

The Catholic Lawyer

Volume 16
Number 2 *Volume 16, Spring 1970, Number 2*

Article 5

January 2017

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THE WAR ON POVERTY: LAWYERS AND LOGISTICS

JAMES M. ROSE*

When the Office of Economic Opportunity (OEO) was created by the Economic Opportunity Act of 1964,¹ the underlying intention was to create a force to do battle with sources of poverty.² By coordinating programs from legal services to emergency food, an attack upon the self-perpetuating conditions of poverty was to be undertaken.³ Such a course of action is a long-term project almost by definition.⁴ Moreover, it necessarily involves resources beyond those granted by a limited budget.⁵ The original conception of the OEO not only constituted a source for new programs, but also was to act as a coordinator of the myriad programs already being run by federal agencies to assist the poor in America.⁶

The anti-poverty program is supplemented by the efforts of a wide variety of federal agencies.⁷ For example, manpower training for the

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¹ 78 Stat. 508 (1964), 42 U.S.C. § 2701 (1964). See generally SELECT SUBCOMMITTEE ON POVERTY OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, THE WAR ON POVERTY, THE ECONOMIC OPPORTUNITY ACT OF 1964, 88TH CONG., 2D SESS. (Comm. Print 1964).

² Yarmolinsky, *The Beginnings of OEO*, in ON FIGHTING POVERTY, PERSPECTIVES FROM EXPERIENCE 35, 47 (J. Sundquist ed. 1969).

³ Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). See generally K. CLARK & J. HOPKINS, A RELEVANT WAR AGAINST POVERTY, A STUDY IN COMMUNITY ACTION PROGRAMS AND OBSERVABLE SOCIAL CHANGE (1968).

⁴ Green & Faux, *The Social Utility of Black Enterprise*, in BLACK ECONOMIC DEVELOPMENT 21, 36 (W. Haddad & G. Pugh ed. 1969).

⁵ Sundquist, *Origins of the War on Poverty*, in ON FIGHTING POVERTY, PERSPECTIVES FROM EXPERIENCE 32 (J. Sundquist ed. 1969).

⁶ See generally Yarmolinsky, *supra* note 2.

⁷ U.S. OFFICE OF ECONOMIC OPPORTUNITY, CATALOG OF FEDERAL ASSISTANCE

disadvantaged is available from the Department of Labor;⁸ the Department of Health, Education and Welfare provides income additions for the needy;⁹ surplus food may be obtained from the Department of Agriculture commodity distribution programs;¹⁰ and many different housing programs are operated under the approbation of the Department of Housing and Urban Development.¹¹

There are many approaches to the ghetto situation as evidenced by these various agencies and their methods of combating the problems of the poor. There has never been a comprehensive strategy of attack, and the programs that are embodied within the eight titles of the Economic Opportunity Act attest to and continue the conglomeration of approaches directed toward the elimination of poverty.¹² However, one of the many strategies which has become increasingly popular in recent months is economic development. The term is borrowed from economics where it has been primarily used

to describe attempts to bring underdeveloped nations into competition with the more industrialized countries of the world. The typical underdeveloped nation exports raw materials and imports finished products, thereby creating an outward flow of capital due to the high cost of manufactured goods. This adverse situation prevents the country from accumulating the capital necessary for acquiring the means of production which would enable it to begin its own industrialization. This primitive economy is also characterized by a surplus of unskilled labor and a dearth of skilled tradesmen and professionally trained leaders of commerce. Similarly absent are capital circulating institutions such as banks or loan companies. Consequently, capital leaks or flows out of the country instead of remaining within the community where it could regenerate.

The temptation is irresistible to analogize the ghetto neighborhood to the underdeveloped country.¹³ Similarly, a rhetorical comparison to the countries colonized by imperial powers, followed by a conscious

PROGRAMS TO ASSIST THE AMERICAN PEOPLE IN FURTHERING THEIR SOCIAL AND ECONOMIC PROGRESS (1967).

⁸ 76 Stat. 23 (1962), *as amended*, 42 U.S.C. § 2571 (Supp. III, 1968).

⁹ 49 Stat. 620 (1935), *as amended*, 42 U.S.C. § 301 (1964).

¹⁰ 80 Stat. 887 (1966), *as amended*, 42 U.S.C. § 1774 (Supp. IV, 1968); 63 Stat. 1058 (1949), *as amended*, 7 U.S.C. § 1431 (Supp. IV, 1968).

¹¹ Housing and Urban Development Act of 1968, Pub. L. No. 90-488, 82 Stat. 476; Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, 80 Stat. 1255.

¹² Actually, the curious admixture which comprises the Act is due to the pressure of various lobbying groups and their differing notions designed to fight poverty. DeLorean, *The Problem*, in *BLACK ECONOMIC DEVELOPMENT* 7, 15-16 (W. Haddad & G. Pugh ed. 1969).

¹³ Harlem has 500,000 black people who spend \$500,000,000 each year on consumer goods, a sum larger than the gross national product of many developing nations. Yet 80% of Harlem's 6,000 retail and manufacturing businesses are owned and managed by white people, who, of course, have little interest in the welfare of the community itself. Profits made in Harlem industries are drained off, not pumped back into Harlem's economy. The root difficulty, of course, is the fact that almost no one who lives in Harlem owns anything.

MOBILIZING FOR URBAN ACTION: CHALLENGE TO BUSINESS 32-33 (Am. Mgt. Ass'n ed. 1968). See also Miller, *Community Organizations in the Ghetto*, in *SOCIAL INNOVATIONS IN THE CITY: NEW ENTERPRISES FOR COMMUNITY DEVELOPMENT* 97, 99 (Rosenbloom & Marris ed. 1969).

pattern of exploitation, is very appealing to the ghetto residents. Whites are viewed as occupying forces¹⁴ owning the assets of the black community as the colonial administrators and governments owned the real property of the colonized nation. Whether the white man intended to be an imperialistic parasite upon the carcass of the poor neighborhood or merely became trapped there by the expansion of the suburbs, it is obvious that there are valid economic parallels to the primitive nation that finds it is sending its capital to foreign institutions for investment elsewhere.

The obvious solution to these analogous situations is to stem the outward flow of the community's assets by encouraging the residents to assume the responsibilities of ownership.

This article intends to expand the "primitive country" analogy by ferreting out the role of the attorney in giving meaningful assistance to the ghetto, and will suggest some methods to increase that aid.

Tools for Economic Development

Increasing the amount of capital is not the only exigency in the underdeveloped country. Their society, like the low income districts in America, lack other tools necessary for economic development. In its broadest sense, "tools" means any instrument capable of developing the capacity to infuse capital into the economy of an area. Specifically these tools fall into three categories.

¹⁴ Innis, *Separatist Economics: A New Social Contract*, in *BLACK ECONOMIC DEVELOPMENT* 50, 53 (W. Haddad & G. Pugh ed. 1969).

Real and Personal Property

Real and personal property are the actual physical tools that a community must have to conduct business. Ghetto land, seldom owned by the people who live upon it, is the means to economic development. The physical ownership of land and its attached fixtures blocks the outward flow of capital to absentee landlords. Moreover, ownership of real estate such as a store is important if an area is to avoid the stigma of a company town.¹⁵ Concomitantly, this will develop a sense of pride in an area. Additionally, personal property necessary to conduct a business is sorely needed. For example, in order to operate a trucking business, a company must have a truck. Frequently, the means for acquiring such a simple thing as a truck are not available to one with a poor credit rating. Consequently, the desired end is not attainable.

Capital

Economic development is necessary in an area where there is no capital generating structure. Capital provides access to both the physical tools of industry and those who possess the skills to operate them. Moreover, capital in the hands of a clever businessman can be manipulated to work for him. Thus, black ownership of banks, credit unions, investment companies, and other capital generating structures is essential to the ghetto community. The bank recirculates the money of the community, and also multiplies capital through judicious investments. No community can be self-sufficient

¹⁵ Bluestone, *Black Capitalism: The Path to Black Liberation?* 1 *REV. RADICAL POL. ECON.* 36, 38 (1969).

if it must send its money to alien financial institutions for recirculation. However, capital alone is insufficient to maintain the community's wealth, because just as wages and income have leaked out in the past,¹⁶ so too will capital.

Knowledge

The most important tool for community development is knowledge. This is often the technical knowledge to complete a specific physical act such as building a house or repairing a piece of broken equipment. It can also be a broader concept such as the ability to plan. These skills are typified by businessmen, bankers and lawyers who deal with the outside communities. It is the kind of tool which can best be used to help a community build itself.

Consider the analogy: when an underdeveloped nation needs assistance, it receives not only the physical equipment but also the capital and technical advisors to do the job. A bulldozer sent to an African nation needs not only the men who know how to operate and repair it, but also people to plan the contemplated project. Furthermore, capital is needed to purchase gasoline and parts for the project. If wisely

invested, this can generate more capital and leverage for this and future projects.

Access to these tools is vital. The problem of logistics for the ghetto is not as drastic as in the case of an underdeveloped nation geographically isolated from its source of supply. Nevertheless, barriers to the free flow of these important instruments exist.¹⁷

Differing philosophies have evolved as to how these tools should be brought to the ghetto.¹⁸ The lawyer is a key instrument here. Some writers suggest that a professional poverty fighter must be trained to be sensitive to community problems¹⁹ while others insist it is vital to engage a practitioner who is not a poverty specialist but who will be broadened by his contact with the low income community.²⁰ The mechanisms for delivering the services, so vitally needed, are also points of contention.²¹ Additionally, three strategies of economic development are debated by those who wish to infuse capital into a community. A knowledge of this debate is a necessity for the practitioner.

The Debate over Economic Development

It is important to realize that economic development is a goal and not a system. When those who are interested in develop-

¹⁶ See generally Address by Andrew F. Brimmer, *The Banking System and Urban Economic Development*, Joint Session of the 1968 Annual Meetings of the American Real Estate and Urban Economics Ass'n, and the American Finance Ass'n, Chicago, Illinois, December 28, 1968. Mr. Brimmer feels the black banks are less than successful because of a lack of experienced management and their excessive overhead expenditures. See also Samuels, *Compensatory Capitalism*, in *BLACK ECONOMIC DEVELOPMENT* 60, 62-64 (W. Haddad & G. Pugh ed. 1969).

¹⁷ DeLorean, *supra* note 12, at 15.

¹⁸ See generally Cahn & Cahn, *supra* note 3.

¹⁹ *Id.* at 1334.

²⁰ Jones, *Wall Street Law Goes Into the Ghetto*, 5 SIGNATURE 46, 48 (1970).

²¹ Garrity, *Business in the Ghetto: How Law and Graduate Business Students Can Help*, 25 BUS. LAW. 202-03 (1969); see also DeLorean, *supra* note 12, at 16.

ing businesses in the ghetto mention "economic development," they are generally speaking in terms of one or more of three different theories.

Individual Entrepreneurs

The first method is the traditional way in which business is transacted around the country, *i.e.*, by individual entrepreneurs. The strengths and weaknesses of this approach are inherent within its philosophy, which holds that business must be transacted in the low income areas today as it has always been conducted. This procedure has withstood the rigors of time. More importantly, it gives "a piece of the action" to the individual owner.²² Indeed, most of the government aid programs are oriented toward the individual.²³

Although the people in the ghetto want to succeed just as others have done, the dramatic changes in our economic structure over the years mandate that the old methods to success are no longer the best. Nonetheless, the people are insistent upon proving to themselves and their community that they can succeed on their own, and since the individual businessman is the model they have seen, it has become the one they wish to emulate. It is, of course, also the most spectacular and financially rewarding method by which the individual can succeed.

The drawbacks of the method include the high rate of failure.²⁴ Success requires the

most intensive investment of capital and assistance from lawyers, business consultants, accountants, and other specialists from the outside communities.²⁵ It is probably the slowest method of developing an area economically. If a fixed amount of capital is to be injected into an area, a better result will be achieved, in all likelihood, if the capital is invested in one or two large enterprises rather than in a series of small entrepreneurs.²⁶ The alternative would be to invest everything in a single small businessman. Unfortunately, this would result in one man owning a vast proportion of the resources of an area, and, regardless of his origins, disappointment is bound to arise among his peers who would much rather be capitalists than workers.

Cooperatives

The traditional alternative to majority stockholder capitalism has been the cooperative movement. Cooperatives are enterprises that are usually incorporated under provisions in state statutes which set forth the conditions for their creation and operation. Of course, all businesses buy and sell in the same general manner, and a cooperative is no different.²⁷ Ownership and management is achieved through a one man-one vote system regardless of the number of shares owned by individuals. This is intended to provide community control and complete customer participation. The diffusion of ownership makes every individual a capitalist with a voice in how

²² Garrity, *supra* note 21, at 202.

²³ See, *e.g.*, 13 C.F.R. § 120.4(b)(2) (1970).

²⁴ A large percentage of small businesses fail within one year of their formation. See Boston Globe, Nov. 10, 1968, at 10-A.

²⁵ Johnson, *Profit Sharing*, BOSTON, Mar. 1969, at 80.

²⁶ Samuels, *supra* note 16, at 62.

²⁷ This does not hold true for the direct charge cooperative.

the business is to be run. It is an accelerated method of getting ownership to the people, although a much smaller proportion of capital is controlled.²⁸ It also provides the individual with the incidental benefit of setting, to some degree, the consumer policies of a store. In this era fraught with deceptive practices, particularly in the ghettos, community ownership of business provides numerous advantages. For example, the cooperative does not raise its prices when welfare checks are issued, nor does it make it a practice to sell inferior merchandise.²⁹

The disadvantages of cooperatives include the fact that they meet with some opposition on the part of the community because they are not the traditional form of transacting business. The cooperative often cannot get aid from government agencies³⁰ and also lacks the expertise to run a business. A small cooperative cannot compete with the volume buying discounts that a large chain can give on the same products.³¹

Another community-owned business that functions on the one man-one vote principle is the credit union.³² Credit unions

are especially important because they are financial institutions which recirculate capital within the community. They act as cooperative loan companies, making loans from money paid by their members. Members open a share account and receive a small dividend on their investment from the profits of the credit union. The growth of a credit union is painfully slow because their assets must accumulate from the meager savings of the low income community members that they serve. The "union" is managed by the community, which must learn not to run it as a charity but as a business, making loans only to those people who have the ability to repay. Although delinquency rates on credit union loans are high, ultimate defaults are relatively low.³³ Another problem with the credit union is that it can become an instrument of political power within the community; and that too leads to disaster.

Community Development Corporations

Recent attempts have been made to piece together a sophisticated corporate structure to act as a holding company to invest in and manage either privately owned or wholly owned subsidiaries of the development company. One model of this "executive organization under community control" envisions a financially autonomous (but not for profit), diversified development corporation chartered to undertake community improve-

²⁸ G. BOYLE, *DEMOCRACY'S SECOND CHANCE* 85 (1941).

²⁹ FTC, *ECONOMIC REPORT OF THE FOOD CHAIN SELLING PRACTICES IN THE DISTRICT OF COLUMBIA AND SAN FRANCISCO* 30-31 (1969).

³⁰ 13 C.F.R. § 120.4(b)(2) (1970).

³¹ See generally Walker, *The Role of the Attorney in a Community Owned and Operated Cooperative*, 25 BUS. LAW. 195 (1969).

³² Federal Credit Union Act, 48 Stat. 1216 (1934), as amended, 12 U.S.C. § 1751 *et seq.* (1964). Project Moneywise is a joint program of the Credit Union National Ass'n (CUNA) and OEO. See generally AN ACTION PLAN FOR COMMUNITY DEVELOPMENT THROUGH CREDIT

UNIONS (1969) (available from CUNA International, Madison, Wisconsin).

³³ *Troubles Beset Credit Unions for the Poor*, San Francisco Chronicle, Aug. 25, 1968, at 35; *Credit Union Merger Urged by Poverty Aide*, Boston Globe, Dec. 25, 1969, at 15-A.

ment projects.³⁴ It would be more diverse than many present development corporations and would seek to increase its assets by growth and pay out social services as "community dividends."³⁵

The form of a community development corporation will depend on its goals and role in the community. The label is scarcely a generic term, and there is a rich diversity of structures that call themselves community development corporations.³⁶ An example is not a definition, but illustrations include the *Fight Project* in Rochester,³⁷ and Rev. Leon Sullivan's *Zion Investment Associates* in Philadelphia.³⁸ A rough definition would include the fact that the community development corporation is a community-owned vehicle. Some input of capital is required by the participants both

for "earnest" money and for the accumulation of operating funds. Reasonably priced shares of stock are sold to the community members, the assets of which are used to attract a large grant from the government or a private foundation, or a loan from a bank. The corporation then invests its money in community businesses of medium or large size. Profits from the businesses are returned to the parent company or passed on to a nonprofit subsidiary for use in neighborhood improvement projects such as day-care centers or community schools.

The flexibility of the vehicle is one of its major advantages. It can undertake large projects and attract large blocks of investment capital, yet keep the control of the money in the hands of its stockholders, the community residents. Its size is realistic in view of the facts of economic life today and enables it to compete with outside enterprises. If it engages in manufacturing it will create an inward flow of capital that most retail shops cannot muster.³⁹ It is comprehensive in the sense that it makes overall plans on the basis of surveys and the technical assistance of sophisticated groups. In addition, as it becomes increasingly clear that the Nixon Administration's policy with regard to the poor is to shift the emphasis from services to augmented income,⁴⁰ the need for a scheme such as the community development corporation becomes more vital.

The disadvantages of the community development corporation are well catalogued

³⁴ INT. REV. CODE § 501(c)(3) (1954) (for purposes of becoming non-taxable) and § 170 (for receiving contributions that are tax deductible to the donor). See also Weston, *Economic Development Corporations*, 25 BUS. LAW. 219, 220 (1969). See generally Note, *Tax Exemption for Organizations Investing in Black Business*, 78 YALE L.J. 1212 (1969).

³⁵ Rosenbloom, *Corporations for Urban Development*, in SOCIAL INNOVATIONS IN THE CITY: NEW ENTERPRISES FOR COMMUNITY DEVELOPMENT 163, 165, 172 (Rosenbloom & Marris ed. 1969).

³⁶ A description of the structure of many different community development corporations can be found in INFORMATION EXCHANGE PROFILES OF PARTICIPATING COMMUNITY DEVELOPMENT CORPORATIONS (1969). (A mimeographed pamphlet compiled by the Cambridge Institute, Cambridge, Mass.) See also Desidero & Sanchez, *The Community Development Corporation*, 10 B.C. IND. & COMM. L. REV. 217 (1969).

³⁷ Skala, *Inner City Enterprises: Current Experience*, in BLACK ECONOMIC DEVELOPMENT 151, 152 (W. Haddad & G. Pugh ed. 1969).

³⁸ *Id.* at 165.

³⁹ See Innis, *supra* note 14.

⁴⁰ Economic Opportunity Amendments, 81 Stat. 688 (1969), amending 42 U.S.C. § 2763 (1964).

in an article by Frederick Sturdivant.⁴¹ The article is a critique of the Community Self Determination Act which would set up a complex system of community development corporations and community banks with tax incentives available to participants.⁴² Sturdivant feels that the subsidies would erode the independence of the present day businessman and create uneconomic businesses unable to compete with outside industry. The paternal aspects of the community development corporation hamper the advancement of black managers because the board of directors makes entrepreneurial decisions. It is also possible that individuals who have little or no investment capital may be reluctant to invest in an enterprise that will funnel its profits to community betterment projects rather than return them as dividends.

The proposal to develop a national series of community development corporations as embodied in the Community Self Determination Act has drawn much discussion and criticism and the Sturdivant article is an example of the objections to this idea. The Act represents an opportunity for governmental aid on a matching basis to communities that are sophisticated enough to organize a development corporation under the extensively detailed and complex procedures of this proposed legislation. This innovative approach had many supporters, but made little headway in Congress last session. Nevertheless, it will be introduced again.⁴³

⁴¹ Sturdivant, *The Limits of Black Capitalism*, 47 HARV. BUS. REV., Jan.-Feb. 1969, at 122.

⁴² *Id.* at 123.

⁴³ See generally BLACK ECONOMIC DEVELOPMENT (W. Haddad & G. Pugh ed. 1969).

As with any business entity, attorneys are needed in all three approaches to economic development: to counsel clients, draft by-laws, and plan the tax futures of the businesses. But the attorney engaged in this practice must also be familiar with a whole new set of capital resources and federal programs which will be described below. The attorney must negotiate with the agencies involved and guide his client through the complicated application procedures.

Capital Sources

Some programs are aimed specifically at injecting venture capital into areas where small businesses might prosper. The Small Business Administration (SBA)⁴⁴ makes loans to provide for the physical tools of industry. Aid to displaced businesses is provided by statute⁴⁵ as well as by lease guarantees ensuring that landlords will receive rent payments when they lease to a small business tenant.⁴⁶

The Economic Opportunity Loan program⁴⁷ has been granting loans in ghetto areas to low income entrepreneurs, but financial and managerial expertise has not been available along with the money.⁴⁸

⁴⁴ See Small Business Act, 72 Stat. 387 (1958), as amended, 15 U.S.C. §§ 636-661 (Supp. IV, 1968).

⁴⁵ 72 Stat. 387 (1958), as amended, 15 U.S.C. § 636(b)(3) (Supp. IV, 1968).

⁴⁶ See Small Business Investment Act, 79 Stat. 482 (1967), as amended, 15 U.S.C. §§ 692-694, (Supp. IV, 1968).

⁴⁷ 81 Stat. 710 (1967), as amended, 42 U.S.C. § 2902 (Supp. IV, 1968); 78 Stat. 526-27 (1964), as amended, 42 U.S.C. §§ 2901, 2905, 2906 (Supp. IV, 1968).

⁴⁸ See generally Garrity, *supra* note 21; Samuels, *supra* note 16, at 69.

This program has not been an unqualified success.⁴⁹

Project Own of the SBA was making loans to low income participants who wished to buy out the present owners of businesses at an annual rate of 5,000 in 1968.⁵⁰ With the SBA guaranteeing 90 percent of the total loan cost, banks have increased their minority business loans by more than 800 percent.⁵¹ The SBA has attempted to provide technical assistance in the form of the Service Corps of Retired Executives (SCORE),⁵² a volunteer organization, whose members work at their own speed and initiative, and only when they want to. The SBA programs are most beneficial to and are drafted for the use of the individual entrepreneur. Capital for other types of organizations must be raised in other ways.

The Small Business Investment Acts of 1958⁵³ and 1967⁵⁴ provide for small business investment companies to take an equity position in small businesses needing capital, or to make loans to them.⁵⁵ It also provides

for low interest loans to state and local development companies⁵⁶ to aid low income areas by planning specific projects. Areas that meet the statutory requirements for "economic development areas" set forth in the Public Works and Economic Development Act of 1965⁵⁷ may receive Commerce Department financial and technical assistance to plan projects in economically depressed areas. An attorney who is familiar with the regulations for small business investment companies, the Securities and Exchange Commission law, and Internal Revenue Service procedures can build leverage on his investments.⁵⁸

On March 5, 1969, the President created the Office of Minority Business Enterprise (OMBE) to coordinate aid to minority owned businesses now available through 116 related programs from 21 different agencies and departments.⁵⁹ Until recently, such concepts as the small business investment company have not been used by ghetto entrepreneurs and developers because there was little awareness of their availability and limited access to attorneys who knew how to make them work. Because of OMBE, it will now be possible to develop many of these programs especially for the needs of low income areas. Concomitantly, the need for attorneys as ad-

⁴⁹ Goodpaster, *An Introduction to the Community Development Corporation*, 46 J. URBAN L. 603, 640 (1969).

⁵⁰ Samuels, *supra* note 16, at 69.

⁵¹ *Id.* at 70.

⁵² MOBILIZING FOR URBAN ACTION: CHALLENGE TO BUSINESS, *supra* note 13, at 35.

⁵³ 72 Stat. 387 (1958), as amended, 15 U.S.C. § 661 *et seq.* (Supp. IV, 1968).

⁵⁴ 81 Stat. 268 (1967), 15 U.S.C. § 661 *et seq.* (Supp. IV, 1968).

⁵⁵ See generally Zeidman, *The Small Business Investment Company—A Tool for Economic Self Help*, 21 BUS. LAW. 947 (1966); Note, "Showdown at Equity Gap"—A Decade of the Small Business Investment Act, 54 VA. L. REV. 772 (1968).

⁵⁶ 72 Stat. 696 (1958), as amended, 15 U.S.C. §§ 695, 696 (1964).

⁵⁷ 79 Stat. 552 (1965), as amended, 42 U.S.C. § 3121 (Supp. IV, 1968).

⁵⁸ R. KELLEY, SBIC'S IN ACTION 163 (4th ed. 1965).

⁵⁹ BASQUEZ, *The Role of the Department of Commerce in the Development of Minority Business Enterprise*, 25 BUS. LAW. 91, 93, 94 (1969).

vocates for community groups has increased.

The capital source for community controlled corporations has been the OEO. Grants have been made available either from the Special Impact Program⁶⁰ or from the Office of Program Development.⁶¹ In addition, nonprofit organizations such as the Ford Foundation have made donations to projects that appeal to them.⁶² Again, attorneys are necessary to negotiate the terms of these grants. With all the delivery systems for getting capital into the low income areas, there must also be sophisticated systems to get expertise into the community as well.

In a discussion of the Poverty Program that has become a classic, Edgar and Jean Cahn called for different proposals to get legal counsel available to the poor.⁶³ Other writers have called for schemes to get technical assistance to economic development projects.⁶⁴ The next section will present some suggestions, which are not meant to be Draconian in scope, but only designed to provoke discussion and interest.

Methods of Delivering Legal Expertise

Whatever the form of an economic development project, legal expertise will be

needed.⁶⁵ Of course, the attorney's role will be dictated by the type of economic development he is engaged to do, but even more so, he will be directed by the needs of the system to which his services are made available.

Presently, there are various ways of bringing legal services to those who need them. One method is the volunteer system. In this situation, the attorney is free to take whatever case he wishes, and refuse those clients he does not wish to represent. Many attorneys feel it is their duty to represent people who cannot afford counsel.⁶⁶ Recently, numerous members of the bar have been volunteering their services because they feel a broader practice makes them better lawyers.⁶⁷ Volunteers from large law firms involved in low income communities have been handling mostly landlord and tenant problems, divorces, criminal actions and the like. Those attorneys who generally handle corporate matters for their firm could use their time and expertise more economically by aiding community businesses. Some volunteers in Boston are participating in a program of this nature by making their skills available through a structure known as a skills bank.⁶⁸ Similarly, law student volunteers can provide needed counsel. A program which matches law students and clients under the aegis of the SBA office is an integral part of an urban law workshop at Boston College Law

⁶⁰ Economic Opportunity Amendments, 81 Stat. 688 (1969), amending 42 U.S.C. § 2763 (1964).

⁶¹ See INFORMATION EXCHANGE: PROFILES OF PARTICIPATING COMMUNITY DEVELOPMENT CORPORATIONS, *supra* note 36.

⁶² FORD FOUNDATION ANN. REP. FOR 1968, 14, 15.

⁶³ Cahn & Cahn, *supra* note 3, at 1331.

⁶⁴ DeLorean, *supra* note 12, at 17.

⁶⁵ Poor, *Dear Mr. (white) Businessman*, BOSTON, Mar. 1969, at 79; Goodpaster, *supra* note 49, at 614.

⁶⁶ Jones, *supra* note 20 at 48.

⁶⁷ *Id.* at 84.

⁶⁸ Poor, *supra* note 65, at 80.

School.⁶⁹ A beneficial learning relationship results for both the client and the student, who gives advice under the mentoring of the law school faculty. The course is loosely allied with a graduate business school seminar so that business management problems receive attention as well. In Boston, there were not enough students to go around to all the businesses that requested them.

There are presently government aided programs that partially fill the gap between supply and demand in this area; the anti-poverty program represents the major resource. Community action agencies are the grantees that administer the many anti-poverty programs of the OEO.⁷⁰ Some large programs, such as Action for Boston Community Development (ABCD) have decided to run economic opportunity programs to aid small businessmen.⁷¹ Some larger community action agencies have attorneys to aid cooperatives, community development corporations and individual entrepreneurs. However, this resource is limited in scope when it exists at all.

There also exists a legal services resource facility to provide legal counsel to cooperative and community corporations. The Western Center on Law and Poverty at the University of Southern California provides "legal assistance in the development of small businesses, neighborhood redevelopment corporations, cooperatives, buying clubs, credit unions and other projects to expand the economic base of slum com-

munities."⁷² Additionally, lawyers in the Volunteers in Service to America (VISTA) program have been assigned to economic development tasks.⁷³ These programs represent limited resources for community projects. None of them is a direct governmental aid program. The community action agencies are not federal agencies; they are local, nonprofit corporations which are funded by federal grants.⁷⁴ Legal services programs are coordinated by community action agencies and are also grantees of the federal government. It is interesting to note, while contemplating the possible configurations legal services to the low income community can take, that the present system does not utilize "government lawyers."

Possible Delivery Mechanisms

Systems for bringing lawyers to the ghetto, other than those that presently exist, may be imagined. For example, the direct employment of lawyers for this purpose by the federal government might be a perfectly viable alternative. These attorneys could be assigned to projects involved in economic development until those programs have the capability of self perpetuation. The attorney would have less latitude than if he were employed by an organization that is a grantee and that has a board of directors composed of at least one-third low income community members such as a community action agency because he would have two employers, the project and the government. Be-

⁶⁹ Garrity, *supra* note 21, at 206.

⁷⁰ Economic Opportunity Act, 78 Stat. 516 (1964), as amended, 42 U.S.C. § 2781 *et seq.* (Supp. IV, 1968).

⁷¹ Poor, *supra* note 65, at 80.

⁷² 1 Pov. L. Rptr. ¶ 8300.48 (1969).

⁷³ 5 VISTA VOLUNTEER 4, 5 (1969).

⁷⁴ Bamberger, *The Legal Services Program of the Office of Economic Opportunity*, 41 NOTRE DAME LAW. 847 (1966).

cause of the general opposition to hiring government lawyers to do tasks other than representing the government itself, there seems to be little support for this idea.

The present system draws fire for a reason similar to that just mentioned in connection with government attorneys. Many people feel that the system as presently structured employs professional social reformers and malcontents.⁷⁵ They would rather have nonprofessionals engaged in this type of work. A system similar to the grant mechanism of the OEO could be devised by which presently existing law firms could bid for government contracts in the same manner as defense contractors bid on projects. The specific needs of the community would be made known in a circular, and the government could choose the most creative and thorough proposal developed as a response.

Another major response to the lack of attorneys has been the English system, known in this country as Judicare. A potential client is certified by a government agency and then presents his certification to any local attorney of his choice. The government compensates the attorney upon presentation of a bill.⁷⁶ The system operates in a fashion similar to Medicare. An OEO research grant has recently been granted to the State Bar of Wisconsin to attempt a pilot project on its feasibility in America. It operates in 27 northern counties of Wisconsin where a client with a Judicare card can

choose his own attorney who will, in turn, be repaid from government funds.⁷⁷

Although Judicare appears to be a radical solution that will no doubt upset many lawyers, it is interesting to note that approximately the same result is reached today in a different manner. When an SBA client receives a loan or a community development corporation obtains funds from government or private sources, it must retain counsel. Part of the total disbursement it has made to attorneys will come out of its funds, and so the government is really paying the attorney's fees through its grantee.

Judicare will attract the same supporters and inflame the same opponents as Medicare has done. Perhaps some of the detractors of this plan would be interested in a final proposal to increase the community corporation's access to legal counsel by stimulating volunteers. This method largely hinges upon a simple change in the tax laws which would make volunteer involvement more attractive financially.

Section 170 of the Internal Revenue Code delineates tax law with regard to what charitable contributions are deductible.⁷⁸ The Code itself does not prohibit deductions for services rendered to a charitable institution. However, regulation 1.170-2 (a)(2) states unequivocally that "[n]o deduction is allowable for contributions of services." Consequently, a businessman can donate a rug to a legal aid office, and, even

⁷⁵ Pye & Garraty, *The Involvement of the Bar in the War Against Poverty*, 41 NOTRE DAME LAW. 853, 868 (1966).

⁷⁶ Bamberger, *supra* note 74, at 850.

⁷⁷ 1 POV. L. RPTR. ¶ 8300.11 (Apr. 6, 1970).

⁷⁸ The Tax Reform Act of 1969, Pub. L. No. 91-172, 91st Cong., 1st Sess. (Dec. 30, 1969), does not affect this problem.

if he is a rug merchant, he will be allowed a tax deduction;⁷⁹ but if an attorney donates his services to the same organization he cannot receive a deduction for his stock in trade. The regulation has been strictly construed. For example, donation of free air time on a radio station for public service announcements was denied an exemption,⁸⁰ as was the donation of blood,⁸¹ although this might be viewed as a donation of goods rather than services. A simple reversal of this policy could help minority businesses immensely. A revision of the regulation would not take congressional action, although if Congress were to speak on this point by amending the Code, it would clear up its intention on this ambiguous question.

A problem would probably arise in evaluating the donations. It is possible that an attorney could show what his fees from other clients are for the services rendered to a community group and deduct the time spent on their business accordingly. Policing the donations could prove to be a problem, but some mechanism could be devised for reporting and verification, as is presently done with the Medicare system. Collusion is a possibility, but certainly it is no more of a likelihood than it is with Medicare. The Internal Revenue Service could require donations to be made through a recognized

tax exempt organization such as a legal services office or community action agency that would certify that the attorney did work with the organization.

Adoption of this new policy would create a point at which it would be more profitable for a law firm to take on a ghetto client than an income producing one. This should prove to be a great incentive to participation in a program that previously cost the firm money.

There will be a temporary loss of revenue to the government but as the economy of an area is developed, more goods will be produced and more services will be required, consequently increasing taxable income.

Conclusion

Economic development is the process of supplying the three tools of community building to an area where capital presently flows outward. There presently exists many government programs that a competent attorney could employ to get capital into the communities that need it. Whether the program of economic development envisioned is to aid individual entrepreneurs, cooperatives or community development corporations, there is a need for knowledgeable counsel and there are several ways in which these services can be delivered to the community. Perhaps the easiest involves a simple change in Internal Revenue Regulations.

⁷⁹ Treas. Reg. § 1.170-1(c)(1) (1966).

⁸⁰ Rev. Rul. 236, 1967-2 CUM. BULL. 103.

⁸¹ Rev. Rul. 162, 1953-2 CUM. BULL. 127.