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Neighborhood Lawyer Programs: An Experiment in Social Change

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PROFESSIONAL COMMENT

NEIGHBORHOOD LAWYER PROGRAMS: AN EXPERIMENT IN SOCIAL CHANGE[1]

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Some months back, syndicated columnist, John Crosby, wrote an article, " The Law's Too Important To Be Left to Lawyers," in which he asserted that "most American laymen" feel an "inborn cynicism" toward lawyers, and that lawyers operate "almost exclusively to protect the guilty and the rich from getting their just deserts."[2]

The charge, of course, is not a new one; it has a long, often honorable traditional. From the Bible to Shakespeare to Columnist Crosby, complaints have been recorded concerning the injustice of the law and of lawyers' practices. Mr. Crosby was doing little more, and no less, than paraphrasing Oliver Goldsmith, who, about 200 years ago, observed: "Laws grind the poor and rich men rule the law."[3]

Lawyers, for their part, have hastened to reply to all accusations, often displaying great skill at skirting the issues and out-accusing their critics. For example, Charles Kimbrell, for the Dade County Bar Association, replying to Crosby in a long letter-to-the-editor, countercharged that Crosby had "vilified" an "honorable calling" (which is assuming what Crosby specifically rejected) and that he had held up an "entire system and profession to public hatred, contempt, scorn and ridicule."[4]

Like most dialogues of this nature, little attempt was made by either party to meet head-on the serious issues involved. The point, however, is not that both Mr. Crosby and Mr. Kimbrell are wrong. Quite the opposite. In modified form, in softer tones, both are right. It is true, as Crosby asserts, that lawyers are held in low esteem in many quarters, especially among that ill-defined group, large by any standard—the poor. It is also true, as Kimbrell observes, that the organized bar has taken steps to give counsel to the indigent. But the greater truth—and, as lawyers, we admit it reluctantly—is on Mr. Crosby's side. On the whole the legal profession has not done the job that needs to be done.

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1. This article is an updated expansion of an earlier critique of the Neighborhood Lawyer Program: Caplan & Johnson, "The Lawyer and the Poor," *New City* 5-8 (Sept. 1, 1965).

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2. Crosby, "The Law's Too Important To Be Left To Lawyers," *The Miami Herald*, May 12, 1964, p. A-7, col. 1.

3. GOLDSMITH, THE TRAVELLER 386 (1765).

4. *The Miami Herald*, May 14, 1964, p. 15, col. A-6.

Not until very recently, that is. Within the last few years, a new legal program has emerged—one that will settle lawyers in the neighborhoods representing the poor and attempting to articulate their needs. As the large corporation has its house counsel resolving its legal problems, so, for example, will ten square blocks of tenement families have their lawyer working, perhaps living, in their community, responding to their day-to-day needs. The program, funded by the Ford Foundation and various federal agencies, notably the Office of Economic Opportunity, has no single title, and varies considerably in structure and size among the half dozen cities where it has been instituted; most commonly, it is referred to as the "Neighborhood Lawyer Program."[5] But, regardless of formal title, everywhere the goal is the same—to provide new services to new clients and to do so with skill and with care.

And that is an enormous undertaking, hindered at the outset by the ignorance of the poor of their legal rights and their hostility toward the law and lawyers.

Commonly, the slum resident—an isolated man, unable to help himself even when he wants to—doesn't perceive his problem as having a legal dimension. And worse, even when he does, he may not pursue it, because as Gary Bellow, the Deputy Director of the Washington Poverty Program, writes: "The poor are suspicious of the legal process; they don't understand it, they feel uneasy with it."[6] Legal institutions are known primarily, sometimes exclusively, in a context of punishment, and the lawyer is viewed as part of this system of deprivations and as part of the entire power structure from which the poor are so remote. The result, again in Bellow's words, "is a deep-seated resistance to the use of the law to effectuate felt needs or to afford protection or promote change."[7]

A second obstacle reflects the sheer size of the endeavor. With so much to be done for so many, the problem of mustering criteria for the selection of cases and clients is critical. Are only indigents to be counseled—and what, exactly, is an indigent anyway? Is he the man at the very bottom of the economic ladder, or is he also the person who out of ignorance, apathy, or distrust wouldn't think of retaining a lawyer,

5. The extension of legal services to the poor, of which the Neighborhood Lawyer Movement is a vital part, has been the subject of a series of conferences during the last two years. The effect has been to foster interest in the Program in scores of communities. What was considered, only months ago, a novel, even radical, program has become an accepted pattern of legal service in several metropolitan areas. St. Louis, Los Angeles, New Haven, Boston, Oakland, and the District of Columbia all have operational neighborhood lawyer programs. The growing acceptability of these programs has been enhanced by the recent establishment of a special group within the Office of Economic Opportunity. This group, the Legal Services Program, is headed by E. Clinton Bamberger, Jr., and has as its sole task the furtherance of equal justice for the poor.

6. Letter to the authors (Fall 1964).

7. *Ibid.*

even though he could probably scrape together the necessary fee? If one objective of the Neighborhood Lawyer Program is to create new attitudes toward the legal process, then a broader standard of indigency should be considered. The American Bar Association has recognized the problem, and at its 1964 annual meeting President Lewis Powell called for the extension of legal services to persons of modest means, to those who could not, by traditional standards, be considered "indigent."[8] But the criteria cannot be too liberal, for then they will cut deeply into the practices of the many private attorneys who have served the lower-middle class for years. And, a too liberal standard would pose problems for the Program itself by spreading its limited resources over vast population. No lawyer, however competent and dedicated, can provide quality legal services to every client when his waiting room is constantly filled with new clients, bringing new problems. The history of the legal aid movement warns of the dangers of operations with too few lawyers and too many clients.

Then there is the problem of deciding what cases a staff of limited size, with a close budget, can and should accept. Is it best to tackle the important, community-wide problem at the outset, or should concern be for the individual grievance—one necessarily of far narrower impact? Elimination of a widespread grievance may be an essential first step in establishing confidence in the Program. It may also mean gambling the energies and fortunes of the entire Program on a single enterprise.

The danger, however, should not be exaggerated. Some methods of abusing the poor are totally lacking in legal rationales and can be remedied easily and quickly by even unseasoned attorneys. For example, when a landlord repeatedly heats his dwellings at temperatures below the statutory minimum, an uncomplicated question of law arises, and the legislative mandate can be enforced with dispatch by the neighborhood lawyer. Indeed, he is perhaps the only one capable of enforcing the statute, since suits of this nature are too costly, and the annoyance too small, for a single individual to litigate.

More complicated is litigating the almost countless contractual and other financial relationships of the poor. If a usurious rate is being charged by a local merchant, a lawyer may, with little effort, find a judge who will invalidate the contract. But in so doing he may also have extinguished the only source of cash open to his client, a man, in all likelihood, without assets or credit rating. And yet, from an ethical perspective, does the lawyer have the liberty to consider such traditionally nonlegal factors as consumer-credit structures in the community? And even if he does, won't he, typically, lack the skills to do so? After all, the lawyer is trained to solve the immediate crisis confronting his client, the one pro-

8. *American Bar News* 2 (September 15, 1964).

voked by a live adversary, and not by some remote and complex economic situation.

Even so, it may be impossible to resolve even the immediate dilemma without digging beneath surface conflicts. It is a major strength of the Neighborhood Lawyer Program that it moves toward ending the lawyer's isolation by integrating his skills with those of others—social workers, psychologists, educators, vocational and marriage counselors, housing authorities, churchmen—who, in some manner, share his interest: the client's well-being.

Yale law professor Joe Goldstein, a founder of the New Haven Program, emphasizes that long-term solutions to the legal problems of slum residents are unlikely to occur without such an integrated approach, marshaling the talents of a half-dozen specialists.[9] Goldstein, a political scientist as well as a lawyer, recognizes the difficulty of achieving a successful, combined endeavor, but nevertheless stresses that reducing a complex problem to solely a legal dimension may bring, at best, temporary relief.[10]

To what extent such collaboration will be fruitful neither Goldstein nor anybody else knows. Certainly, there will be limitations on the scope of co-operation. If the social worker argues that it would do the "old man" some good to spend a few nights in the cell block, plainly this is not a decision the lawyer can implement. Moreover, the confidential nature of the lawyer-client relationship narrows the scope of permissible communication between the lawyer and other professionals. But everywhere there will be some professionals and community organizations who will join with the lawyer in common enterprise.

Perhaps the most novel and the boldest part of the Program is that the metropolitan government, which in some form will support the neighborhood lawyer, will also be his adversary, both in and outside the courtroom. The community action agencies, established to plan and conduct the Federal Government's anti-poverty program, are supported, if not dominated, in most localities by City Hall. The Program thus envisions institutionalized conflict within the official power structure. The agencies and departments of the city will be partners to the neighborhood lawyer, but partners he is required to oppose, at times, on behalf of his clients.

This may be the area of the Program that will generate the greatest opposition, and where frequent attempts at muffling will occur. Perhaps it is too much to expect any set of vested interests to deliberately establish and arm an opponent in its midst. Yet that is what is happening to some degree. The neighborhood lawyer must be prepared to oppose vigorously

9. Interview with Professor Goldstein (Spring 1964).
10. *Ibid.*

the very agencies that nourish him. Even the most client-oriented agency will emit an arbitrary ruling or promulgate a policy justified by what political scientist Victor Rosenblum has called "an agency-centered perspective."[11] If, for example, the department of public aid wishes to exclude the client from the enjoyment of a disputed benefit, the interest of client and agency will require adversary representation. Then the neighborhood lawyer is needed. To preserve the independence of its legal arm, the Poverty Program is insisting that administrative control over neighborhood lawyers be separated from the overall community action program. Generally, this control reposes in a separate corporation, sometimes in an independent Board of Directors. Hopefully, this type of structure will insulate the neighborhood lawyer from the governmental agencies and officials who find him threatening.

The lawyer-client privilege will quite properly color the co-operation between lawyer and nonlawyer in treating the client's problems. But other provisions of the Canons of Professional Ethics could stand as a substantial barrier to effective legal representation for the poor. In particular, the prohibitions against solicitation and advertising conflict with the goals of the Program. Because the poor, unlike their middle-class neighbors, often lack a clear idea of whether they have a legal problem, the neighborhood lawyer may be compelled to articulate and resolve the dilemma in a way more directive than would be permissible for his downtown counterpart who counsels a better educated, more assertive client.

The neighborhood lawyer may also be compelled to publicize his availability, and his successes, in a way that clearly constitutes advertising in violation of the Canons. The Canons, drawn up in 1908, aimed at preventing the fomenting of litigation, the unseemly competition among lawyers. They did not envision the types of problems facing a neighborhood lawyer in 1966. In any event, one remedy is to update the Canons, and the American Bar Association is leading the way toward a thorough revision emphasizing what former President Lewis Powell has called "the public responsibility of the profession."[12]

A remaining source of possible opposition is the "marginal" lawyer. Although much of the legal business of the poor is unprofitable (about seven out of eight cases according to the Philadelphia experience with "middle-income" groups), some cases are quite lucrative. Traditionally, these cases have been handled by local practitioners, who do not accept the modest, routine problems and who may or may not exemplify the highest standards of the profession. Sometimes these lawyers earn an excellent living; more often they exist at the margin of survival. One approach would be for the neighborhood lawyer to refer the money-making

11. Interview with Professor Rosenblum (February, 1965).
12. Installation Speech, 1964 Annual Convention (New York City August 14, 1964).

cases he encounters, such as personal-injury cases, to the private practitioner.

Underlying the neighborhood lawyer movement is an awareness, by lawyers and nonlawyers alike, that the entire American legal system has a middle-class, even upper-class, orientation, a bias that is mirrored in our law schools. Every facet of legal education, from curriculum through legal research, is slanted toward topics of concern to the wealthy. Several courses are usually offered in tax law, none in welfare law. Weeks may be spent studying the history of property law in feudal England, none on the problems of tenants in our modern slums. It may be that as an adjunct to the development of the neighborhood lawyer movement, law schools will begin to balance their course content. As more lawyers enlist in the service of the poor, demand for a legal education that prepares one for this chore will be voiced and heard.

There are signs on the horizon. This year the law schools of Harvard, Georgetown, the University of Chicago, Ohio State, Columbia, the University of Wisconsin, among others, are offering seminars in Law and Poverty. And other schools, such as Northwestern, are beefing-up their student-manned legal clinics to provide able instruction on the legal needs of the poor. The University of Detroit, under a grant from the Office of Economic Opportunity, is revamping its entire curriculum, adding, in the process, elective courses in welfare law, landlord-tenant law, juvenile problems, the sociology of poverty, and the legal status of the unorganized employee. The law school is also operating a neighborhood law office, located in a slum community and staffed by law students and full-time attorneys.[13]

A final function of the Neighborhood Lawyer Program is dissemination of legal information to the low-income community. If the poor are to be reached, they must be informed of their legal rights, must be made aware of when to contact a lawyer, and how. Without this, the law can never be made to serve the poor, and the poor can never view the law as a potential ally rather than a persistent enemy.

The range of possible activity is enormous. It includes (a) publications—brief and readable—which outline legal rights and obligations; (b) clinics, open in the evenings, answering questions, referring complaints to appropriate agencies and practitioners; (c) workshops, demonstrating problems; (d) adult education and high school courses in "everyday" law; (e) model agreements, such as contracts and leases, to be

13. In addition, under the leadership of Father Albert Broderick, a three-day national conference on law in the liberal arts curriculum was held at Catholic University in December, 1964. One of the panel discussions was devoted entirely to the question of whether there should be a course on law and poverty in the undergraduate curriculum. The proceedings of the conference will be published in the near future: BRODERICK, POVERTY POCKET IN THE LIBERAL ARTS: THE ROLE OF LAW IN SOCIETY (1966).

utilized as guides by the residents of the area. Many of these would be developed in conjunction with all interested parties—landlords, merchants, and finance companies—as well as tenant and consumer-oriented groups.

One problem the Program will have to face ultimately is where to turn for long-term financing, financing which will leave its lawyers unfettered in their representation of the poor.

In its present experimental stage, its financial support is derived largely from private foundations and the federal government. To date, neither of these sources has interfered with the operation of the Program or in the conduct of individual cases. Independence from the pressures a funding source can generate has been the watchword. But private foundation and federal government support has been forthcoming on the supposition that these neighborhood law programs were pilot projects which, if successful, would be adopted by the local communities. And where in the local community is financial support to be found, support ample enough to provide quality representation, and yet avoid the controls which could dampen the zeal of the advocate?

Some point hopefully to bar associations. However, in very few communities can adequate funds be obtained from voluntary contributions of members of the bar. This is not because of any stinginess on the part of lawyers, but because quality representation costs big money. It is one thing to donate enough to support a small, conscience-salving legal-aid organization. It is another to raise the thousands of dollars needed, in even a small city, to employ enough lawyers with talent to represent the poor.

But beyond the question of obtaining sufficient funds from voluntary bar support is the question of control of the activities of neighborhood lawyers by the bar association. The organized bar sometimes is dominated by the wealthy and established interests in a community, and their ambitions are likely to conflict at times with those of the poor. A similar problem arises when the neighborhood lawyers must depend on local government for financial support. Will the lawyers be permitted to bite the hand that feeds them in the inevitable suits against the welfare department and other local government agencies?

Possibly the answer, at least for smaller communities, lies in permanent foundation support. For large, metropolitan areas, it may rest in creation of a department which has the same status and independence as the public prosecutor, and the same liberty to oppose other arms of the government when it looks like they are misbehaving. Or, the long-term solution may be found in permanent Federal financing of independent, local organizations. This is the pattern currently followed by the Office of Economic Opportunity: A local legal aid society or similar organization is given a grant to conduct the legal assistance program in the com-

munity. This procedure offers promise of independence because the federal government is farther removed from local political conflicts and is less susceptible to political pressures than a state or municipal agency.

In the broadest sense, the Program is neither liberal nor conservative. It has elements of both and should have an appeal which cuts across traditional lines of political philosophy and party politics. To those who believe that the poor need a better deal, or that they will get it regardless of what we do or fail to do, the neighborhood lawyer program should be most welcome. It utilizes existing institutions, existing law, professional personnel. It represents change within the system. It provides an alternative to manning the barricades, to violence in the streets, to passive resistance outside the law. It embraces that noble and illusive ideal—ordered progress. Philadelphia attorney, Tom Gilhool, has recently written that "there is even precedent in democratic societies for the success of some violence in winning social change without destroying the democracy. It is not necessary that we be committed to order alone, we may also be committed to justice."[14] The neighborhood lawyer program holds the promise of both order and justice.

14. Gilhool, *Book Review*, 73 YALE L.J. 112, 116 (1964).