpayment was theoretically the basis for a suit for both damages and possession, it was standard practice to sue for possession only. This enabled the speculator to take advantage of a judicial interpretation of S. 5 of the Illinois Forcible Entry and Detainer Act[12] which permitted vastly expedited procedures in the case of suits confined to the issue of possession as distinct from a claim for damages (*Reid v. Arceneaux*, 1965). A speculator who sued for damages as well as for possession faced a normal trial which took longer and involved much more uncertainty. A lawyer who acted for many buyers contrasted this with the very limited nature of trials for possession in the following terms:

> There are only two questions at the trial. The first is whether the buyer got a notice. If he did, the only other question was whether he had paid the money. If he said "No, but . . ." he would be cut off with the comment that there could be no "buts" in the case, no excuses or explanations were relevant.

With the proceedings so limited, a buyer could not show that his contract was illegal, unconscionable, or unconstitutional. To pursue such issues, he had to file a separate suit and wait several years for it to come to trial. In the meantime, he could well be evicted. To avoid eviction, the buyer had two options. He could pay all arrears and penalties within a set period (normally 30-60 days).[13] Or, within five days of the trial court's decision, he could file a notice of appeal and a cash bond which was usually set between $3,000 and $5,000.

The buyer who had been ordered evicted had been shown that any ideas he might have had about owning the place, or having any special claim to it, were illusory except on one condition—that he pay up. The way the proceedings had been structured, the buyer had little alternative but to "see" that the "only reason" he was going to lose the house was that he had not paid.

2. The Judge's Role

From this stage on, the judge and the buyer's own lawyer normally exerted considerable pressure upon buyers to pay up.[14]

12. Ill. Rev. Stat. ch. 57 (1967).
13. Ibid. § 19.
14. There were approximately six judges of the Circuit Court of Cook County who heard the eviction cases involving the members of the C.B.L. One of these judges regularly sat on housing cases and de-

Often, the judge began by chastising the buyer for "living in the home without paying" and for "taking the law into your own hands" if a buyer attempted to claim some justification for non-payment. Next, however, the judge's tone changed, and the suggestion was made that a solution *should* be found short of eviction. This was often made in terms intimating that the judge would see to it that the speculator was not unreasonable and that, even at this stage, he must be prepared to help the buyer redeem himself. For example, the author heard one judge tell a buyer:

> "You should be able to work something out with them. Your home is your castle. I am here to protect you. That is why I have to follow the law. But you should see them, and they should work something out with you."

The harshness of the initial description of the imminence of their losing all, combined with the conciliatory tone of the suggested "deal," put considerable pressure on the buyers. These judicial pressures were so strong that even determined buyers found it difficult to resist the "suggestion" that they should resume payment of an increased amount to amortize the sum which had previously been disputed. (Often, an additional penalty would also be included.)

3. The Lawyer's Role

The role of the buyer's lawyer is of great significance in such proceedings. During the "trial" part of the proceedings (i.e. until working out a "deal" was mentioned), a lawyer providing normal legal services for the buyer usually accepted the terms of the pattern and did not attempt to act inconsistently with it. When one lawyer did try to raise a defense other than that the money claimed to be owing had been paid, he was curtly silenced by

---

parted from the above pattern by granting many buyers long adjournments and also dismissing some cases against them on legal technicalities. (This judge, too, did eventually exert pressure on buyers and speculators to "settle.") The speculators managed to avoid this judge by applying for a jury trial or for a change of venue. Each of these meant that the case was automatically assigned to one of the other judges. These other judges regularly heard routine civil litigation, much of which was debt collecting. The author observed them dealing with approximately eight C.B.L. members in the fashion described above. In none of these did proceedings last longer than an hour, and many were briefer. Interviews with lawyers, non-legal helpers and buyers provided overwhelming evidence that buyers were regularly treated as described. Summary as these proceedings might seem, tenants were regularly treated in an even more cursory fashion, as one newspaper reported (Green, 1969):

> Judge Hermes . . . hears up to 300 eviction cases during his morning court session. In most, the tenant has failed to file an initial appearance and is unlikely to appear . . . As many as 20 families are evicted in one minute's time. In one 20-second period a reporter saw five families—absent from the court—evicted.

the judge who implied that he was a bad lawyer and did not know the law. During the buyers' strike, the many lawyers who volunteered to assist C.B.L. were persuaded by the organization to file a set of standard defenses and counterclaims. To this extent it could seem as though they did not accept the terms of the forcible pattern. But, even with the pressure on them from C.B.L., most of these lawyers made it quite clear to the court that they did not expect any departure from standard practice. The filing of the defenses and counterclaims was "for the record." Many of the buyers who were represented in this fashion complained bitterly afterwards that their lawyer "wasn't trying" and that "I could have done better myself."

It was only when the stage of "working something out" had been reached that a lawyer who acted for a buyer in the forcible pattern normally saw a really useful role for himself. This appears to explain why at this stage many lawyers representing buyers came to exert considerable pressure on the client "to see sense." Often, the main contribution of the lawyer was to produce a definition of the situation which gave the client a face-saving way out of "the mess." This need be no more than being able to say that he (the client) now understood what had previously been unclear. In fact, the buyer had not acquired any new information. The lawyer facilitated the pretense that he had, thus camouflaging the reality of total capitulation to the demand for all the money claimed to be owing.

Parsons (1954; 383, 389) has isolated two latent functions of the legal profession which may usefully be employed in analyzing the role of lawyers in situations like this. He describes these two functions as: "relieving the client of responsibility" and "making the client face reality." In relieving the client of responsibility, the lawyer allays doubts, fears and uncertainties. Indeed, even when the lawyer doesn't consciously intend to do this, the client may be only too willing to read assurances into the lawyer's words and actions. Sensing that the client is "happier" the lawyer can easily feel that he has been of use to the client—without considering whether or not the particular outcome was what the client wanted. In this sense, the situation may be as therapeutic for the lawyer as it is for the client.

There are many lawyers who claimed to have made members of C.B.L. "face reality." Several of the buyers' lawyers quite openly claimed that their proper role was to make buyers "realistic." In part, they meant simply explaining the arithmetic of payment amortization and court proceedings to simple and confused people. And in part they meant attempting to counteract

what they regarded as misleading propaganda issued by organizers of the payment strike. This exemplifies the limited nature of the "reality" which the buyers' lawyers attempted to make their clients face. It involved an unquestioning acceptance of the forcible pattern.

4. Litigant Reactions to Routinized Litigation

The function of a lawyer in litigation such as the forcible pattern may accurately be described as therapeutic in the short term, and it clearly involves forcing the client to face the lawyer's view of reality. However, this role can also produce long-range dysfunctional effects for both the client and the legal system. For example, the forcible pattern, at least temporarily, inhibited some buyers from seeking other forms of redress. A more realistic course of action for some would have been to walk away from the house. Litigants who are swept along in the patern, agreeing at the time to the terms of "the deal," may well come to develop a sense that something had been "put over" them—that they have in some profound sense been given a "raw deal." However, rather than locating the source of their problem in the structure and setting of routines like the forcible pattern, they may place the entire blame for their misfortune upon one or another of the individual actors—perhaps accusing a judge of being bribed, or their own lawyer of not trying.

This can have several implications. In the short term, it may mean that attention is distracted from the importance of a one-sided law and from the routinization of litigation. Individual men, and not the legal system itself, are likely to be the target of any dissatisfaction or resentment. But, in the long range, unreformed patterns of litigation such as the forcible pattern produce a very large number of people whose contact with lawyers and other legal actors is unhappy and frustrating. The C.B.L. example suggests that an accumulation of such persons is fertile soil for subsequent critiques of the legitimacy of the legal system itself.

5. Judges and Lawyers: Sources of Shared Meanings

One final point needs to be made with respect to the provision of normal legal services for poor and minority groups. Interactions among legal actors are often rigidified into patterns similar to the one described above. They are particularly likely to occur when one set of lawyers constantly acts for a particular type of client (e.g. speculators) and a few judges are assigned

a relatively large number of the particular type of case (e.g. eviction cases). Moreover, such patterns are likely to be facilitated where another set of lawyers acts for the other parties to the suits (e.g. contract buyers) and where this second group of lawyers shares with the lawyers for the other side a view of the meaning of certain crucial legal rules and symbols. For example, in the forcible pattern the buyers' lawyers all accepted distinctions between property, equity and possession. They all took it for granted that the sellers' interest was deserving of such special protection that the buyer's equity (if any) could be totally overlooked—he had forfeited his claim by living in the home and not paying.

The source of the communality of outlook among judges and lawyers can only be a subject for speculation in this paper.[15] Of obvious significance is legal training in which basic analytic concepts are mainly presented as abstractions, and the social impact of many of them is difficult to visualize. Moreover, until comparatively recently, law students were largely taught to ignore "non-legal" questions such as a law's social consequences. Another important pressure on a young lawyer to share the conventional view of concepts and rules is the weight of professional opinion. The tag "bad lawyer" is easily applied to lawyers who seriously question conventional legal understandings—and the effect of such a tag upon a lawyer's professional identity can be severe. Again, prior to the emergence of C.B.L. (and some tenant unions which became active at approximately the same time), the only group of litigants who regularly appeared in the courts and spoke up on the question of the adequacy of the eviction law were quite strong in its support. There is reason to believe that the repetition of such views by landlords and speculators provided a strong reinforcement of the widespread acceptance of the key concepts and rules by lawyers and judges. For example, one judge who regularly heard eviction cases at the time described this influence in an interview with the author:

15. It seems clear that mere employment of one group of lawyers in government-sponsored legal services does not of itself produce the commonality of outlook which leads to the types of pitfalls and disfunctions outlined above. Skolnick (1967) has criticized Sudnow's analysis of the services of full public defenders for failing to recognize this. The latter had observed a number of public defenders channeling clients into pleading guilty regardless of the objective truth or falsity of the charges. In so doing, the lawyer tended to condemn the client in advance and minimized the chance of a vigorous defence, thus sharing the perspectives of the prosecutors. Sudnow also recognized that there was considerable pressure on the defender to be part of the courtroom "team." Skolnick demonstrated that many criminal lawyers in private practice were subjected to the same pressures, and responded in the same ways as did the public defenders.

> Landlords regale you hour by hour as you sit on the bench: "There are people who are professional deadbeats who constantly spend their money on booze and T.V. instead of on the good things of life like . . . rent." (Here he leaned back and laughed heartily at his own joke.) What do you do about these professional deadbeats? They have in many cases given up trying to make it.

Overall, the effect of such representations appears to have been to reinforce the view that the conventionally accepted rules and concepts were necessary to protect the position of a virtuous speculator (or landlord) against damage caused by deadbeats. To question such concepts and rules would almost be to question the desirability of virtue.

Whatever the source of communality of legal outlook described above, the case study demonstrates that it is not complete, or invincible. In the following two sections of this paper, discussion will center on the situation which arose when some lawyers and a group of buyers became determined to challenge the rules and concepts which were basic to the forcible pattern.

B. Innovative—Individual Litigation: Constraints and Opportunities

1. Pre-C.B.L. Efforts

Before C.B.L. was formed, a few lawyers attempted or contemplated the affirmative use of innovative litigation to improve the position of contract buyers vis-à-vis speculators. Before exploring some general issues concerning innovative-individual litigation, it is worth outlining briefly the efforts of two of these lawyers, who can be called A and B.

The efforts of lawyer A were exerted in the late 1950's. He filed a suit in the Illinois courts which he apparently saw as a test case on behalf of a large number of buyers. His theory was that the speculators had made fraudulent misrepresentations concerning the real value of the property, taking advantage of buyers who were unsophisticated, uneducated, and desperate for housing. In 1960 the Illinois Appellate Court rejected this notion, stating bluntly that the buyers were to be treated in the same way as any other buyers. The court applied the normal rule that any buyer who inspects prior to purchase should disregard the seller's representations on matter such as value, state of repair and so forth (*Coleman v. Goran*, 1960). The Court said:

> If the purchaser has an opportunity to view the property, it is his duty to make use of that opportunity. Unless the representations concern matters which the prospective purchaser cannot readily determine upon examination, he will be held to have ex-

> ercised his own judgment rather than to have relied on the statements of the seller.

Lawyer A's litigation failed to persuade the judges that the law should make special provision for the inability of people like the buyers to "readily determine upon examination" market value, the existence of building code violations, defective furnaces, and other defects. The rule which the Illinois judges employed seems to have been framed to take care of the needs and problems of purchasers who were reasonably sophisticated in urban ways. The judges also failed to take into account the fact that black contract buyers were the victims of a severe housing shortage for their group.

The second lawyer who contemplated innovative test litigation for buyers, B, began his efforts in the mid 1960's. He reported that he had become increasingly uneasy after each forcible case he had handled for both tenants and buyers. He developed some legal arguments which he hoped might undermine the pattern described above. He proposed to argue that the Illinois Forcible Act's failure to permit buyers to raise defenses and its onerous appeal bond requirements constituted denials of due process and equal protection of the laws. Even when he was prepared with these legal arguments, he faced a problem of finding suitable clients to use in a test case. He recounted how he had learned from experience in analogous settings that there were hazards in both winning and losing a test case in the trial court. If the case is lost in the trial court, the pattern reasserts itself and it becomes highly problematic whether the lawyer can ask the client to risk all by refusing to make a deal. If the case is won in the trial court, or appears to have a good chance of winning, the opposition may not appeal, or may offer a good settlement to avoid the danger of an unfavorable appellate court precedent. This is particularly likely if the opposition is a repeated user of the pattern.[16]

As it turned out, before C.B.L. was organized, B could not find any buyers who appeared willing to fight "come what may." It was only when C.B.L. had been formed, and when its members became determined to overcome the forcible pattern, that B's ideas were put to use, and the eviction law was declared to be unconstitutional, in part, and was "reinterpreted." A detailed analysis of his attempts at using innovative litigation to attack the forcible pattern will be made in the final section of this paper.

---

16. These possibilities are systematically developed in Galanter (1974).

2. Conditions of Innovation: A View of Law as Dynamic

The fate of the efforts of both A and B prior to C.B.L. suggests some general considerations about the nature of innovative litigation and about some major problems associated with it. Of prime importance for this style of litigation is a perception by counsel of the law as dynamic. A model of law which assumes that existing rules are clear and static and that change is the business of the legislature, not of judges and lawyers, precludes the possibility of innovative litigation. Lawyers like A and B did not so perceive the law. Their view of it was much closer to that developed by writers such as Cardozo (1921 and 1924), Levi (1961) and Jaffe (1969) who have shown how judges develop and change the common law and how statutes are reinterpreted. These writers present law as consisting, in part at least, of areas of rules and principles which are competing, conflicting and ambiguous. They also document many examples of legal innovations and developments which have grown out of such "murky" areas.

Stinchcombe (1968: 114) has made the general observation that:

> The amount of social energy devoted to a value is mainly determined by whether it is defended by full-time workers or by amateurs. One of the main advantages of full-time workers is their greater degree of reflection and rationality . . . . The greater rationality with which values embodied in institutions are defended and disseminated is one of their main advantages in competition with alternative values.

This suggests that a very important determinant of the nature and scope of developments which occur in any "murky" area of law is the nature and quality of efforts of lawyers who are constantly practicing in that area. If most of the lawyers practicing in an area are usually employed by one side (for example, speculators or landlords) it is scarcely surprising that the values and interests protected in that area of law reflect the interests of that side. Moreover, as the analysis of routinized litigation and normal legal services in the previous section of this paper suggests, the mere provision of lawyers for the other side (buyers and tenants) does not ensure that there will be developments of doctrine or rule which reflect the interests of this other side. In addition, as lawyer A's fraudulent misrepresentation test case shows, even the efforts of a single innovative lawyer who conscientiously strives to achieve such developments can prove fruitless. It is often necessary to bring protracted and repeated litigation on a point to convince the judges that something is amiss with their view of the law. This drastically increases the neces-

sary investment of time, energy and money beyond that usually available to individual lawyers (such as A) who represent individual poor or minority group clients.

3. Conditions of Innovation: Support From the Profession

There have been some structural developments within the overall enterprise of lawyering which have recently helped individual lawyers to overcome some of these obstacles to successful innovative litigation for poor and minority group members. These developments have allowed such individual lawyers to profit from the work and experience of many others, and have encouraged the increase in the number of minds devoted to the tasks of innovation. For example, law school courses on poverty and minority law can be quite stimulating in providing theories for innovative litigation. Law journal articles espouse and criticize new approaches and arguments. Services like a poverty law "clearing house" and other brokering services for complaints and briefs reduce substantially the expense of bringing many similar test cases within a short period. They also provide for continuing refinement of issues and arguments and increase substantially the number of lawyers who can more quickly pursue (and even exploit) judicial *dicta* concerning directions or arguments worth pressing.

Another function of these aspects of the professional specialization of poverty and minority groups lawyers is to protect individual lawyers from the weight of disparaging opinion of lawyers generally. Cardozo (1921:35) referred in passing to the importance of the "judgment of the lawyer class." The nature and effect of professional opinion is one of the most important areas for research in the sociology of law (and perhaps the most neglected). There are some examples in this study of trial judges and opposing lawyers making snide and insulting remarks about one imaginative lawyer's "ignorance" of the law and about his being a "bad lawyer." While these comments did not deter that lawyer from persisting with his innovative legal arguments, they clearly unsettled him. The cumulative effect of such comments is what is important—it is likely to undermine the lawyer's determination to be involved primarily in imaginative representation.

Lawyers who are able to withstand such pressures are most likely to be found among groups of lawyers who share something of a full-time commitment to securing legal changes. But their very identification with such a group may itself attach a "radi-

cal" or "extremist" label to almost any argument they present, diminishing the chances of its acceptance by the court. One way of countering such labeling is for such groups of lawyers to develop the forms and trappings of other specialist groups of lawyers. The emergence of a Commerce Clearing House poverty law service and poverty or minority law journals may have such an effect.

The Contract Buyers' case study suggests two further aspects of this professional opinion which may be of general significance. The first of these is that the members of the legal profession generally appear to recognize that some substantive fields of law are properly the subject of attempts to use litigation for innovation. On the other hand, there appears to be a commonly held belief among lawyers that other fields are static, and properly so. In Australia, for example, it appears that even quite aggressive barristers dismiss the possibility of fruitful litigation in the area of social services. It would seem important to discover the source of such classifications, and the mechanisms by which they are maintained. One major factor maintaining such classifications is that they are self-fulfilling prophecies. If the arrangement and focus of law school curricula are also an important factor, the recent development of poverty law and civil rights law courses should produce significant changes.

The other aspect of "professional opinion" which is revealed by this case study concerns the qualities of the arguments used. Professional scorn is far less likely to be attached to technical, or narrow legal arguments—the meaning of a word, the effect of a proviso, or the scope of a *ratio*. However, arguments of broad, general principle—such as fundamental principles of equality—meet a different and far less sympathetic response even where these general principles have been explicitly enacted in the Constitution. Arguments based on the general principle of equal protection, for example, appear to be much more likely to give rise to expressions of scorn than an argument that "and" means "but."[17]

In summary, in the absence of organization among litigants, the innovative potential of litigation for individuals appears to depend heavily on the organizational support furnished by seg-

17. This is not to suggest that a bill of rights embodying broad general principles has no importance for poverty lawyers. Poverty lawyers in Australia for instance, would appear to face even stronger scorn for their arguments based upon the requirements of equality because they cannot even cite a constitutional "guarantee" of those requirements.

ments of the legal profession and, therefore, on innovations within the profession. When such support is available, innovative litigation which is initiated by lawyers on behalf of individuals from poor or minority groups may produce changes in the law which favor the interests of such groups. But, for the reasons outlined above, any changes so achieved are likely to be slow. Moreover, while the process may be effective over time, there can be little reliance on the efficacy of any particular step. Many individual litigants may lose before success is achieved.

C. Innovative—Organized Litigation

In this section, the case study will be used to explore the characteristics and significance of litigation which is brought by innovative lawyers on behalf of organized groups of poor or minority persons. The main focus will be upon the effects of organization of groups upon litigation. Attention will also be paid to the thesis of Wafford (1957), that the slow and uncertain processes of the law can be "helped" by non-violent activities in support of changes in the law.

There was no group identity or organization of buyers until November 1967 when a group accompanied the Jesuit seminarian to confront one speculator and demand renegotiation of the terms of their contracts. In the various ways outlined in the introduction, the scope and intensity of the group's activities grew during the succeeding twelve months, and culminated in a well-publicized payment strike.

1. *Communitas*: Internal and External Effects

There were many complicated processes involved in these developments, which were by no means inevitable or easy for the buyers. What appears to have attracted and sustained many of them was something which overshadowed their instrumental and economic aim of having the contracts renegotiated. This can be described as a very strong sense of *communitas* (Turner, 1969:128). It involves an intense feeling of altruism embracing all who were in the same or a worse situation than themselves and an intense loyalty to those who had joined the group which was "fighting for justice." Members spoke frequently of "hangin' together," and "stickin' together like glue." In addition they frequently expressed their grave concern for other buyers, as the following examples illustrate:

> When I go to bed at night, I feel so good. For three years I've been happy with nothing. And I think my happiness came from being concerned with other peoples. Before Jack (the Seminar-

> ian) came to Lawndale, tho', I wasn't concerned with nobody but (myself) and trying to get my house paid for. But now I've been trying to get the other fellow's house paid for that was in worse shape than I was . . . .

Another woman, asked whether she was prepared to go to jail rather than leave her home, replied that she wouldn't go to jail for the old house, "cause they are not worth it." But, she added:

> A lot of people say: "I've never been to jail in my life and I don't want to go." Me, I've never been, and I wonder what it's like. I wouldn't mind going if everybody else is going. If six or seven of the C.B.L. women went to jail I'd get there and go with them.

Associated with such feelings is the sense which another buyer described thus:

> If you ever try to do anything alone you know how hard it is. Then you get into a group and everybody is trying to go in the one direction and it just kind of pulls you along.

Members of organized and active groups are capable of activity and persistence which would not be conceivable or possible for them individually. But such people often have had no prior comparable experience, and find it quite difficult to deal with the tendency for the intense experience of belonging and acting together to become an end in itself. Such an experience is virtually impossible to sustain over a long period of time. Moreover, attempts to sustain it are likely to be incompatible with other aims and life-goals and may become destructive of the other activities of the members. (Litigation appears to be particularly vulnerable to this threat.)

Another important ramification of the intense experience of belonging and acting is that it attracts the attention of a wide range of outsiders—who may seek to join or to destroy the movement. Even where such outsiders admire the movement and purport to assist it, their own goals and priorities can cause serious tensions with, and problems for, the group. The relevance of these comments for the case study is two-fold. First, one very important group of outsiders attracted to the movement of buyers was a group of lawyers. It is important to examine the nature, quality and significance of the involvement of these lawyers. Second, as shall be explored below, the buyers, in concert with many outside supporters, engaged in activities which had important, although by no means uniformly favorable, ramifications for the litigation in which they became engaged.

2. The Challenge to Lawyers: Litigants Force the Issue

The first group of lawyers who were attracted to the Contract Buyers League did not propose to resort to the legal system

to aid the buyers. Instead they spent a great deal of time and energy in negotiations aimed at bluffing or exerting moral pressure on the speculators. They met with little success. The absence of any claim of legal right put them at a great disadvantage. As Macaulay (1963:62) has suggested:

> The legal position of the parties can influence negotiations even though legal rights or litigation are never mentioned in their discussions; it makes a difference if one is demanding what both concede to be a right or if begging a favor.

There are several explanations for the apparent failure of legal imagination on the part of this first group of lawyers. One is simply the question of resources. Hundreds of buyers were seeking redress. The transactions involved in each case were complex and difficult to unravel and document. Any possible legal proceedings were thus likely to be so extensive and protracted that few lawyers could afford such representation without fees which were beyond the buyers' resources. A few of the lawyers involved worked for organizations which provided free legal assistance, but they were precluded from bringing litigation, because too many of the organization's resources and energies would have been invested in a single situation.

It was the imminence of the payment strike which prompted the involvement of another group of lawyers and caused them to act with amazing speed in resorting to litigation on behalf of the buyers. One of these lawyers wryly commented several years after the law suits had been filed:

> If the people hadn't decided to withhold their payments we'd still be sitting around talking about the best way to file a lawsuit.

These lawyers were not engaged in the full-time representation of poor and minority groups. Indeed, they had represented some of the wealthiest and most established interests in the city of Chicago. They undertook to provide for the buyers a kind of representation similar to that supplied to the wealthy who needed innovative legal services. Indeed, they claimed to have provided even more. As one of them observed:

> . . . we have done things in terms of legal representation in this case for C.B.L. that we probably wouldn't have done in a normal case. But . . . this is not a normal case. You are not dealing with normal people. . . . This is a once in a lifetime event. . . . There are no rules to govern this sort of thing. You try to do what your judgment tells you is the most intelligent thing to do each day . . . you are never quite sure what is around the corner. . . . The commitment of being a lawyer is made, and therefore, you are going to represent them through thick or thin . . . class action problems, statute of limitation problems . . . and especially, it involves dealing with holdout problems. . . .

The buyers' collective activities and the strong sense of *communitas* among them were what persuaded these lawyers to act as they did.[18]

3. The Civil Rights Law Suit

Five weeks after the commencement of the payment strike the lawyers filed a major class suit on behalf of thousands of buyers seeking legal redress for the harm buyers suffered because of the basic situation. The defendants were a lengthy list of speculators and their assignees, savings and loans associations and others (*Contract Buyers League v. F. & F. Investment*, 1969). The complaint was long and complicated and sought relief under such laws as anti-trust, securities and exchange, fraud and usury. But its main thrust was under the provisions of the 1866 Civil Rights Act[19] which provided *inter alia* that:

> . . . All citizens shall have the same right as is enjoyed by white citizens . . . to purchase, hold and convey real property. . . .

After a century of virtual disuse, this law had been revived by the U.S. Supreme Court in *Shelley v. Kraemer* (1948) and again in *Jones v. Mayer Co.* (1968). The use which lawyers made of this law has been carefully analysed elsewhere (Yale Law Journal: 1971). It will suffice for our purposes to mention here only the most imaginative and innovative aspects. In *Jones* (1968:439) the Supreme Court had interpreted the 1866 law as abolishing "all badges and incidents of slavery" and had stated (1968:443) that:

> When racial discrimination herds men into a ghetto and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. (1968:443)

The Court concluded that the legislation was a constitutionally valid attempt to ensure that:

---

18. Weber (1967:298) has suggested that:
> The role of the representative of the underprivileged and of the advocate of formal equality before the law is particularly suited to the attorney by reason of his direct relationship with his clients. . . .

Weber does not specify the circumstances under which this direct, whole-hearted relationship with the underprivileged is defined by lawyers as inherent in their role. That it took a dramatic, well-publicized strike to cause even a few lawyers to devise innovative litigation for the buyers, suggests that such circumstances are limited. Possibly in situations like that produced by the strike, some lawyers come to see the underprivileged as constituting a significant "power group" akin to the groups of the economically powerful who normally engage the services of top lawyers. Lawyers may have a tendency to see as part of their professional role the development of "direct" and whole-hearted relationships not with underprivileged people as a whole, but rather with members of certain socially recognized underprivileged groups.

19. The provision is currently codified in 42 U.S.C. § 1982 (1964).

> a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man.

The buyers' lawyers fashioned from these statements a prohibition of racially segregated housing markets. Any profits, they reasoned further, which are made on an illegal market are illegal whether or not the person making them created the market conditions, or did anything to ensure their continuance. This means that, whether or not any of the defendants had actually blockbusted or had done anything to restrict the supply of homes or mortgage financing for blacks, they had made illegal profit because they traded on illegally segregated markets. They had bought on the "white market" for a low sum and sold on the "black market" at a high price. This profit arose out of one of the "relics of slavery" and could rightfully be complained of by the buyers under the civil rights legislation. In his opinion refusing to dismiss the suits the original trial judge seems to have accepted this as a valid statement of law (*Contract Buyers League v. F. & F. Investment*, 1969:216). In an oral opinion of May 22, 1972, the new trial judge in the south side new homes case, *Clark v. Universal Builders* (1969) rejected this interpretation of the law. However, on July 26, 1974, the United States Court of Appeals overruled his decision and held that the 1866 law is violated if persons take advantage of a dual housing market caused by racial segregation to demand "prices and terms unreasonably in excess of prices and terms available to white citizens for comparable housing" (*Clark v. Universal Builders Inc.*, 1974:13). Undoubtedly this is not the last word to be heard on this matter; it is certain to be an issue in any appeal once the trial of the suit has actually been held.

The other highly innovative aspect of the case is its class nature under Rule 23 of the Federal Rules of Civil Procedure (1964). The lawyers sought to have C.B.L. and a small number of named plaintiffs sue on behalf of all persons similarly situated regardless of the identity of their seller. Named speculators would be representing the class of defendants. The trial judge modified this by removing C.B.L. as a party, and by confining the plaintiff class to buyers from the named speculators. The class nature of the suit saves duplication and delay and also permits the lawyers to bring to the attention of judge and jury the magnitude of the problem, and the total of the defendants' profits. The procedure does offer considerable scope for lawyers representing poor and minority groups. On the other hand, over five years have elapsed since both suits were filed, and they have still to be tried, partly because of their scope and complexity.

4. The Attack on the Forcible Law

The civil rights law suits were not the only contribution to C.B.L. which these lawyers made. In March 1968, after these two suits had been filed, the lawyers asked the buyers to end the strike. With a brief exception, hundreds of buyers refused to resume payments for over a year, until there had been a number of successful evictions. Preceding these evictions were months of attempted evictions which were blocked in a "not quite violent" manner. During this period the C.B.L. received great publicity, which was mainly favorable to it and hostile to the speculators and to the eviction law.

At first the lawyers acting in the civil rights law suits refused to have anything to do with problems caused by the strike. But as the leading lawyer put it:

> Repeatedly in this case, lawyers have been forced to improvise and to push beyond the frontiers, so to speak. Not because of their own ingenuity, or anything they started, but rather in spite of themselves, and over their objections that it couldn't be done. This is because the people said: "Well, screw it, we're going to do it anyhow." The lawyers were then forced to do some original thinking to find some avenue of relief for what the people had already decided to do. There is no question about that.

The processes involved in forcing the lawyers to engage in this "original thinking" concerning the strike were quite painful for both lawyers and buyers. One lawyer has summed up the essential problem for the lawyers as being the difficulty of realizing that:

> . . . the people are not looking at this as a cold dollar and cents transaction. It is not handled as a regular business transaction where you assess your risks and make judgments based on them. In other words the people are saying: "We aren't going to pay those guys any more. You can put us out. We are tired of being pushed around, and we are not going to be any more". They won't pay as a matter of principle.

Many of the problems which were encountered in the attempts to have the forcible law declared unconstitutional were caused because it took the lawyers a long time to realize that the strike was important to the buyers in a symbolic way—it was more than just an instrument in obtaining renegotiated contracts. The act of not paying the speculator seems to have served the striking buyers as a symbol of the severence of an unpleasant and oppressive bond. Moreover, continued nonpayment in the face of eviction and the attempted use of the forcible pattern came to be symbols to the buyers of more general complaints about the one-sidedness of the legal system. The long-term aim of securing some financial relief tended to become of secondary importance to many of the strikers.

The buyers' leaders were impatient with the initial inability of their own lawyers to appreciate this aspect of the strike. Early in 1969, they sought advice from the lawyer, B, whose plans for a test case on the validity of the forcible law were discussed earlier. This appears to have made their own lawyers in the class actions somewhat defensive, and clearly produced a situation of confusion concerning responsibility for overall legal strategy.

In part as a response to the confusion and tension between their lawyers, the buyers' leaders began in August, 1969 to wage an increasingly intense publicity campaign concerning the plight of the striking buyers. One target of this campaign was the courts themselves. The main thrust of their new-found complaint was that it would take years for their civil rights law suit to be heard, and yet the speculators could have eviction proceedings against them determined within two months. The following is quite typical of their press releases at the time.[20]

> Those of us who are in the Contract Buyers' League are now beginning to question seriously whether the situation is so impossible that it is foolish for us to continue with the lawsuits we initiated. We are seriously considering asking our lawyers to withdraw these lawsuits because the judicial system of this country apparently is not equipped to provide justice for poor black people.

It took several months of this type of public complaint by the buyers and a number of highly dramatic attempted evictions of strikers before the lawyers acting for the buyers in the civil rights lawsuits were persuaded to throw their full resources into the attack on the constitutionality of the eviction law. For the first three months of 1970, most of their legal work was devoted to this end.

The buyers' complaints about the unequal speed of eviction cases and civil rights suits provided a legitimacy for their collective activities (including dramatic resistance to attempted evictions). They were able to claim that they were being evicted "without their day in court." It may be that some buyers were enabled to resist eviction by such a rationale although none of the buyers interviewed for this study placed strong emphasis on this. There is, though considerable evidence that an increased number of outsiders who were uncertain of the actual merits of the buyers' claims about the basic situation rallied to the buyers' side because the buyers were unable to have the validity of the forcible proceedings determined before eviction. The fol-

20. This was issued as a mimeographed handout, and statements like this were widely quoted in the press.

lowing extract from a newspaper report (Storck, 1970:10) of the attempted eviction of one of the buyers illustrates this reasoning:

> Law suits were instigated. The constitutionality of the whole thing is being questioned, including the wisdom of the state eviction law. Inevitably the eviction notices began landing. . . . The league argued in court that maybe it might be a reasonable idea not to throw people out of their homes until the whole thing was figured out. The Illinois Supreme Court, in its infinite compassion for the rights of the real estate dealer, turned that one down. So yesterday 200 Sheriff's deputies backed up by 150 Chicago police circled Jonnie Moss' lawn while his furniture was hauled out into the snow. Last night the neighbors had moved the Mosses back in . . . . There are 100 more families caught in the contract bind who have been served eviction notices. There will be more after that. . . .
>
> They're hoping maybe somewhere a judge may give the C.B.L. suits a hearing. Before the sheriff comes, (Sic) But if you go by the saga of Jonnie Moss, it is not much of a hope.

The lawyers' attack on the validity of the forcible law was successful. In April 1970, the Illinois Supreme Court reinterpreted the statute so as to permit a wide range of defenses and counterclaims to be raised in proceedings for possession alone (*Rosewood v. Fisher*, 1970). Moreover, some two and a half years after the attack on the constitutionality of the forcible law had commenced, the Illinois Supreme Court also held that it was invalid to the extent that it required the appeal bond as a condition of appeal (*Hamilton Corp. v. Alexander*, 1972). This is an impressive example of a successful attempt to make the law responsive to the previously ignored distinctive needs of a group of people. But such a judgment needs to be qualified.

5. The Mixed Blessings of Innovative-Organized Litigation

The first qualification is that the courts refused to provide any relief for striking buyers *while the strike continued.* Delays in rulings and refusal of bonds and schemes to stay eviction pending rulings appear to have been used by the courts to preclude granting relief from forcible proceedings which were eventually found to be unconstitutional. Weber (1967:356) has suggested an explanation for such judicial responses as these to such pressures:

> The rational course of justice . . . is interfered with . . . by every type of intensive influencing of the course of administration by . . . communal activity which is born of irrational "feelings" and which is normally instigated or guided by party leaders or the press . . . these interferences can be as disturbing as . . . those of star chamber practices of an absolute monarch.

Some activities which are fundamental to organized groups like C.B.L. may be inherently counter-productive in the courts—at least in the short term. Judges seem to perceive an incompati-

bility between their judicial role and appearing to acquiesce to direct "extra-legal" pressure. It is part of the judicial self-concept to be seen calmly and dispassionately applying the laws even-handedly—taking the time for sober second thoughts before making a final decision (Peltason, 1955). This case study suggests, however, that once the immediate appearance of public pressure has been removed, the judges may be quite anxious to make an adjustment to the law to avert future friction and dissatisfaction. (Mobilized groups may in these circumstances be fighting other peoples' battles and lawyers representing such groups would have an obligation to warn them of this possibility.)

Extra-court activities like those of the buyers may lead to a long-term enhancement of the authority of courts and lawyers, especially where the pressure is aimed at changing laws which have long been administered for the advantage of one group. Changes like those effected in the forcible law can be used by future litigants who employ competent and aggressive lawyers to force trial judges to decide cases which can go either way and to exercise real judgment rather than merely rubberstamping the claims of one side. By abandoning patterns of routinized litigation like the forcible pattern, the judges diminish the number of people who feel that something has been "put over" them in the courtroom, and who blame lawyers and judges for it. The power and authority of judges may be augmented in the long run at the price of some short-term discomforting threat to their self images.

A second important qualification to the buyers' eventual success with the eviction law is the effect which the strike and the resistance to the eviction law had on the civil rights law suits. At first the federal trial judge handling the civil rights cases attempted to settle the strike. When this failed he adopted an approach of "non-interference" both with the strike and with the evictions. However, before long, he began complaining that the buyers' "street" tactics were threatening the integrity of the courts. The courtroom sessions became occasions for his bitter complaints to the effect that the buyers were making erroneous statements about the court and himself and that these were believed by a wide range of persons. He complained of the pressure it put him under:

> I get telephone calls from United States Senators, from the Mayor, from a whole host of people, from rabbis, etc. etc. You know, what can we do? These people have come to talk to us and they say they are not getting expeditious considerations of their grievances in your court—in your court.

He often delivered tirades against the newspaper accounts, for example:

> I have quit reading the newspapers in the Contract Buyers League case because first of all, I not only don't recognize what I know about the case from what I read in the papers, but the misrepresentations infuriate me. I don't see why I should be wasting my adrenalin on newspaper stories.

His patience with the buyers and their lawyers manifestly diminished, and he began imposing a series of sanctions which he justified as follows:

> I don't care for myself. That is the least of my problems. But I am very sensitive to injustices being done to the institutions of justice. That is what it seems is happening in this case.

He ended his policy of non-interference by dismissing 180 striking buyers from the law suits. Because of the evictions and their publicity, hundreds of other members of the plaintiff classes became frightened and opted out of the law suits, having gained nothing or a very small reduction as a settlement for their claims. When the defendants also complained about the judge (on the basis of his complaints about the ingratitude of the buyers to whom he had given more justice than whites would have received) he handed the cases to other judges. These judges have been far less sympathetic to the buyers' position, less imaginative in their approach to the cases, and far less accommodating of the problems of the buyers' lawyers in preparing the cases. Indeed, in reversing a series of rulings against the buyers made by the trial judge in the south side case, the United States Court of Appeals described some of them as "highly improper" and "clearly an abuse of discretion" (*Clark v. Universal Builders Inc.*, 1974:25 and 26).

These qualifications suggest that organized groups like C.B.L. may need legal advice from lawyers who are sufficiently detached from their client's *communitas* to resist telling the group what it wants to hear. (There is a tendency among "movement lawyers" to reject this notion, often with severe consequences for themselves and for their clients). But lawyers also need to guard against overestimating the effects on litigation of unorthodox extra-court activities. Lawyers with little or no previous contact with organized minority groups do not, on the one hand, have the experience to foresee real pitfalls which they could help members of the group to avoid. On the other hand, warnings and advice that such lawyers give about "inherent incompatibilities" between collective activities and the judicial process may be suspect. Lawyers generally appear to be overly cautious about the durability and flexibility of the legal system, and tend

to underestimate seriously how much strain the judges will tolerate. It can be expected that lawyers who regularly act for mobilized groups over the years will develop considerable capacity to distinguish between the "real pitfalls" of innovative-mobilized litigation and over-caution, and their clients will then be well served by advice in this respect. But if inexperience is associated with one set of problems, expertise may involve yet other serious problems. For example, lawyers who regularly act for minority groups which engage in "extra-court" activities could find their prestige and "professional standing" fading. Their capacity to influence the courts with legal arguments in court proceedings may diminish accordingly.

IV. CONCLUSION

This case study has been used to explore some key differences among the roles of lawyers and among their relationships and attitudes to their clients and to the law. This has resulted in the development of a way of categorizing common-law litigation. Only future case studies of such litigation will make it possible to assess the strengths and weaknesses of the categories used. In particular, the extent to which distinctions made in this report are useful in analyzing litigation involving only non-poor and majority-group persons must remain open to conjecture at this stage.

CASES

Alexander v. Hamilton Corp., No. 69-L-12709 (Cook County Cir. Ct., Ill. 1969), *aff'd in part, rev'd in part*, 290 N.E.2d 589 (Ill. 1972).

Contract Buyers League v. F. and F. Investment, 300 F. Supp. 210 (N.D. Ill., E.D. 1969), *aff'd sub nom. Baker v. F. and F. Investment*, 420 F.2d 1191 (7th Cir. 1970), *cert. denied*, 400 U.S. 821 (1970).

Contract Buyers League v. Universal Builders, Inc., No. 69-C-115 (N.D. Ill., E.D. 1969), *aff'd sub nom. Clark v. Universal Builders, Inc.*, 420 F.2d 1191 (7th Cir. 1970), *cert. denied*, 400 U.S. 821 (1970), 501 F.2d 324 (1974).

Coleman v. Goran, 168 N.E.2d 56 (App. Ct. Ill. 1960).

Jones v. Mayer, 392 U.S. 409 (1968).

Reid v. Arceneaux, 63 Ill. App. 2d 113 (1965).

Rosewood Corp. v. Fisher, No. 69-M1-61118 (Cook County Cir. Ct., Ill., 1969), *rev'd per curiam*, 46 Ill. 2d 249 (1970).

Shelly v. Kraemer, 331 U.S. 1 (1948).

REFERENCES

BLUMBERG, Abraham S. (1970) *Criminal Justice.* Chicago: Quadrangle Books.

CARDOZO, Benjamin N. (1921) *The Nature of the Judicial Process.* New Haven: Yale University Press.

——————— (1924) *The Growth of the Law.* New Haven: Yale University Press.

DUNCAN, Otis and Beverly DUNCAN (1957) *The Negro Population of Chicago: A Study of Residential Succession.* Chicago: University of Chicago Press.

GALANTER, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Review* 95.

GLASER, Barney G. and Anselm L. STRAUS (1967) *The Discovery of Grounded Theory: Strategies for Quantitative Research.* Chicago: Aldine Publishing Company.

GREEN, L. (1969) "How Court Runs an Eviction Mill," *Chicago Daily News* (August 14).

JAFFE, Louis (1961) *English and American Judges as Lawmakers.* New York: Clarion Press.

LEVI, Edward (1969) *An Introduction to Legal Reasoning.* Phoenix: Phoenix Books.

LEWIS, Anthony (1964) *Gideon's Trumpet.* New York: Vintage Books.

MACAULAY, Stewart (1963) "Non-contractual Relations in Business: A Preliminary Study," 28 *American Sociological Review* 55.

MC ENTIRE, Davis (1960) *Residence and Race.* Berkeley: University of California Press.

MAC NAMARA, John R. (1971) "The Contract Buyers League: A View from the Inside," 1(4) *Yale Review of Law and Social Action* 70.

MC PHERSON, J. (1972) "In My Father's House There are Many Mansions, and I'm Gonna Get Me Some: The Story of the Contract Buyers League," 229 *The Atlantic* 51 (April).

MARKS, R. (1972) *The Lawyer, the Public and Professional Responsibility.* Chicago: American Bar Foundation.

PARSONS, Talcott (1954) "A Sociologist Looks at the Legal Profession," in Talcott Parsons (ed.) *Essays in Sociological Theory.* New York: Free Press.

PELTASON, Jack W. (1955) *Federal Courts in the Political Process.* New York: Random House.

ROTHWAX, Harold (1969) "Law as an Instrument of Social Change," in Harold H. Weissman (ed.) *Justice and the Law in the Mobilization for Youth Experience.* New York: Association Press.

SATTER, M. (1958) "Land Contract Sales in Chicago: Security Turned Exploitation," 39 *Chicago Bar Journal* 262.

SCHWARTZ, Richard B. (1973) "President's Message: Getting a Paradigm Together," 7 *Law & Society Review* 323.

SKOLNICK, Jerome (1967) "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 59.

STINCHCOMBE, Arthur L. (1968) *Constructing Social Theories.* New York: Harcourt, Brace and World.

STORCK, D. (1970) "John Moss Learns About Evictions," *Chicago Today* 10 (January 30).

SUDNOW, David (1965) "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," 12 *Social Problems* 255.

TURNER, Victor W. (1969) *The Ritual Process.* Chicago: Aldine Publishing Company.

VITCHECK, Norris (1962) "Confessions of a Blockbuster," 235 *Saturday Evening Post* 15 (July 14).

VOSE, Clement (1959) *Caucasians Only.* Berkeley: University of California Press.

WAFFORD, Harris (1957) "Non-violence and the Law: The Law Needs Help," 15 *Journal of Religious Thought* 15.

WEBER, Max (1967) *On Law and Economy in Society* (Max Rheinstein, ed.). New York: Clarion Books.

YALE LAW JOURNAL (1971) "Discriminatory Housing Markets, Racial Unconscionability, and Section 1988: The Contract Buyers League Case," 80 *Yale Law Journal* 516.