

## Trends in Legal Services for the Poor

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# TRENDS IN LEGAL SERVICES FOR THE POOR

JUNIUS L. ALLISON \*

LEGAL AID FOR THE POOR is now more available and more competent than is any other professional service, with the possible exception of public education.<sup>1</sup> This does not mean that the full needs are being met, nor that we can relax our efforts to improve and extend what is provided. But it does seem that it is time to wipe out the guilt feelings expressed by some for the long years in which the indigent had few opportunities to get proper legal advice and, therefore, had little access to our courts.<sup>2</sup>

The following chart indicates how much numerical progress has been made since 1960:

Year	CIVIL		CRIMINAL	
	Number of Offices	Number of New Cases Reported	Number of Offices	Number of New Cases Reported
1960	222	366,607	98	115,188
1961	231	382,679	110	141,719
1962	236	397,942	110	154,111
1963	240	422,569	115	167,891
1964	244	413,638	136	205,931
1965	247	426,477	162	244,845
1966	388	491,746	272	334,009

\* Executive Director, National Legal Aid and Defender Association.

<sup>1</sup> Consider the facilities of Chicago, for an example:

- a. The Legal Aid Bureau of United Charities—55 full-time lawyers in a downtown office, an appellate and test case division, a juvenile court branch, two law student clinic programs, and several neighborhood offices.
- b. The Legal Aid Department of the Jewish Family and Community Services.

The most dramatic and most significant agent in bringing about this favorable change is the Legal Services Program of the Economic Opportunity Act of 1964. However, there are other major developments, unrelated to the federal program, which have materially contributed to the development of legal assistance for those unable to pay: the Criminal Justice Act of 1964,<sup>3</sup> the recent Supreme Court decisions (*Gideon v. Wainwright*,<sup>4</sup> *Escobedo v. Illinois*<sup>5</sup> and *Miranda v. Arizona*<sup>6</sup>) and two projects of the National Legal Aid and Defender Association (NLADA) supported by grants from the Ford Foundation.

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- c. A Church Federation organization—almost 140 volunteers having evening hours, principally, for interviewing clients in more than a dozen low-income areas, in cooperation with the Chicago Legal Aid Bureau.
  - d. Community Renewal Foundation, six full-time lawyers.
  - e. Legal Services to Youth (civil and criminal).
  - f. National Association of Community Counsel (in Chicago and Detroit)—15 full-time lawyers, 40 volunteers from VISTA.
  - g. Public Defender of Cook County—40 full-time deputies.
  - h. Federal Defender Program (full-time staff, volunteer lawyers).
  - i. Defense of Prisoners Committee of the Chicago Bar Association, more than 100 members.
  - j. Several facilities serving the suburban areas.

<sup>2</sup> Howard Westwood of Washington, D.C., a member of NLADA board of directors, says that efforts to improve legal aid have not been prompted by a guilty conscience, but by the "simple mandate that justice should be available for all." Letter to author, September 21, 1967.

<sup>3</sup> 18 U.S.C. § 3006A (1964).

<sup>4</sup> 372 U.S. 335 (1963).

<sup>5</sup> 378 U.S. 478 (1964).

<sup>6</sup> 384 U.S. 436 (1966).

Of course, the promotional program of the NLADA, particularly during the last decade, has been a major factor in the growth of legal aid and defender facilities. Also, the active role taken by the American Bar Association in recent years has given to the movement the prestige and encouragement of more leaders of the legal profession. These have not been "crash" programs, as the development has been gradual and continuous; and the influence of prominent lawyers has been pervasive throughout the history of legal aid. While these activities of the legal profession will be referred to again in this article, I want to discuss briefly the specific events that have had a sharp and almost sudden impact on the problem of providing free legal advice and representation for the poor. The present operation of the Legal Services Program of the OEO and related problems will be treated more fully.

### National Defender Project

Beginning in 1963, the Ford Foundation made a series of three grants to the NLADA totaling more than six million dollars for a program of experimentation and demonstration including "establishment of new defender services, improvement of existing ones in urban areas, assigned counsel demonstration projects, cooperative programs with law schools and . . . special experiments related to the defender areas."<sup>7</sup> Projects involving other phases of the administration of criminal law are also included,

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<sup>7</sup> Ford Foundation grant letters to NLADA, Feb. 20, 1963; Dec. 9, 1963; June 26, 1964; and June 21, 1965.

such as providing counsel to prisoners, law student fellowships, work-release projects, funds for "test" cases, administrator-assigned counsel plans, bail bond programs, and on-the-job training for young lawyers.

With a staff of attorneys experienced in the criminal law field and a national advisory council, the National Defender Project has brought about some significant changes in the administration of criminal justice. Grants have been made in more than fifty jurisdictions enabling the local communities to establish experimental and demonstration programs. Bar associations, law schools, and judges have taken the initiative in carrying out projects for the benefit of indigent defendants.

In commenting upon the work of the NDP in 1966, consultants for the Ford Foundation said:

This program is an ambitious one, calling for significant changes in the traditional way of providing legal services. The NDP has accomplished tasks that would have been regarded as unrealistic at the inception of the grant—and it has often worked these changes in localities where no one would have anticipated a favorable response.<sup>8</sup>

In addition to the hard-core activities of the Project, several supplemental aids have been provided, such as:

1. *The Defender Newsletter* (summarizing and commenting upon recent court decisions in the criminal law field), published periodically;

2. Sponsorship of conferences (New England Defender Conference, 1963, and annual meetings of the NDP Advisory Council and periodic workshops for project directors);

3. Publication of a handbook on "How to Organize a Defender Office";

4. Several articles in law journals; and

5. Making money available for the preparation and publication of a trial manual.

In summing up the impact of the NDP, one of the staff reported:

The Project has instituted various demonstrative and training programs throughout the country. . . . The successes and failures . . . are studied to provide general background information to be made available to those agencies interested in equal justice to both the rich and the poor. . . . Better plans and better defender practices have won the approval of the bench and the bar. The result of these programs is the strengthening of public respect for the legal profession and the eventual fulfillment of the ideal of equal justice under law.<sup>9</sup>

#### National Council on Legal Clinics

This project was made possible by an \$800,000 grant from the Ford Foundation to NLADA in 1959. (In 1966, the work of the Council was taken over by the Association of American Law Schools and the name was changed to the Council on Education in Professional Responsibility when the Ford Foundation made a second grant in the amount of \$980,000.)

<sup>8</sup> Report to the Ford Foundation on the National Defender Project (Berl I. Bernhard and Ronald B. Natalie, Consultants), August 1, 1966.

<sup>9</sup> Peter M. Callahan, NDP attorney, staff memorandum, Sept. 7, 1967.

The purpose of this grant was to enable NLADA (through the Council) to develop and conduct "an experimental project in law school education."<sup>10</sup> The term "professional responsibility" is not limited to the lawyer's responsibility for dealing honorably with clients, courts and fellow lawyers, but, as Howard R. Sacks, Director, says, "also involves the lawyer's obligation for law reform and for helping to insure that adequate legal services are provided for the indigent and the unpopular."

In the last two years, grants have been approved for more than thirty law school projects, totaling more than \$300,000. A wide range of subject matter such as the following is covered:

- Arbitration clerkships
- Correctional internship
- Legal clinics
- Local government studies
- Urban legal studies
- Poverty law, civil rights
- Trial court clerkships
- Family law seminar
- Law-psychiatry project
- Rural apprenticeship
- Student field work (in prosecutor's office, juvenile court, police department, and in hospitals)
- Teaching materials

In an effort to spread the concept of teaching of professional responsibility by the pervasive method, the Council has prepared much teaching material which is

made available to all law schools. Included are such titles as:

- Professional Responsibility Problems in Family Law
- Defending the Unpopular Client
- Problem Cases on Professional Responsibility of the Advocate
- Moot Court Problems on Unauthorized Practice
- Selected Materials on Family Law: Custody, the Unwed Mother, Adoption, Parental Neglect, Juvenile Court (in preparation), Housing (in preparation)
- Legal Aid Manual (in preparation)

Three films ("Defending the Unpopular Client," "The Lawyer's Place in Our Society," and "The Individual Lawyer and the Organized Bar") have been produced and made available to bar associations and law students.

The concluding report of one of the evaluators of a selected group of projects of the Council gives some indication of the success of this experiment in law school education:

In sum, we are in agreement that the National Council on Legal Clinics has, by its grant program, given a valuable stimulus to law schools seeking to increase their students' sense of professional responsibility; that the program has served to attract attention on a national basis to the problem of training in professional responsibility; that the participating schools have developed a useful diversity of methods for attacking the difficult education problems that Council's objectives present and that the program as a whole is now providing a body of experience which could be usefully drawn upon were the program to be extended. It is especially gratifying that the program has come at a time when the professional responsibilities of

<sup>10</sup> Annual Report of Orison Marden, Chairman of the Council, to the Ford Foundation, 1964.

the lawyer in the society are being deepened and intensified.<sup>11</sup>

### Supreme Court Decisions

Since so much has been written on the meaning and effect of the recent United States Supreme Court decisions affecting legal services for indigent defendants, it would be unnecessarily repetitious to discuss them here in any detail. Briefly outlined, these are the principal landmarks in the criminal field:

*Gideon* warns that the absence of counsel for an indigent defendant in a serious case may be so constitutionally fatal that a retrial or release of the defendant will be required.

*Escobedo* states that if five specified conditions exist at the police station (the inquiry is focused on a particular suspect, who is in custody, is being interrogated, and he requests but is denied opportunity to consult his lawyer, and the police have not effectively warned him of his right to remain silent) incriminating statements made cannot be used against him at a criminal trial.

*Miranda* extends, after criticizing existing methods used by police in the interrogation process, the *Escobedo* ruling by saying that the prosecution may not use statements made by defendant unless it is demonstrated that certain safeguards against self-incrimination have been observed.

*Gault*, involving a fifteen year old minor, applies constitutional limitations to the operation of the juvenile court.

(The *Kent* case dealt primarily with the construction of a District of Columbia statute.) Certain rights heretofore applied only to criminal proceedings (right to counsel, privilege against self-incrimination, right of confrontation, and the right to have adequate notice) were extended to proceedings in the juvenile court.

The effect of these cases has been dramatic and almost immediate. They rendered moot the discourse on right of counsel and obligations to supply lawyers for indigent persons charged with criminal offenses. Provisions must now be made—and quickly—in the states where no organized defender services exist.<sup>12</sup>

Florida, the home state of Clarence Gideon, led the movement in 1963 by enacting a state-wide statute requiring a public defender for each judicial circuit.<sup>13</sup> Then came Colorado with a permissive state law,<sup>14</sup> Oregon with a post-conviction law,<sup>15</sup> and Pennsylvania, authorizing compensation for assigned counsel,<sup>16</sup> as did North Carolina<sup>17</sup> and Minnesota.<sup>18</sup> In 1965, New York required each of the 62 counties to set up a defender system,<sup>19</sup> and several other states moved to broaden their services, with the last state-wide

<sup>12</sup> For more complete data, see Silverstein, *Defense of the Poor*, American Bar Foundation, 1965.

<sup>13</sup> FLA. STAT. ANN. § 27.50 (1963).

<sup>14</sup> COLO. REV. STAT. ANN. § 39-7-29 (1963).

<sup>15</sup> ORE. REV. STAT. §§ 133.625 *et. seq.* (1965).

<sup>16</sup> PENN. STAT. ANN. tit. 19, § 784 (1966).

<sup>17</sup> N.C. GEN. STAT. §§ 15.5, 15.219 (1965).

<sup>18</sup> MINN. STAT. ANN. §§ 611.07, 611.071, 611.12, 611.13 (1947).

<sup>19</sup> See Devitt, *New York's Answer to the Problem of Defense of the Indigent*, THE LEGAL AID BRIEFCASE, Oct., 1965.

<sup>11</sup> The Asheville Conference of Law School Deans, *Proceedings*, NCLC (1965).

law being enacted in New Jersey in 1967.<sup>20</sup>

### Legal Services Program of the OEO

The LSP has now been fairly well established in the network of legal assistance programs over the country. Earl F. Morris, President of the ABA, puts it this way: "The bugaboo of federal control has been scratched as local control of the program, largely by lawyers, has been achieved."<sup>21</sup>

It would be most unfortunate if this needed service were curtailed or dismantled. It would be little short of tragic if federal funds were suddenly withdrawn. Probably no other part of the OEO has as wide acceptance, or as full support of private citizens who are in the best position to know—the lawyers. These leaders of the Bar who look back over many lonely years of working for legal aid for the poor know that new LSP offices have been opened where no legal assistance on an organized basis existed, and they are aware of new life that has been injected into many tired and underfinanced legal aid facilities. When they hear exaggerated complaints against the LSP they must be reminded of the criticism legal aid has faced over the decades. They now welcome the LSP, a reinforcement just in time; a serendipity, indeed.

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<sup>20</sup> N.J. STAT. ANN. § 2A: 158A-1—A-22 (1967).

<sup>21</sup> Address, Washington State Bar Association, Vancouver, B.C., Sept. 1, 1967.

However, now that the LSP has full membership in the legal family and in the community agencies concerned with the welfare of the poor, we are permitted to look at its operation with less tenderness and with more candor. In fact, this view is necessary if we expect continued progress.

As was true of all the effective services which have finally been forged from the hasty plans of OEO, the LSP has suffered from its share of inept planning and naive concepts of its earlier period.

The Legal Services part of the OEO sprang, Minerva-like, almost full-grown into being, without even a putative father from the organized bar. Legal Services were literally (and quite logically) read into the first Economic Opportunity Act.<sup>22</sup> A few bright young lawyers were employed to launch a crash program designed to saturate the country with legal assistance programs.<sup>23</sup> Little effort was made to profit by what had been learned over the long and often lonely years by lawyers experienced in promoting legal aid for the indigent. In fact, a great amount of energy was wasted and much ill will engendered by attacks upon existing legal aid.<sup>24</sup>

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<sup>22</sup> Tentative Guidelines for Legal Service Proposals to OEO.

<sup>23</sup> In E. HOFFER, *ORDEAL OF CHANGE*, the author observes that "the workman new to his trade attacks his work as if he were saving the world, and he must do so if he is to get anything done at all."

<sup>24</sup> Frankel, *Experiments in Serving the Indigent*, 51 A.B.A.J. 460 (1965); Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. (1965). But for the other view, see speech by E. Clinton Bamberger, Jr., Proceedings of Conference on Law & Poverty, Harvard Law School, Mar. 1965.

Needless misunderstanding has been created by sponsors of the federally supported innovation. Bar associations—in urban as well as in rural areas—were alarmed by the inappropriate use of such terms as “revolution,”<sup>25</sup> “lay advocates for the poor,”<sup>26</sup> “supermarket legal services,”<sup>27</sup> “smell of the crusade,”<sup>28</sup> and “promotion of neighborhood dissent.”<sup>29</sup>

As late as last fall, a leading article in *The Catholic Lawyer* reached a conclusion which is clearly erroneous to anyone familiar with the subject of legal services for the poor:

Although various legal aid and defender programs moved in to fill the void when it became clear that indigent criminal defendants were entitled to counsel, few legal programs existed which provided aid in the civil area.<sup>30</sup>

Anyone familiar with the subject of legal services for the poor will probably agree that the 244 civil legal aid organ-

izations that existed in 1964 were, in fact, “few legal programs” when measured against the actual need. (In 1964 there were 136 defender offices handling criminal matters—a number certainly too small to supply counsel for all indigent defendants.) These, compared to the present available services, were “few,” but to make the above statement without these qualifications does not give the true picture.

As recently as last August, the Smith Fellows (scholarships supported by OEO) at the University of Pennsylvania were told:

You will be making trouble, stirring up litigation, looking for clients, literally violating the canons of ethics.<sup>31</sup>

If time and opportunity were to permit, each of these, perhaps, could be explained in a way acceptable to most of those now troubled over the trend in legal services for people living in poverty. But we hear and read by snatches and catch words.<sup>32</sup> And there are a few who deliberately quote out of context (as I may be accused of doing) to make a point. What I am trying to say is that such ventures in semantics raise doubts rather than persuade.

Staff changes and maturity of personnel generally have helped us to weather these diverting factors, but the most significant

<sup>25</sup> P. Wald, *Law and Poverty: 1965*, p. 1, working paper for the National Conference on Law and Poverty sponsored by the Attorney General of the U.S. and the OEO, Washington, D.C., 1965; Speech by E. Clinton Bamberger, Jr., National Conference of Bar Presidents, ABA, Chicago, Feb. 1966; Speech by W. Barvick, Wyoming State Bar Association, Riverton, Wyo., Sept. 1966.

<sup>26</sup> Speech by N. Katzenbach, National Conference on Law and Poverty, Washington, D.C., June 1965.

<sup>27</sup> Report of speech by OEO Director R. Sargent Shriver, *Chicago Daily News*, Nov. 18, 1964.

<sup>28</sup> Speech by J. Cahn, Annual Meeting of Junior Bar Conference, Miami, Aug. 1965.

<sup>29</sup> Cahn & Cahn, *War on Poverty: A Civilian Perspective*, 73 *YALE L.J.* 1317 (1964).

<sup>30</sup> *Legal Services and the War on Poverty*, 13 *CATHOLIC LAW.* 272, 283 (1967).

<sup>31</sup> Speech by Hon. Marvin E. Frankel at First Meeting of the Smith Fellows, Philadelphia, Pa., Aug. 1967.

<sup>32</sup> In A. HUXLEY, *BRAVE NEW WORLD REVISITED* (1958), the author states “In public and private life, it often happens that there is simply no time to collect the relevant facts or to weigh their significance.”

reason for the health and growth of the program is the intrinsically sound principle and the praiseworthy objectives of the OEO Legal Services Program itself.<sup>33</sup> In spite of the support given by the ABA<sup>34</sup> and the NLADA,<sup>35</sup> state and local bar associations and many individual lawyers expressed their opposition to the federal program.<sup>36</sup>

Fortunately, the confused and misinformed public began to listen to the more mature leaders. Sargent Shriver, Director of the OEO, was particularly effective in dispelling the misconceptions. In an address to the American Bar Association in 1965, he stated clearly and directly:

We are not trying to impose a uniform federal blueprint . . . .

<sup>33</sup> *But see* M. Mayer, *THE LAWYERS*, ch. 8 (1967), where the author is somewhat critical. "Unfortunately, the advocates of vastly extended legal services for the poor become trapped in a rhetoric of 'rights,' most of which are not applicable to the problem." *Id.* at 293. The OEO has "not been content to see the lawyers . . . doing what lawyers can do." *Id.* at 299. "The false emphasis on rights, which is merely self-confusing in the private sector, becomes a handicap to rational planning when the OEO-sponsored lawyers come to deal with public agencies." *Id.* at 294.

<sup>34</sup> Resolution, NLADA House of Delegates (Feb. 1965).

<sup>35</sup> *See* NLADA, *Summary of Conference Proceedings*, 1965.

<sup>36</sup> Walker, *Et Tu Brutel!*, TENN. B.J. (Aug. 1965); Resolution, Board of Governors, The Florida Bar, March 19, 1966 (critical in part only—relating to bar participation); Resolution, Board of Governors, American Trial Lawyers Association, March, 1966 (critical in part only—again referring to role of the bar). Note that most of these objections were overcome by amendment (Title II, § 211-1(b) of the EOA in 1966); Resolution, Council of the North Carolina State Bar, Oct. 7, 1966.

We are not trying to take paying customers away from the private practitioner . . . .

We are not trying to subvert the canons of ethics . . . .

We are not trying to replace lawyers with . . . laymen . . . .

We are not trying to turn legal aid into a political patronage system.

We are not trying to use federal money to destroy the independence of the bar.

We are not trying to reduce or kill off private and charitable sources of funds.

We do not intend to bypass the organized bar or to exclude legal aid and public defender agencies.

Soon thereafter a well recognized and widely respected lawyer was appointed as director of the Legal Services Program.<sup>37</sup> New *Guidelines* were prepared with advice and assistance from the NLADA and other members of the legal profession. The NLADA was given a grant to employ two staff attorneys to assist in field work. The ABA, NLADA and the National Bar Association joined the Legal Services Program in their favorable testimony before various subcommittees of Congress to advise the lawmakers of the official position of the organized bar on the need for a continuation and extension of federally supported legal services.

<sup>37</sup> E. Clinton Bamberger, Jr., member of the law firm of Piper & Marbury, Baltimore, was named Director in Sept. 1965. He was succeeded by Earl Johnson, Jr., a highly competent lawyer who had experience in the Neighborhood Legal Services Project, Washington, D.C.

With these developments, coming after the uncertainties of the early period, the number of outspoken critics of the OEO has been greatly reduced. Many of the bar associations that had expressed disapproval have reversed their stand and are now fully cooperating.<sup>38</sup>

Conceding that the federal "bugaboo" has been at least dissipated, we must admit that we still have some unresolved procedural questions. Are we smart enough to maintain a balance between public and private support? Can we retain the advantages of both resources without becoming all one or the other? Must one—like bad money under Gresham's Law—drive out the other? Now that most legal services rely on both, what is the future?

A thoughtful report by the Acting President of Carnegie Corporation touches upon these issues.<sup>39</sup> He discusses the problems of financing private agencies by governmental assistance, comparing the experiences of universities in getting grants or contracts to support needs for other private, non-profit agencies.

Clearly the university case has been well made. But the same case has never been made for using public money to develop the general capacity of non-governmental organizations to do their

jobs more effectively. The standard government position here is that it is simply buying services as a commodity and has no responsibility for the basic health of the suppliers. Therefore it must not pay for a whit more (and often less) than the tangible products it receives, whether research or services; it must buy at the lowest possible price; and it must limit its support to the program and administrative costs of a carefully defined project with a specific terminal date.

This kind of support is in the long run harmful to the nongovernmental organizations. It tends to produce mushroom growth and to place them in a position where they must continually seek further project support of the same nature to prevent the laying-off of staff and closing-down of programs. Thus, the paths of these organizations become characterized by frequent changes of direction induced by Washington's concerns of the day, rather than deliberate courses set by the organizations' own boards of trustees. This process in turn can diminish the interest of the trustees, and hence their sense of responsibility—which is the very heart of effective voluntary private service in the public interest.

Others have raised the question of the future of voluntary agencies. T. Gordon Harris, a senior editor of *Look* magazine, expresses some hope for a revival of vitality of voluntary groups: "at precisely this moment . . . the voluntary principle has taken life again. A new crop of professional staffers and citizen leaders seems to be springing up."<sup>40</sup>

<sup>38</sup> Resolution, Board of Governors, Tenn. Bar Ass'n., Nov. 11, 1966; Agreement reached between Council of North Carolina State Bar and Legal Services Program, April 14, 1967; AMER. TRIAL LAW. NEWSLETTER, June 1966. However, this was not a complete endorsement, see AMER. TRIAL LAW. NEWSLETTER, Aug. 1967.

<sup>39</sup> Pifer, *The Nongovernmental Organization at Bay*, ANN. REP., CARNEGIE CORP. OF N.Y. (1966).

<sup>40</sup> Harris, *Design and Direction for Voluntary Association*, AAUWJ., Oct. 1967. In discussing the "distinctive characteristics" of voluntary agencies, he points out: "Through

It is essential that the proportion of local, private support be maintained. What can be done to make certain that this source will not diminish? Will private donors give less, now that the OEO is supplying most of the money? A recent study of priorities made for the Community Fund of Chicago recommends that no additional financial assistance be given to the Legal Aid Bureau to take care of the demands made by increased costs and by population growth, as this service should look to government for most of its support.<sup>41</sup> The NLADA has received reports that a few community funds have refused to participate in supporting an OEO funded project<sup>42</sup> and some indicate that future giving may be reduced. However, the United Community Funds and Councils of America adopted a policy of support and cooperation, saying:

There is full agreement that both governmental and voluntary activity is needed. . . . Voluntary community fundraising groups should include funds in their budgets to match governmental appropriations for local community action programs. . . .<sup>43</sup>

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them, people act upon belief or dogma without the restraint imposed upon Government, with its needs for legitimacy or broad consensus, and without the discipline imposed upon business by the necessity to find customers enough to make a profit."

<sup>41</sup> 2 Priorities and Profiles, Community Fund of Chicago and the Welfare Council of Metropolitan Chicago, 1967.

<sup>42</sup> E.g., Letter from Executive Director of United Givers Fund, Macon, Ga., to NLADA, Mar. 14, 1966.

<sup>43</sup> *Government and the Voluntary Sector in Health and Welfare, Statement of Consensus*, UCFCFA, Sept. 27, 1966, New York City.

A good case can be made for the proposition that it is now as important (if not more so) that private giving be encouraged as it was before OEO, so that a proper balance can be maintained between public and private support of these necessary services.

The present ninety percent funding by the OEO has been reduced to eighty percent.<sup>44</sup> In commenting upon this provision, William T. Gossett, President-elect of the ABA, said: "Certainly the presently provided 20% local matching requirement will have a disastrous effect upon the program and will necessitate budget decreases at a time when encouraging effectiveness is being reached."<sup>45</sup> In places where a new program is started under OEO, there is little or no problem in the community paying the ten or twenty percent or even more. It works out, however, that areas that had been spending a substantial amount for legal services (even though inadequate) are, in a way, penalized by having to continue their present expenditure and face an increased percentage of matching funds for extensively broadened services.

This leads me to the conclusion that it is the *maintenance of effort*<sup>46</sup> aspect of the statute that should be revised. Under the EOA, this requirement is subject to "such regulations as the Director may adopt and promulgate. . . ." I certainly

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<sup>44</sup> Economic Opportunity Act, Title II, § 208-(a) & (b) (1966); Economic Opportunity Act, Title II, Part B, § 225(c) (1967). See 3 U.S. CODE CONG. & AD. NEWS 4280, 2d Sess. (1966).

<sup>45</sup> Statement made before Committee on Education and Labor, U.S. House of Representatives, July 17, 1967.

<sup>46</sup> Economic Opportunity Act, Title II, § 208(c) (1966).

would not want the federal money to be used in lieu of what is being spent locally, but somehow those places that are raising considerable moneys locally should be given some credit or consideration under maintenance of effort requirement in "situations where literal application of such requirement would result in unnecessary hardship or otherwise be inconsistent with the purposes sought to be achieved." Just what formula could be used or how this should be worked out, I have no definite answers. But this is the part of the statute that needs reconsideration.

Some are nagged by another question: are we really complying with the letter and the spirit of the *Guidelines* and the Economic Opportunity Act applying to its independence and local administration?<sup>47</sup> However, placing more control in local units of government is not the complete answer if we want the services screened from partisan politics. They cannot remain independent—a necessary characteristic of an effective legal assistance program—with someone from the mayor's office looking over the shoulders of the lawyer. This probably will be the effect of the 1967 amendments to the EOA which define a Community Action Agency as a state or political subdivision or an agency designated by the unit of government. The hard question is how to make the individual projects a real and integrated part of the community's legal services without handing the control to politicians. Some fear that if the local gov-

ernment is not given a greater voice, the trend toward a national organization of federally supported units tied closely to CAP will be furthered. If more than a nodding recognition is paid to the philosophy of "creative federalism," LSP must share more of the professional activities with other groups. LSP still jealously guards what the staff considers to be the proper and necessary role of the national office in matters ancillary to grant activities. These programs include field visits, evaluations, window posters, clearinghouses for briefs, news releases, television films, a house organ, and other publications—all bearing the distinctive insignia of LSP. National training programs are being established and technical training seminars are anticipated. The project directors are called to national workshop conferences with travel expenses provided. One hears members of the LSP staff too often refer to "our" offices, "our" directors, and "our" projects.

I am not suggesting that any one of these is bad—but I am raising the question of the trend. Perhaps we need a greater polarization of legal agencies. Perhaps the federal office is attempting to fill a need in the area of evaluation that should be, but is not, attended to by the legal profession, even though the 1967 Economic Opportunity Act emphasizes independent evaluations.

Should we not ask what is the role of bar associations in this development? What are the responsibilities of the NLADA? The organized bar certainly cannot escape its obligations in the field of ethics, standards, and other matters pertaining to the competency of lawyers

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<sup>47</sup> Economic Opportunity Act, Title II, §§ 202(4), 211-1(b); *Guidelines*, Legal Services OEO, at 3, 8. See 1 U.S. CODE CONG. & AD. NEWS 595-99, 1st Sess. (1964).

and their relation with their clients and the courts.

Some in the NLADA and many of the bar associations feel that the LSP administration does not want a real partnership. Certainly in the early days of the OEO, the NLADA was not considered as eligible for membership in the club. It was thought that the "traditional" legal aid group was too inflexible and unimaginative to qualify. And it must be admitted there was some justification for this belief. However, again and again NLADA has demonstrated its aggressiveness and its commitment to the objectives of the LSP in the belief that "creative federalism" calls for a true partnership approach to the problems of poverty.

It may be that these manifestations should be expected of a new national bureaucracy. An image must be preserved for Congress to observe. Also, sometimes intra-agency pressures create a competitive relationship among its divisions in a kind of sibling rivalry, as the social workers say. Perhaps an obvious struggle for identity is to be expected of the new kid on the street.<sup>48</sup> But all this is in viola-

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<sup>48</sup> Perhaps it would be more accurate to say that the real difficulty lies within the structure of the OEO: the relationship between the CAP and LSP, rather than between LSP and the established private legal organizations. This disturbing fact became most noticeable outside OEO a few months ago with the report of McKinsey & Co. on reorganization of CAP which ignores the adversary nature of law practice. As the LSP *Guidelines* provide, legal services must be independent. Furthermore, continued insistence upon submerging LSP within CAP will destroy the present working relationship with the organized bar and with lawyers individually. Such a state of affairs would be little short of suicide for the legal services part of OEO.

tion of the spirit and the purpose of the government's efforts to eliminate the causes of poverty. The idea of the government relying upon resources other than its own is well expressed by Max Ways in "Creative Federalism and the Great Society."

Tens of thousands of professional and managerial types, in and out of government service, are shaping and executing Great Society programs. This is as it should be, for professional and managerial men are preeminently oriented toward direction choosing and problem solving within a complex framework of many centers of decision.<sup>49</sup>

The strength of the LSP is related to funding processes and other budgetary matters rather than to its genius for organization. LSP is not equipped with staff or by experience or with Congressional directive to become a national professional organization. I cannot believe that there is any conscious effort on the part of the LSP staff to bring about such a development. The Director appears to be most cooperative with the NLADA, the ABA and local bar associations. The local offices are permitted to join the NLADA. Joint conferences are being sponsored and, of course, many well established legal aid societies have been given federal grants to enlarge their services.

Also, the appointment of a national advisory committee composed of lawyers (with one exception) is further evidence that the present administration is beginning to realize the value of a close tie with the legal profession (not only during

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<sup>49</sup> *Fortune*, Jan. 1966.

crucial debates on appropriation bills in Congress, but in the delegation of certain functions that other groups might do as well or better). This committee (even though it has no representatives of the poor) has been very effective so far. One further step might be taken. Its status—a kind of a “kitchen cabinet”—should, perhaps, be clarified by amendment to the EOA, so that rather than being advisory only, it might be given policy making powers.

In our zeal to maintain local independence of legal aid facilities, there is, of course, a danger in retreating from federal influence and backing into city hall.<sup>50</sup> Since lawyers are less vulnerable to political pressures than is the local CAA, the legal profession makes an ideal copartner—one that will make certain that neither the CAA nor the city controls the operation of the poor man's law office.

Mr. Pifer, in calling for a new approach to a private-public partnership, makes this pertinent observation:

The probability is that project support alone will in time make these organizations little more than appendages of government. What may also develop,

since government officials cannot in the very nature of their jobs take consistent responsibility for the affairs of private organizations, are situations in which responsibility falls somewhere between government and trustees, with no effective check on the activities of staff. The dangers here are obvious.

What I have said suggests one problem—and a real one—but one which can be worked out satisfactorily. Regrettably, there appears to be another which is as serious in affecting the smooth and proper operation of administrative procedures. This one is related to the fuzzy area of responsibility between Legal Services Program and the local (and regional) Community Action Program. A great many complaints have been made over bottlenecks that exist somewhere along the path that an application must take before it is finally acted upon. It is a long, hazardous journey from the initiating group to the local CAA to the OEO regional office to Washington and back, frequently by an equally circuitous route—with a stop-off in the governor's office—and the LSP legal consultants and directors playing what seems to be too minor a role. The efficiency of procedure must be gauged by the weakest and the most indifferent administrative unit. Local sponsors have reported that several programs have been lost and may have been unnecessarily delayed somewhere along the way—to say nothing of the conflicting reports made and duplication of reviews required. This argues for a single line command, but it should be through channels manned primarily by lawyers. There is much discussion around proposals to take LSP from the

<sup>50</sup> See, *Snarls Delay Legal Aid Set up for City's Poor*, The Chicago Daily News, Nov. 11, 1965, reporting that a bar official stated that the city was insisting upon screening clients and wanted agreement that the OEO-funded service would not file any suit against the city. (The issue was resolved by the community supported Legal Aid Bureau agreeing to take these cases.) The EOA of 1967 gives the state and principal local bar associations more opportunity to comment on programs—at the proposal stage and after funding. 42 U.S.C.A. §§ 2701-2991 (Supp. 1967).

CAP and create a separate organization or integrate the program into an existing agency. Whatever direction is finally taken, the program cannot be divorced from the legal profession unless we want it to wither away, or explode.

In observing these national trends, we must admit that some effort—but not enough—has been made by the NLADA and the ABA to meet their responsibilities for coordinating and improving the administration and the substance of legal services for the poor. The following NLADA developments are illustrative:

- (a) Revised standards have been developed;
- (b) A committee on accreditation and evaluation has been appointed and is at work;
- (c) A joint program (OEO, NLADA and ABA) of evaluation has been developed;
- (d) Joint sponsorship of workshops, seminars and conferences has been planned and carried out;
- (e) The NLADA Review Committee has made a detailed report on the function and structure of NLADA and efforts are being made to implement the recommendations;
- (f) *The Legal Aid Briefcase* has been expanded and the *Legal Aid Digest* has been created to meet the needs for material on poverty law;
- (g) Staff additions have been made (a director of development program and a director of research and publications);
- (h) A study of eligibility of clients has been made;

- (i) Other services (including the preparation of a film clip for television, posters for publicity purposes, amicus briefs in certain "test" cases, materials on ethical questions) are being provided;
- (j) A community counsel project has been incorporated by NLADA (funded by OEO) and is now operating;
- (k) A council on housing and the law is now under consideration by NLADA in cooperation with ABA and other organizations.

The matter of evaluation, and eventually that of accreditation, has emerged as something the legal profession must work on—now. Of course, there are standards for both civil and defender offices which the NLADA has developed (and which have been adopted by the ABA), but these are too general. Also, the NLADA is continuously making field trips, conducting studies and making reports which are in effect evaluations. This is in addition to the joint evaluation program being developed with LSP, ABA and NLADA. We must move further in this direction.

In addition to being a law office, a legal aid or defender service is a community agency, usually a corporate body, supported by private or public funds. It is an administrative unit also, to which clients are referred to in the trust and belief that the organization provides competent, professional assistance. Here donors' money is handled, lawyers and lay assistants hired, volunteers engaged, law students taught and public relations programs developed. In these respects, it differs from private law firms.

In other specialized law practices something close to evaluation is required: patent lawyers have to pass a special examination; many bar associations screen lawyers for their lawyer reference panel on personal injury, real estate, etc.; law schools are accredited. Other agencies are evaluated and accredited: family services associations, hospitals, and schools.

Three general observations should be made:

- (1) The practice of law is an art, and as such cannot be evaluated by the usual yardsticks;
- (2) Objective standards can be applied to some but not to every phase of the service;
- (3) Conclusions reached will be relative rather than absolute.

It is a matter of common knowledge that there is a wide variety of types of agencies providing civil legal services—ranging from the informal committee system to the carefully organized non-profit corporation. They differ in structure: the department of social agencies, municipal bureaus, bar association offices, law school clinics, independent societies, and separate OEO-funded services. On the criminal side, there exist four principal methods: the loose assignment of counsel plan, the public and private defenders, and those that have characteristics of all these three methods. As to personnel, the range is from volunteers, to part-time, to full-time employment. As to competence of personnel, the variance is even greater: from young inexperienced lawyers (and, of course, ineffective “experienced” ones) to the highly skillful. Great differences

also exist as to other fundamental characteristics: salaries, eligibility qualifications, availability, and types of cases accepted.

All this suggests that there are built-in obstacles in evaluating any service program and that this is especially true of professional services. None the less, there are some tangible characteristics which have great bearing on the final performance of the lawyer (or the teacher, or the physician). For these, yardsticks can be used. They may relate to physical quarters, available supporting services, or to the volume of work which must be done. Even with the lawyer himself, certain minimum qualifications—such as education and experience—can be written into standards.

Other matters, particularly administrative ones, can be subjected to standards: the financial structure, the eligibility rules, the scope of the service and the availability to those served. All these, regardless of the competency of the lawyer, affect the over-all effectiveness of the legal assistance program—and all these can be inventoried and evaluated.

Aside from these difficulties, there exists the most obvious objective: that of giving meaning and real substance to the judgments of the evaluating agency. At the present time, there are no legal mandates, no penalties, no sanctions, no authoritative commands. In this respect the agency will differ from those that rate hospitals, secondary schools, medical clinics and law schools. The force of any pronouncement will depend upon

*(Continued on Page 174)*

ingful opportunity to influence events which affect them and their community. However, effective utilization of the courts requires legal assistance, a resource seldom available to the poor.

Litigation is not the only need which ghetto residents have for legal service. Participation in the grievance procedures suggested above may well require legal assistance. More importantly, ghetto residents have need of effective advocacy of their interests and concerns in a variety of other contexts, from representation before welfare agencies and other institutions of government to advocacy before planning boards and commissions concerned with the formulation of development plans. Again, professional representation can provide substantial benefits in terms of overcoming the ghetto resident's alienation from the institutions of government by implicating him in its processes. Although lawyers function in precisely this fashion for the middle-class clients, they are too often not available

to the impoverished ghetto resident.

The legal services program administered by the Office of Economic Opportunity has made a good beginning in providing legal assistance to the poor. Its present level of effort should be substantially expanded through increased private and public funding. In addition the participation of law schools should be increased through development of programs whereby advanced students can provide legal assistance as a regular part of their professional training. In all of these efforts, the local bar bears major responsibility for leadership and support.

Hopefully, as black and white, wealthy and poor alike come to see that violence begets violence and that this "new wave" of concerned lawyers will stand tall for the individuals and groups it serves no matter what the pressures, we shall continue to look to the majesty of the law as the instrument for its own reform.

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## T R E N D S

*(Continued)*

the prestige of evaluators, upon the attitude of the organized bar, upon the role assumed by a majority of the legal aid and defender organizations, and upon the public generally.

All this suggests the size of the assignment of NLADA's Special Committee

on Evaluations headed by E. Clinton Bamberger, Jr., of Baltimore.

It is not too speculative to suggest that during coming months the present interest and concern of the legal profession will be devoted to a sound program of evaluation, thereby remaining participants—not just observers—in the events that determine the trends in Legal Services for the Poor.

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