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ALTERNATE LEGAL ASSISTANCE PLANS

JOHN D. ROBB *

THIS ARTICLE SEEKS to explore the various plans for rendering more effective civil legal services to the poor.

History of Development of Legal Aid in the United States

Historically, legal services for indigents developed in the cities with less attention paid to rural facilities.¹ This was natural because more of the poor live in the cities. There they tend to generate more legal problems in the aggregate and their problems are brought into sharper focus.² Prior to the adoption of the Economic Opportunity Act in 1964, organized legal aid facilities³ had been established in all but seven of the nation's largest cities⁴ and in

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¹ Thus, "target" cities for promotion and standards for organized Legal Aid facilities were primarily cities of 100,000 or more. *See, e.g.*, 91 A.B.A. REP. 187 (1966); 90 A.B.A. REP. 470 (1965); 85 A.B.A. REP. 480-81 (1960); 84 A.B.A. REP. 299-300 (1959). More recently, however, the emphasis has shifted to cities of 75,000 or less but has remained directed to metropolitan centers. *See* 86 A.B.A. REP. 178, 527-28 (1961); STANDARDS FOR LEGAL AID & DEFENDER OFFICES 7 (1965). Volunteer lawyer committees were deemed adequate for small towns and rural areas. *See* 84 A.B.A. REP. 300 (1959).

² Legal problems of the poor tend to multiply in the large cities with their massive slums, crowded and filthy living conditions, greater opportunities for victimizing the trapped tenement dweller and conflicts which erupt between the individual and the numerous sophisticated government agencies. *See* CONFERENCE ON LAW AND POVERTY PROCEEDINGS 98 (1965). *Cf.* E. KOOS, THE FAMILY & THE LAW 11-12 (1949).

³ "Organized" Legal Aid facilities is a term denoting permanent Legal Aid offices manned by compensated staff lawyers as distinguished from purely voluntary and uncoordinated efforts of volunteer lawyers serving the poor in their own offices.

⁴ 90 A.B.A. REP. 470 (1965).

numerous smaller cities as well. However, of these, 130 failed to meet even the minimum American Bar Association standards then in effect.⁵

Legal Aid for the poor was born in the private law office where lawyers discharged their professional obligation of serving the impoverished which has traditionally been imposed upon them because of their exclusive right to practice law.⁶ As the "baby" grew this informal manner of rendering services by lawyers began to give way to more sophisticated plans, such as bar-sponsored volunteer committees of lawyers and Legal Aid Societies which began to develop in earnest in the early part of the 20th Century.⁷ The bar committee plan consists of a central referral office, frequently at the courthouse, where the eligibility of applicants is determined and they are referred to individual volunteer lawyers for service on a rotating basis. It is generally administered by a committee of the bar association. The Legal Aid Society, on the other hand, usually consists of a separate association, typically a corporation employing full-time compensated lawyers to provide the necessary service.

⁵ 90 A.B.A. REP. 186, 188 (1965).

⁶ AMERICAN BAR ASS'N, LAWYERS AND THE POOR 6 (1966).

⁷ Although the first Legal Aid Society was founded in New York in 1876, there were only forty-one organized Legal Aid facilities in the United States by the end of 1916 of which thirteen were Legal Aid Societies, twelve were Departments of Social Agencies and three were bar association plans. By 1949 total organized offices had grown to ninety-two. E. BROWNELL, LEGAL AID IN THE UNITED STATES 7, 11-12, 26 (1951).

The last thirty years has seen a decided shift away from primary reliance on the use of volunteer bar committees and toward the employment of full-time compensated counsel.⁸ The reasons for this were that bar committee plans suffered from frequent changes in personnel, lack of continuity of service, inaccessibility of offices to the poor, reluctance of the impoverished to come for service, difficulty in publicizing services because they were frequently operated out of private law offices, lack of uniformity in applying eligibility standards and in the proper maintenance of records, frequent use of counsel unfamiliar with the problems of the poor, inequitable burdens on lawyers with a large part of the obligations falling upon the few sympathetic lawyers and the secondary attention given to indigent matters in competition with a lawyer's normal fee-paying practice.⁹

As of December 31, 1964, prior to the inception of the Office of Economic Opportunity Legal Services Program, there were 246 Legal Aid Societies and 136 bar committee plans in existence.¹⁰ Since the passage of the Economic Opportunity Act in 1964 primary emphasis on city facilities has continued although many rural programs have also been established. There are now OEO-financed agencies in forty-six of

⁸ During the 1920's and 1930's, the bar continued to debate whether its responsibility extended beyond the philanthropy of individual lawyers in establishing Legal Aid Services. 86 A.B.A. REP. 527 (1961).

⁹ 84 A.B.A. REP. 298 (1959).

¹⁰ 90 A.B.A. REP. 187 (1965).

the fifty largest cities.¹¹ Only twenty percent of OEO Legal Services funds have been used for programs in rural areas although they contain forty percent of the nation's poor.¹² In recognition of these needs the 1967 Amendments to the Economic Opportunity Act directed OEO to place greater emphasis

on rural programs.¹³ The organized bar and the National Legal Aid and Defender Association must also give more critical attention to such programs.

The use of full-time staff lawyers has also greatly accelerated under OEO. Of the 255 programs funded,¹⁴ all but six use staff lawyers exclusively as com-

¹¹ An additional program has been funded since the forty-five reported in the *Joint Statement of the American Bar Association, the National Legal Aid and Defender Association and the National Bar Association before the House Committee on Education and Labor*, July 17, 1967 (hereinafter cited as THE JOINT STATEMENT).

¹² As of August 15, 1967, OEO had funded fifty-nine programs in predominantly rural areas (including ten on Indian Reservations) at an "annualized" cost of 8.5 million dollars of a total "annualized" budget of 42 million dollars. See unpublished memo from Director of Legal Services to Director of Community Action Program dated August 15, 1967, on file in the office of the Director of Legal Services, Washington, D.C.; THE JOINT STATEMENT, *supra* note 11, at 2. The twenty percent spent for Legal Services contrasts with thirty-two percent of the total Community Action budget which reportedly was allocated for rural programs in the fiscal year ending June 30, 1967. See *Testimony of Sargent Shriver Before the Subcomm. on Rural Development of the House Agricultural Comm.*, June 29, 1967. Shriver also testified: that 1.5 million rural families were living in "dilapidated" housing; that fifty percent of such housing was unsound and without plumbing as compared to only twenty percent for urban housing; that rural children were two years behind their urban brothers and sisters in "educational level." See also Mittelbach & Short, *Rural Poverty in the West—Status and Implications*, 15 KAN. L. REV. 462-64 (1967); Gibson, *Rural Poverty in the Northeast*, 15 KAN. L. REV. 481 (1967).

¹³ Act of Dec. 23, 1967, 81 Stat. 691, amended § 201 of Title II of the Act to declare it to be the policy of the Act to provide opportunities enabling rural poor to remain in their areas and to become self-sufficient. Section 241 of the Act created an Assistant Director for Community Action in rural areas. 81 Stat. 705 (1967). These provisions were enacted because Congress felt OEO had not devoted sufficient attention or funds to rural areas. HOUSE COMM. ON EDUCATION & LABOR, H.R. Doc. No. 866, 90th Cong., 1st Sess. 21, 26-27 (1967). Furthermore, §§ 311 and 312(b) of the Act made special provisions for rendering assistance, including legal advice and representation, to migrant and seasonal farm workers and their families. 81 Stat. 709, 710 (1967). Prior to the adoption of the 1967 Amendments, OEO had recognized this imbalance. Its Legal Services Division was considering tentative allocations of an additional 7.3 million dollars for new rural programs during the fiscal year ending June 30, 1968, (hereinafter referred to as "fiscal year 1968") until budget limitations intervened. See memo from Director of Legal Services to Director of Community Action Program, *supra* note 12; THE POOR SEEK JUSTICE 12 (1967). These budget restrictions have forced an 8.5 percent cutback to 38 million dollars for the Legal Services Program in fiscal year 1968. Interview with Earl Johnson, Jr., OEO Legal Services Director, Feb. 18, 1968.

¹⁴ There are now ten more than the 245 programs listed in Exhibit 1 of THE JOINT STATEMENT, *supra* note 11. OEO lists 299 total programs but this includes technical assistance, research and demonstration projects. See OEO Public Affairs Release, Dec. 17, 1967.

pensated counsel.¹⁵ Of the six, only one, Wisconsin, uses lawyers in private practice exclusively.¹⁶

Goals and Objectives of Legal Services to the Poor

No consideration of the various methods for rendering legal services to the poor can be fruitfully undertaken without an understanding of the goals and objectives sought to be attained. The twin goals of the program are: (a) to provide equal justice for all under our laws, and (b) to help destroy poverty. In order to achieve these objectives we must provide as good quality service for the poor as that enjoyed by the rich. Such services must be readily available and accessible. The poor must understand their rights and the role which the law, the legal system and lawyers can play in vindicating them. Finally, the law and the legal system itself must provide the substantive rules, as well as the machinery for readily responding to the legitimate needs and rights of the impoverished. No system for rendering legal services to the poor, whatever its form, can hope for success unless it addresses itself effectively to these vital elements. In determining the most

¹⁵ The six are Wisconsin Judicare and the other programs listed in note 20, *infra*. Numerous programs, of course, use uncompensated lawyers in private practice to supplement staff efforts. Reports of the A.B.A. Standing Committee on Legal Aid & Indigent Defendants, 3-4, Aug. 1967 (hereinafter cited as Standing Committee).

¹⁶ The rest utilize staff lawyers in other portions of the program.

effective plan the entire panorama of problems must be considered, not just the simpler question of which can render better case-by-case salve for the ugly wounds of each individual's poverty.

Judicare

The OEO Program which utilizes full-time staff lawyers operating out of accessible neighborhood centers has received the overwhelming support of the organized bar.¹⁷ Nevertheless, one continues to hear statements by attorneys that Legal Aid should be rendered by lawyers in private practice. In addition, at least three state bar associations¹⁸ in large rural areas have supported this concept. The term "Judicare" has been used to describe this viewpoint. The mounting interest in Judicare is evidenced by a recently proposed amendment to the Economic Opportunity Act, defeated handily in the House of Representatives of the 90th Congress, First Session,

¹⁷ Although the issue of Judicare versus staff lawyer-neighborhood center concepts has never squarely been debated before the House of Delegates of the American Bar Association, that Association, together with the National Legal Aid and Defender Association, the National Bar Association and most state and local bar associations, has vigorously supported the program generally. See THE JOINT STATEMENT, *supra* note 11, at 2-4; Standing Committee, *supra* note 15, at 2, Feb. 1967; *id.* at 3, 6, Aug. 1967; Voorhees, *The OEO Legal Services Program: Should the Bar Support It?*, 53 A.B.A.J. 23, 25 (1967). The American Trial Lawyers Association which first opposed the program now supports it.

¹⁸ New Mexico, Mississippi and South Dakota. A number of local bar associations, including a large number in New Mexico, are also known to favor Judicare.

which would have required OEO to "encourage, foster and stimulate" Judicare plans in addition to the use of staff attorneys.¹⁹

Wisconsin has the largest OEO-funded Judicare program.²⁰ Wisconsin Judicare operates under a Board of Directors, most of whom are lawyers, in twenty-six rural counties of the state. It is administered by a professional staff consisting of an attorney-director, two attorneys, an administrative assistant and an accountant.²¹ Clients are certified as financially eligible for service by the local Community Action representative or County Welfare Director. The client is then free to select the lawyer of his choice from among those practicing in the area. The staff, in addition to supervising the program of direct services to the client, is primarily responsible for research, community and attorney education, legislation and general law reform similar to that carried out by ordinary

Legal Services Agencies. The direct services portion operates as follows: after the preliminary conference with the client, the lawyer, if further service is indicated, submits to the Judicare Office a report which states the nature of the problem, proposed recommendations for action and an estimate of the proposed fee. Fees are computed at sixteen dollars an hour or eighty percent of the minimum fee schedule, whichever is less, with a maximum of 300 dollars per case (without prior approval of the Judicare office).²² The Program was funded June 1, 1966, and has been in operation since July 15 of that year.²³ OEO regards the Judicare Program as a "demonstration" or experimental project and has announced that no others will be funded until Wisconsin Judicare and the other Judicare experiments have been thoroughly evaluated.²⁴

Respective Arguments in Favor of Staff Neighborhood Lawyers or Judicare

A. Arguments Supporting Full-time Lawyers and Neighborhood Centers.

A number of principal reasons have been given for adhering to the use of full-time staff lawyers in Neighborhood Centers.

¹⁹ See H.R. 12103, 90th Cong., 1st Sess. (1967).

²⁰ However, Judicare forms a part of the Legal Services Program in other areas, such as Washington Township and Riverside, California; New Haven, Connecticut; Alameda County, Washington and in portions of Montana. A Judicare Plan funded as a demonstration project by the Department of Health, Education and Welfare operates in Nassau County, a suburb of New York City, and in Sussex County, Delaware. A number of communities have established additional uncompensated volunteer lawyer committees without federal funding as a result of the needs publicized by the OEO Program which committees provide "a measure of Legal Services to the Poor." Standing Committee, *supra* note 15, at 4, Aug. 1967.

²¹ Letter from Barbara Yanow of OEO Legal Services headquarters staff to John D. Robb, Jan. 29, 1968.

²² Preloznik, *Wisconsin Judicare*, WIS. B. BULL., June, 1967, at 11-13; 25 LEGAL AID BRIEF CASE 91-93 (1967).

²³ Preloznik, *supra* note 22, at 13.

²⁴ Bamberger, Jr., *The Legal Services Program of the Office of Economic Opportunity*, 41 NOTRE DAME LAW. 847, 850-51 (1966); Letter from Sargent Shriver to the Hon. Thomas G. Morris, Congressman from New Mexico, July 31, 1967.

First, they can provide better quality case-by-case service because: (a) they become experts in the laws affecting the poor and the handling of indigents' problems,²⁵ and (b) they can give these matters their undivided attention.²⁶ The poor require representation as tenants, as welfare and public assistance recipients, as juveniles, as misdemeanants, and as debtors. In addition, the poor are involved in numerous family disputes, as well as other problems.²⁷ Many of these problems require special skills for their

²⁵ Marsh, *Neighborhood Law Offices or Judicare*, 25 LEGAL AID BRIEF CASE 14 (1966); Note, 80 HARV. L. REV. 805, 849 (1967); Voorhees, *supra* note 17, at 27; Masotti & Corsi, *Legal Assistance for the Poor*, 44 J. URBAN L. 493-97 (1967); Letter, *supra* note 24.

²⁶ Marsh, *supra* note 25; Masotti & Corsi, *supra* note 25, at 495-96.

²⁷ Thus, of the 290,934 matters handled by OEO Legal Services Programs in Fiscal Year 1967, thirty-five percent involved family problems, such as non-support, divorce, annulment and child custody matters, thirty-two percent involved misdemeanors, juveniles and school cases, eighteen percent consumer problems, such as sales contracts and garnishments, eight percent landlord-tenant disputes and other housing problems and seven percent welfare and other administrative agency problems. OEO Public Affairs Release, Dec. 17, 1967. Preliminary figures suggest that Judicare may not be furnishing the poor with adequate representation respecting many of these broader areas of need because its lawyers are unduly preoccupied with the handling of domestic relations cases. 35.4 percent of the Wisconsin problems, for example (Preloznik, *supra* note 22, at 15), have related to divorce matters which is more than double the sixteen percent national average for OEO-funded programs. THE POOR SEEK JUSTICE 11 (1967). Thus far, forty-seven percent of the Washington Township Judicare problems have related to domestic relations matters (which include non-support, annulment, custody and adoption,

solution.²⁸ Legal Services lawyers are now providing representation in these and other novel areas and are dealing with

in addition to divorces) (Interview with Barbara Yanow, Legal Services Division, Washington, D.C., on Jan. 12, 1968) compared with a national average of thirty-five percent for all OEO Programs. OEO Public Affairs Release, Dec. 2, 1967. Indeed, the Washington Township refunding application has allocated approximately sixty percent of its future budget to divorce problems alone (*see* Refunding Proposal, Dec. 8, 1967, on file in Legal Services Division, Washington, D.C.) which is nearly four times the normal number. *See* THE POOR SEEK JUSTICE 11 (1967). In the vital field of welfare and consumer problems, for example, where great problems exist in Washington Township, such cases constitute only 0.9 percent and 6.7 percent, respectively, of the overall caseload. Yanow interview, *supra*. This amounts to only 1/7th and 1/3rd, respectively, of the percentage of such cases normally handled by OEO-funded agencies. OEO Public Affairs Release, Dec. 17, 1967.

Preloznik attempts to justify the Wisconsin divorce figures by comparing them to NLADA figures for all agencies. Preloznik, *supra* note 22, at 16. This is not a fair comparison because the NLADA figures include (a) domestic relations matters of all kinds, such as non-support, annulment, adoption and custody matters in addition to divorces, and (b) many non-OEO-funded agencies, some of which have been substandard for years. The Brownell figures cited by him are obsolete: they relate to times long prior to OEO and to conditions the improvement of which was one of the objectives of the OEO Program.

²⁸ WALD, LAW & POVERTY 4, 5, 6-41 (1965); CONFERENCE ON LAW & POVERTY PROCEEDINGS 1, 2, 13-16, 38 (1965).

problems unfamiliar to many lawyers.²⁹ The problems of the poor are different from those of the rich. The less fortunate are frequently poorly educated, inarticulate, suspicious, afraid, inept, gullible, defeatist and often lacking in confidence to engage in even the simplest acts which we take for granted in

²⁹ Brennan, *The Responsibilities of the Legal Profession*, 54 A.B.A.J. 122 (1968); THE POOR SEEK JUSTICE 4, 7, 13-21 (1967). In the field of housing, for example, Legal Services lawyers are helping to devise remedies against violations of building codes by landlords, to protect tenants from retaliatory evictions, to overcome the unfair common-law rule that the landlord's obligation to repair is independent of the tenant's covenant to pay rent and many have challenged evictions made without cause by Public Housing authorities. THE POOR SEEK JUSTICE 4, 13, 14 (1967).

In welfare matters Legal Services lawyers are enforcing rights guaranteed by statute and regulation but often ignored by administrators, challenging unfair man-in-the-house rules, midnight searches without warrants and illegal reductions in benefits. *Id.* at 4, 16, 17. Twelve Legal Services Agencies, for example, have challenged state welfare residency requirements (many of which require one year's residence for eligibility) and four have been voided as a result. (Another act has been struck down since the three reported in the OEO Public Affairs Release, Dec. 12, 1967.) In consumer contract cases, lawyers are challenging wrongful repossessions and further developing and refining concepts of unconscionable contracts. THE POOR SEEK JUSTICE 4, 15 (1967). In brief, Legal Services Agencies are "pioneering" new methods for settling disputes commonly encountered by the poor with such groups as landlords, merchants and creditors. See Bamberger, Jr., *supra* note 24, at 848; Marsh, *supra* note 24.

our middle class society.³⁰ They are frequently separated from our society and its institutions by great language and cultural barriers.³¹ In addition, by reason of default justice, many of the fields of law most affecting the poor are undeveloped or are biased against them.³² Lawyers and Legal Services Programs are engaged in developing the long neglected law of the poor³³ in much the same manner as labor, administrative, tax and other laws have been developed during the early part of this century. This requires more highly specialized skill and training and a deeper understanding of these problems than is ordinarily found among the bar at large, attuned as it is to the issues affecting the more affluent segments of our society.³⁴ For too long most lawyers have failed to challenge, and indeed have come to accept as fair, laws which actually discriminate heavily against the poor. In short, lawyers in private practice have sometimes been slow to recognize that the poor have at least as many problems as the rich³⁵ and that such persons are much less able to cope

³⁰ WALD, *supra* note 28, at 3; Shriver, *National Policy*, 41 CAL. STATE B.J. 220 (1966); Bamberger, Jr., *supra* note 24, at 847; EXTENSION OF LEGAL SERVICES TO THE POOR CONFERENCE PROCEEDINGS 10, 11 (1964).

³¹ THE POOR SEEK JUSTICE 11 (1967).

³² *Id.* at 3, 13; Address of the Hon. William J. Brennan, Jr., at Airlee House, Warrenton, Virginia, Nov. 15, 1966.

³³ See *supra* note 29. Cf. *Symposium on Legal Services*, 41 CAL. STATE B.J. 282 (1966).

³⁴ Marsh, *supra* note 24; Voorhees, *supra* note 17; WALD, *supra* note 28, at 44, 65; EXTENSION OF LEGAL SERVICES TO THE POOR CONFERENCE PROCEEDINGS 10 (1964).

³⁵ Bamberger, Jr., *supra* note 24, at 847.

with them.³⁶ It has been charged, with some basis, that many lawyers in private practice have a tendency to dismiss the problems of the poor "summarily."³⁷

Full-time lawyers can also become more familiar with the related needs of the impoverished and with the policies and personnel of the numerous employment, housing, medical, social and welfare agencies, the services of which must be utilized effectively if the "whole person" is to be treated.³⁸ Problems of the poor are seldom entirely legal; contemporaneous treatment of these related difficulties is frequently necessary in order to obtain maximum benefit from the Legal Services.³⁹ The problems of the poor in the neighborhood office do not have to compete for attention with better paying matters as they do in private law offices where they are likely to receive secondary treatment, however well motivated the private lawyer may be.

Second, full-time lawyers can develop a broader legal attack on poverty problems.⁴⁰ The full-time lawyer is better able to discern and attack those general laws, rules, regulations and practices which operate most consistently and unfairly against the poor by reason of this greater familiarity which he acquires

with the common poverty problems.⁴¹ Effecting changes by the use of test cases, legislative or administrative action and other techniques (commonly referred to as law reform) is one of the most important objectives of the Legal Services Program.⁴² Assisting individual clients on a case-by-case approach, although fulfilling a vital function, can at best render relief (often only temporary) for those who happen to find their way to a lawyer. However, a basic change in the underlying cause of these common difficulties may effect a permanent cure which assists all others similarly situated

³⁶ *Id.*

³⁷ Marsh, *supra* note 25.

³⁸ Masotti & Corsi, *supra* note 25, at 496; WALD, *supra* note 28, at 65; Note, 80 HARV. L. REV. 805, 811, 812 (1967).

³⁹ *Id.*

⁴⁰ Bamberger, Jr., *supra* note 24, at 850, 851; Note, 80 HARV. L. REV. 805, 849 (1967); Masotti & Corsi, *supra* note 25, at 496; Letter, *supra* note 24.

⁴¹ *Id.* Voorhees, *supra* note 17, at 27. The law reform and community education programs of the Washington Township Judicare Program were reportedly inadequate during the first nine and one half months of operation. Letter from Earl Johnson, Jr. to John V. Trump, President, Washington Township Legal Assistance Center, Dec. 8, 1967. An OEO evaluation in August 1967 revealed the following conditions: the program, despite good intentions, had failed to have any significant effect upon the poverty group; although high quality service had been rendered by private lawyers in the more traditional matters, no significant cases apparently had been undertaken; private lawyers displayed a lack of interest and aggressiveness which was possibly attributable to their lack of any training in poverty law; they had not displayed as much ingenuity or determination as had lawyers in other poverty programs; there was a tendency to look for the most expedient means of disposing of cases rather than challenging the laws and practices which adversely affect the poor; and few persons in the community outside of the Community Action Program were aware of the program or knew of its objectives. *Id.*

⁴² THE POOR SEEK JUSTICE 13 (1967); Speech by Earl Johnson, Jr., Harvard University, Mar. 18, 1967, summarized in 2 LAW IN ACTION, April-May, 1967, at 4.

regardless of their access to a lawyer. Elimination of such cause also has the potential to prevent the recurrence of literally thousands of future cases resulting not only in better conditions for the poor but also in freeing Legal Services Programs to assist in other critical areas.⁴³

Third, full-time lawyers are generally less expensive.⁴⁴ The limited experience with Judicare thus far indicates that it is costing approximately three times as much as the use of staff lawyers.⁴⁵

⁴³ THE POOR SEEK JUSTICE 13-15 (1967). OEO estimates that such actions have restored hundreds of millions of dollars of illegally removed benefits to the impoverished. Johnson, 2 LAW IN ACTION, Dec.-Jan., 1968, at 2.

⁴⁴ Voorhees, *supra* note 17, at 27; Note, 80 HARV. L. REV. 805, 849 (1967).

⁴⁵ The figures are approximately 144 dollars per case for Wisconsin Judicare and 150.62 dollars per case for Washington Township, Fremont, California Judicare, as against 48 dollars for other OEO-funded agencies according to OEO figures. Interview with Barbara Yanow, Legal Services Division headquarters staff, Washington, D.C., Jan. 12, 1968; Letter & Memorandum from Yanow to John D. Robb, Jan. 11, 1968. These figures are gross and require meaningful analysis before they acquire any significance. For example, they do not provide a fair comparison of the respective costs in rural areas since rural programs are more expensive than urban ones (CONFERENCE ON LAW AND POVERTY PROCEEDINGS 112 (1965) and OEO's 48 dollar figure includes both city and rural programs. Actually eighty percent of the OEO Programs are in the cities. No cost comparisons are available relating only to rural programs but it appears as though Judicare is exceeding the costs of many of the rural programs, such as California Rural Legal Assistance (96 dollars according to its 1967 refunding application, page 7) and UPCAP (98 dollars), this being a circuit riding program in the upper peninsula of Michigan. The Washington Township figures are more than double the 64 dol-

lars per case cost of the neighboring Hayward staff lawyer office of the Alameda County Legal Aid Society which serves a similar but larger population. Of course, in very sparsely settled areas where a full-time lawyer is not justified, Judicare may actually cost less than using part-time lawyers or circuit riders. Marsh, *supra* note 25, at 15. The Director of Wisconsin Judicare contends that it costs less than using these other systems in the rural areas covered by that program. OEO's cost figures probably will prove to reflect a fair comparison between the relative costs of Judicare and staff lawyers in all but the largest metropolitan centers where Judicare would almost certainly cost proportionately more. For example, because of the efficiencies possible in large city programs, the Chief Counsel of the New York Legal Aid Society has estimated that it will cost at least seven times as much to duplicate such services with Judicare.

Judicare advocates challenge OEO's cost comparisons. They contend that the thirty percent overhead costs of operating the Judicare office, which are included in OEO's figures, really should be reduced to ten percent because these overhead costs include research, community and attorney education, law reform efforts and the like. See Preloznik, *supra* note 22, at 11. However, this is not a fair criticism of the comparison because most of the programs considered in arriving at the 48 dollar figure provide similar services which are included in calculating their costs. Further, in some respects the OEO comparison is quite conservative because it excludes the costs of Judicare Alert, a community education part of the program and because the costs of determining eligibility in Wisconsin are borne largely, if not entirely, by Welfare and Community Action Agencies rather than by the Judicare Program. If the 55,000 dollar Judicare Alert figures are included, the cost per case for Wisconsin Judicare is 177 dollars. Letter & Memorandum, *supra*.

Some of the reasons why Judicare is proving more costly are:

- (1) Lawyers who only occasionally encounter the poor in their practice must necessarily spend more time in research and preparation. This same research and preparation must then be similarly duplicated by countless other lawyers encountering the same common problem for the first time,

Fourth, experience has shown that the services of the full-time lawyers are more likely to be used because: (a) the poor have more confidence in them,⁴⁶ and (b) they are available in neighborhood offices which are well marked and accessible.⁴⁷ The poor are timid, fright-

whereas the full-time lawyer only has to research this problem once.

(2) Judicare overhead is costly. There must be regular review and approval of billings and payments therefor, together with special reviews of the billings and work of lawyers to guard against abuses, such as overcharging, doing unnecessary work and the like. The overall thirty percent overhead in the Judicare Program is, of course, in addition to the normal thirty-five to forty percent overhead involved in operating the private lawyer's own office.

⁴⁶ Masotti & Corsi, *supra* note 25, at 494.

⁴⁷ Letter, *supra* note 24; Letter from Christopher Clancy, Southwest Regional Legal Services Director to Earl Cooper, Executive Director of the New Mexico State Bar, Oct. 31, 1967. The opening of conveniently located neighborhood centers has resulted in greatly increased caseloads. THE JOINT STATEMENT, *supra* note 11, at 8; Note, 80 HARV. L. REV. 805, 809, 810, 822, 823 (1967); Masotti & Corsi, *supra* note 25, at 493-95. Cf. OEO GUIDE LINES FOR LEGAL SERVICES 23 (1966). The Washington Township Judicare Program has not been successful thus far in getting the poor to make much use of the services. Only 330 cases were handled during the first nine and one half months of operation, that is, approximately 3.5 cases per thousand population, despite the fact that the program serves an area comprising 125,000 persons and 7,120 families are reported to live below poverty levels fixed at 4,000 dollars a year. Interview, *supra* note 45; Washington Township Initial Funding Proposal & Refunding Proposal, Dec. 8, 1967. Wisconsin Judicare, which is an older program and which has a higher incidence of poverty (thirty percent versus fourteen to twenty-two percent) and which has also had the benefit of a special community education program

ened and reluctant to leave the neighborhoods where they reside and to consult with lawyers "downtown."⁴⁸

Fifth, it is preferable from the standpoint of the Bar and involves less interference with the profession to have a few full-time lawyers subject to governmental regulations than to have broad segments of the Bar thus regulated.⁴⁹ Indeed, if a large percentage of lawyers were to become dependent upon the government for support as would occur under widespread use of Judicare, it would be difficult ever to abolish or drastically modify the plan however defective it might prove to be because of the huge economic effect it might have on the Bar. Certainly, lawyers would be much less objective about such defects.⁵⁰

(Judicare Alert), has fared much better. It is serving 9.3 cases per thousand population. This figure is obtained by annualizing the 2,681 cases handled between May 31, 1967 and December 31, 1967. The total cases handled from July 15, 1966 through December 31, 1967 are 3,655 of which 974 were prior to May 31, 1967 and 2,681 subsequent thereto. Interview, *supra* note 45; JUDICARE PROGRESS REPORT, June 14, 1967, on file in Legal Services Division, Washington, D.C.

⁴⁸ *Id.* See also Marsh, *supra* note 25. Cf. WALD, *supra* note 28, at 45.

⁴⁹ Letter, *supra* note 24; Letter, *supra* note 47. Other arguments in favor of using full-time lawyers are that it avoids difficult problems of advertising and solicitation which become involved once private lawyers are competing against each other for poverty practice. Voorhees, *supra* note 17, at 26, 27; Note, 80 HARV. L. REV. 805, 849 (1967).

⁵⁰ See note 103, *infra*. This is a good reason for not jumping into a larger Judicare program until further information about its performance has been gathered and evaluated.

B. *Arguments Supporting Judicare.*

The principal arguments⁵¹ by advocates of Judicare include:

(1) The poor have the same choice in the selection of counsel as do the rich.

(2) The bar will participate more actively in making the Legal Services Program a success if more lawyers are involved in solving the problems of the poor by handling their cases.

(3) The poor will be better served by drawing on the broader experience of the whole Bar.

(4) The lawyer-client relationship is better preserved.

(5) The Bar will benefit economically.

Of the various Judicare arguments the second has perhaps the greatest force.⁵² However, it would seem that the opportunities of lawyers (as well as their sense of professional obligation) for service on boards of directors and as volunteer helpers fulfilling the matching local share requirement, already involves a substantial number of lawyers and at

least partially offsets this advantage.⁵³ The freedom to choose one's lawyer makes Judicare theoretically superior in this respect. However, since a large percentage of the poor have never been served by a lawyer before⁵⁴ it is not an informed choice.⁵⁵ Further, the author has encountered few complaints from the poor or their representatives about having to use staff lawyers.

Although there may be more opportunity for interference with the lawyer-client relationship under the staff lawyer approach, the OEO Guide Lines contain several provisions designed to insure the independence of the lawyer in the handling of cases and the integrity of the relationship.⁵⁶ Some administrative inter-

⁵³ More than 7 million dollars worth of time has been estimated to have been donated by attorneys for this purpose alone in 1967. See Standing Committee, *supra* note 15, at 3, Feb. 1968.

⁵⁴ Marsh, *supra* note 25, at 12, 14, estimates the percentage at eighty percent. Although some programs have reported even higher percentages, Marsh's estimate appears somewhat high. Masotti & Corsi, *supra* note 25, at 494, 495.

⁵⁵ In the Washington Township Judicare Program, cases are actually being assigned to lawyers primarily on a rotation basis despite the fact that the freedom of choice was listed as one of the principal arguments by the proponents of the program in obtaining funding. Interview, *supra* note 45. Even in Great Britain it is now apparent that the poor cannot, unaided, exercise an intelligent choice. See Draft of Memorandum of The Council of the Law Society, Jan. 28, 1968, at 17, 18.

⁵⁶ Thus, the Guide Lines provide that the lawyers' "independence of professional legal judgments" must be protected; that such lawyers may take action against the Community Action Agency itself and that this independence is best accomplished by having a separate policy-making board operate the program. OEO GUIDE LINES FOR LEGAL SERVICES 8 (1966).

⁵¹ Preloznik, 25 LEGAL AID BRIEF CASE 93-95 (1967); Note, 80 HARV. L. REV. 805, 849 (1967); Masotti & Corsi, *supra* note 25, at 498-501; Skinner, *Memorandum re Judicare*, 6 B. OF N.M. BULL. 302, 303 (1967); Glass, *Why Judicare?*, 6 B. OF N.M. BULL. 349 (1968); Jones, *Legal Services to the Poor: A Brief for the Poor*, 6 B. OF N. M. BULL. 378 (1968).

⁵² Many old time "legal aiders" recall how difficult it used to be to obtain the interest and assistance of lawyers prior to the interest stimulated by the OEO Legal Services Program; and the dangers of leaving such work entirely to professional poverty lawyers have been sounded by the Hon. William J. Brennan, Jr. 54 A.B.A.J. 121-26 (1968).

ference by Community Action Agencies and officials has occurred respecting both the general operation of OEO-financed agencies and respecting the work of the Legal Services Directors in Regional Offices within OEO's administrative structure.⁵⁷ However, few instances of direct interference with the lawyer-client relationship or with the judgment of lawyers in the handling of their cases have reached the writer's attention.⁵⁸

Only further experience can answer the contention of Judicare advocates that the lawyers handling cases under Judicare have more general practice experience than those employed by Legal Services Programs.⁵⁹ There is a serious

question, however, whether the more meaningful experience is that acquired in general practice or that acquired in dealing specifically with the problems of the poor.

Respecting the economic argument, this is not a program for the financial betterment of the bar; rather, it is designed to help the poor and the main criterion should be what is in the best interests of the people being served. Indeed, this must be the attitude of a profession which is really dedicated to public service.⁶⁰ However, some members of our profession are unwilling to accept this attitude. They contend that (a) the Legal Services Program is actually taking business away from the bar; and (b) that in any event the bar would prosper under Judicare.

The first contention is not supported by any known facts. Although no specific studies have been made concerning the issue, all data available suggests that the contrary is true and that law business has undoubtedly increased on the whole as a result of the OEO Program.⁶¹ It is, of

⁵⁷ See Report of Legal Services National Advisory Committee to Sargent Shriver, Nov. 20, 1967, on file with the Legal Services Division, Washington, D.C., which suggests more administrative independence for the Legal Services Division within OEO to prevent recurrences of these difficulties. See also REPORT OF HOUSE COMM. ON LABOR & EDUCATION, H. R. DOC. NO. 866, 90th Cong., 1st Sess., 24, 25 (1967) which indicates that the independence of lawyers, the lawyer-client relationship and all other professional standards and aspects of the program should be preserved.

⁵⁸ There have, however, been a number of attempts to curtail the types of cases which Legal Services Programs may handle. Perhaps the most publicized attempts along these lines have occurred in California where vigorous objections were made to the handling of cases by California Rural Legal Assistance directed against the importation of Mexican laborers and against cuts in Medi-Cal, Medicaid and Medical Welfare Programs.

⁵⁹ This contention may well be correct. The Director of Wisconsin Judicare claims that most of the lawyers in the area covered by the program are participating. OEO Programs tend to attract bright, young, dedicated men.

The average age of lawyers in the largest OEO rural program, California Rural Legal Assistance, is 30 years and they average four and one half years of experience in the practice. CRLA Refunding Report, Fall 1967, at 56, on file in Legal Services Division, Washington, D.C. Legal Aid advocated counter by contending that staff lawyers, while perhaps less experienced, are more zealous than lawyers handling poverty cases in private practice. Judging from the excellent results and the energies which have been expended in the programs to date, there is much to be said for this latter contention.

⁶⁰ Voorhees, *supra* note 17.

⁶¹ THE JOINT STATEMENT, *supra* note 11, at 4; Symposium, *supra* note 33, at 281; Speech by Earl Johnson, Jr. before the Tri-State Con-

course, true that some marginal cases previously handled by lawyers for substandard fees are now being handled by OEO staff lawyers. Some of the younger lawyers and a few others whose main practice involves the poor have perhaps been adversely affected to some extent. Nevertheless, a large part of the caseload under the Legal Services Program consists of matters which would never be brought to lawyers but for the publicity generated by the program itself.⁶² The Legal Services Program actually helps the bar in a number of ways:

(1) Ten percent of the clients seeking assistance are ineligible and are referred to lawyers in private practice, usually through bar referral plans.⁶³ Lawyer Referral Services are booming in areas having OEO Programs as a result.⁶⁴

(2) It has generated new business for private lawyers who receive fees from landlords, merchants, finance companies and other fee-paying clients involved in disputes with the clients of Legal Aid.⁶⁵

(3) Publicity from the program tends to make the fee-paying public more aware of the need for lawyers' services and thus increases the general level of legal business.⁶⁶

(4) It has relieved attorneys of the burden of handling poverty cases without a fee.⁶⁷

(5) The public service aspects of lawyers' contributions of their time and money to support these programs are helping to raise the image of the profession in the eyes of the public.⁶⁸

The second "economic" argument is premised on the assertion that lawyers should cash in on the program just as it is claimed doctors are doing under Medicare and Medicaid. The erroneous assumption that this should be a money-making project for the bar overlooks at least two important considerations. First, it assumes that since the government has financed Medicare and Medicaid, it will freely lavish similar funds upon Judicare. Funds expended during the first twelve months of operation included 3.1 billion dollars⁶⁹ on Medicare and 1.03 billion dollars⁷⁰ for Medicaid; yet, concerted

tinuing Legal Education Institute, June, 1967, 6 B. OF N.M. BULL. 60.

⁶² See *supra* note 54.

⁶³ During fiscal year 1967, 31,433 or approximately ten percent of persons seeking assistance from OEO Legal Services Agencies, were referred to private attorneys. 290,934 eligible clients received assistance during this period. See OEO Public Affairs Release, Dec. 17, 1967. Many of these fee cases would otherwise have gone unidentified and untreated. *Symposium*, *supra* note 33, at 281.

⁶⁴ THE JOINT STATEMENT, *supra* note 11, at 4. XIV ABA Coordinator and Public Relations Bulletin 2 (1966) reports increases ranging from 250 to 400 percent. See speech by Earl Johnson, Jr., *supra* note 61. Cf. *Symposium*, *supra* note 33, at 281.

⁶⁵ Marsh, *supra* note 25, at 16; *Symposium*, *supra* note 33, at 281.

⁶⁶ *Id.*

⁶⁷ Bamberger, Jr., *supra* note 24, at 849; Marsh, *supra* note 25, at 15; *Symposium*, *supra* note 33, at 281.

⁶⁸ Marsh, *supra* note 25, at 15.

⁶⁹ Letter from Robert M. Ball, Commissioner of Social Security, to John D. Robb, Jan. 26, 1968. 2,508 billion dollars of this was for Part A dealing with hospital insurance payments and 663 million dollars for Part B voluntary medical insurance payments.

⁷⁰ Speech by Philip R. Lee, Assistant Secretary for Health and Scientific Affairs, Department of Health, Education and Welfare, entitled "Medicaid, Implications for Health Care," New York City, Dec. 12, 1967, at 10. Cur-

attempts to get Congress to earmark between forty-nine and fifty million dollars for Legal Services at the 89th Congress and the First Session of the 90th Congress proved futile despite a concerted congressional information program by the American Bar Association and other elements of the organized bar.⁷¹ It is unrealistic to expect Congress to fund Legal Services sufficiently to meet the much higher costs of a Judicare system.⁷² Due to the higher costs, wholesale conversion to Judicare at present without increasing funds available for the Legal Services Program would result in curtailing services to present clients by approximately two-thirds.⁷³ Surely the bar should not advocate and the Congress should not entertain any change which would effect such a drastic curtailment of services to the poor.

Second, there is the questionable assumption that physicians, either now or in the long run, are really better off, considering all of the implications of the Medical Program, than are lawyers merely because their income has increased. The medical profession today is subject to the most widespread regulation that has ever occurred in its history by reason of the

rent expenditures are now considerably higher for both Medicare and Medicaid than they were during the first twelve months of operation due to rapidly rising costs. *Id.* at 10-12; *TIME*, Oct. 6, 1967, at 96-98.

⁷¹ Standing Committee, *supra* note 15, at 6, Aug. 1967; Report of the A.B.A. Standing Committee on Legal Aid & Indigent Defendants 4, Feb. 1968.

⁷² See *supra* note 45.

⁷³ This is based on current figures indicating Judicare costs approximately three times as much as the present system. See *supra* note 45.

control exercised over nearly every physician by federal and state governments under the Medicare and Medicaid Programs. Further regulation and control is presently under consideration because of the mounting costs and other problems relating to the program.⁷⁴ It is submitted that the doctors have paid too high a price for what may well prove to be a short lived prosperity.⁷⁵

C. *Conclusions Regarding the Respective Arguments*

The Judicare programs have not been operational long enough to provide solid answers to most of these respective contentions, particularly those relating to the quality of the service although at least one study suggests that the services rendered by Neighborhood Centers are of a

⁷⁴ Rapidly rising costs have caused Congress to authorize HEW to experiment with ways to reduce the costs of both hospital and physician charges. REPORT OF SENATE COMM. ON FINANCE S. DOC., No. 744, 90th Cong., 1st Sess., 71, 72 (1967). Among the numerous steps being presently studied by HEW are "The Encouragement of the Group Practice of Medicine" and establishment of a national center to discover new ways of delivering health care more efficiently. Lee, *supra* note 70, at 13. There is also experimentation with "integrated" health service systems, including "organized services" and "control" over utilization of services. 1 REPORT OF THE NATIONAL ADVISORY COMM. ON HEALTH MANPOWER, Nov. 1967, at 70, 71, 74, 75.

⁷⁵ Even if the foregoing were not correct, however, the organized Bar must never let the choice of plan be decided upon the basis of its economic impact upon the profession. If the Bar ever became more interested in its own financial welfare than in assisting the poor, Judicare or any modification thereof would almost surely founder upon the abuses of overcharging, poor service and the like. See Voorhees, *supra* note 17, at 27.

higher quality.⁷⁶ Nevertheless, the limited experience with Judicare, coupled with the vast experience accumulated by Legal Aid Agencies and more recently by Legal Services Programs, suggests that OEO's policies have thus far been basically sound. With sharply limited funds and a large unsatisfied need⁷⁷ it has made sense

⁷⁶ Masotti & Corsi, *supra* note 25, at 495. Both OEO and the American Bar Association plan to conduct a thorough evaluation of Judicare when it has been operational long enough to provide more meaningful answers.

⁷⁷ Estimates as to the percentage of need being met by all Legal Aid and Legal Services organizations range widely from approximately 7 to 28.5 percent. Fifteen percent is probably a good estimate. An estimated one million matters were handled by Legal Aid facilities of all types in 1967. Standing Committee, *supra* note 71, at 3, Feb. 1968. The highest estimate of needs has been made by OEO. Speech of Earl Johnson, Jr., *supra* note 42; THE POOR SEEK JUSTICE 28 (1967). This figure was fourteen to eighteen million cases per year but was based in part upon preliminary drafts of an American Bar Foundation survey which was later revised to 3.5 to 5 million. See Silverstein, AVAILABILITY OF LEGAL SERVICES FOR THE POOR: A PRELIMINARY REPORT ON CASE STUDIES OF SAMPLE COUNTIES PREPARED FOR THE AMERICAN BAR FOUNDATION 42 (1966). The American Bar Foundation study appears conservative because it is based upon the problems recognized by the poor themselves (Silverstein, *supra* at 40), whereas the program has demonstrated that the poor do not really know their rights and how a lawyer can help them. OEO's current estimates range from 6 to 14 million annual problems. Letter from Earl Johnson, Jr. to John D. Robb, Dec. 12, 1967. The 6 million figure is based upon a projection of the experience of the District of Columbia Legal Services Program (the most adequately funded program) to the rest of the nation. The District of Columbia experience suggests that the true unmet needs aggregate approximately thirty cases per thousand of population. Other estimates have placed the percentage of needs currently being met

to concentrate funding upon a basic staff lawyer plan which, within its circumscribed limitations, already had a solid history of service to the poor for half a century prior to OEO.⁷⁸ Furthermore, the staff neighborhood lawyer approach clearly seems to have the better of the respective arguments in cities and metropolitan areas where operational efficiencies resulting from a large volume of cases give it a towering advantage.⁷⁹

at ten percent. Address by Bamberger, Southwest Regional Conference on Legal Services to the Poor, Austin, Texas, March 25, 1966; Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. 410, n.18 (1965).

Earlier estimates by Emory Brownell, former longtime Executive Director of the National Legal Aid and Defender Association, had placed the percentage of need then being met at fifty percent based on an assumed need of ten cases per thousand population. E. BROWNELL, LEGAL AID IN THE UNITED STATES 246 (1951).⁷⁸ See *supra* note 7. Although much maligned recently, Legal Aid was the shining beacon, rather than the light that failed, which kept alive the hopes of the poor in achieving the ideal of equal justice during earlier times when neither the public, the government nor the Bar paid adequate attention to poverty problems. Despite its admittedly serious shortcomings, Legal Aid developed a successful mold for the efficient operation of offices staffed by full-time lawyers and pioneered in the development of branch neighborhood offices and many other concepts which were adopted and improved by OEO. Cf. Standing Committee, *supra* note 15, at 5, 6.

⁷⁹ The large volume of cases permits a high degree of specialization, better quality service and lower costs per case. See NLADA Summary of Data 3 (1967), reprinted in NLADA CONFERENCE PROCEEDINGS (1967). Median cost per case in Legal Aid offices and cities classified in four categories ranged from \$19.20 to \$32.29 per case. Additional contributing factors, of course, are the proximity of clients and courts, as well as the proximity and availability of other related facilities.

The English Plan

Under the Legal Aid and Advice Act, portions of which have functioned in England for seventeen years, clients may choose their own attorney as under *Judicare*. If the matter involves more than just advice, the lawyer must submit a Statement of the Case to a committee which decides if the client has "reasonable grounds" for taking the contemplated action and if it is "reasonable in the circumstances" for the client to receive assistance.⁸⁰ The plan provides for legal advice, pre-litigation services beyond advice but short of litigation and assistance in litigated matters. Although the plan has operated well according to British lawyers⁸¹ and unquestionably has many good features, it is evident that it is not functioning satisfactorily in a number of crucial respects, particularly when viewed in the light of our American objectives and traditions.⁸²

First, the poor are receiving few services under the litigation portion of the plan in vital areas such as landlord and tenant, welfare, consumer credit and other diversified types of cases, which make up

⁸⁰ LEGAL AID REGULATIONS ¶ 5(1) (1962); Pelletier, *English Legal Aid: The Successful Experiment in Judicare*, 40 U. COLO. L. REV. 29 (1967).

⁸¹ Utton, *The British Legal System*, 76 YALE L.J. 371, 375-76 (1966); Pelletier, *supra* note 80, at 11.

⁸² It has been stated that the reason the plan works better in England than it might in the United States is because Great Britain has a smaller and more compact country, a strong Law Society and an absence of multiple independent authorities regulating the practice. Speech by Allison, Austin, Texas, March 25, 1966, entitled "New Opportunities for Legal Aid."

a large share of the OEO Legal Services Program,⁸³ since more than seventy percent of the cases and eighty percent of the overall cost of litigation relate to divorce and domestic matters.⁸⁴

Second, there are serious defects in the legal advice⁸⁵ and pre-litigation⁸⁶ portions of the plan which have received only slight use.⁸⁷

⁸³ See *supra* note 27, for a listing of the variety of cases handled by OEO-funded programs.

Nor does it appear that this is a result of any lack of need for a lawyer's services in these areas. See Zander, *Lawyers on the Doorstep*, *The Manchester Guardian*, Jan. 26, 1967.

⁸⁴ Zander, *supra* note 83; TWELFTH REPORT OF THE LAW SOCIETY AND COMMENTS AND RECOMMENDATIONS OF THE LORD CHANCELLOR'S ADVISORY COMMITTEE DEALING WITH LEGAL AID AND ADVICE 60 (1963) (hereinafter referred to as REPORT); FOURTEENTH REPORT 18, 19, 57 (1965). For the year ending 1966 the percentage had increased to seventy-three percent, comprising 77,091 of the 106,351 cases. SIXTEENTH REPORT, Apps. 3, 4 (1967). Fifty percent of the matters where advice only is sought involve divorce problems. FOURTEENTH REPORT 5 (1965).

The high percentage of divorce litigation has become a matter of concern to the Lord Chancellor's Advisory Committee and others. See Zander, *supra* note 83; THIRTEENTH REPORT 46; FOURTEENTH REPORT 57; SIXTEENTH REPORT 50.

⁸⁵ Zander, *supra* note 83; NEW SOCIETY, Jan. 19, 1967, at 86; Scott, 64 L. SOC'Y GAZETTE 4; Liell, *Why Not Neighborhood Law Offices*, 111 SOL. J. 763 (1967); Heath, *Mr. Heath on the Law's Future*, 111 SOL. J. 534 (1967); FIFTEENTH REPORT, *supra* note 84, at 53; SIXTEENTH REPORT, *supra* note 84, at 3, 4, 50. Heath describes this part of the plan as a "comparative failure." See also Pelletier, *supra* note 80, at 25, 26.

⁸⁶ FIFTEENTH REPORT, *supra* note 84, at 4; SIXTEENTH REPORT, *supra* note 84, at 4, 5; Draft of Memorandum of The Council of the Law Society, 2-6, Jan. 28, 1968.

⁸⁷ See *supra* notes 85 and 86.

Third, the eradication of poverty does not appear to be an object of the "scheme" since it has no law reform program as such.⁸⁸

Fourth, the right to bring actions appears to be unduly restricted as a result of committee review of prospective suits.⁸⁹

Fifth, litigation costs per case appear high, averaging 223 dollars overall⁹⁰ and 336 dollars for divorce cases.⁹¹

⁸⁸ Swygert, Study of English Plan and Judiciary 9 (1966), on file in Legal Services Division, Washington, D.C.; Speech by Allison, *supra* note 82. The English Plan has been criticized for confining itself to areas of "traditional" service rather than reaching the newly defined problems as under OEO's Legal Services Program. NEW SOCIETY, Jan. 19, 1967, at 85. Some changes in the law have, of course, resulted as a by-product of the system. See, e.g., FOURTEENTH REPORT, *supra* note 84, at 11, 12; FIFTEENTH REPORT, *supra* note 84, at 8; Pelletier, *supra* note 80, at 22, 39, 40. This is a particularly serious defect under American standards since law reform is one of the most important objectives of the OEO Legal Services Program. See *supra* note 42.

⁸⁹ Irvine, *A National Legal Service*, NEW STATESMAN, June 10, 1966, at 136. Cf. Zander, *supra* note 83. Utton, *supra* note 81, at 376, suggests that the high rate of success in litigated matters may actually suggest a serious shortcoming in the scheme, to wit, overly conservative administration.

"[M]any applicants are eliminated by . . . a careful enquiry into the merits of their claims." FOURTEENTH REPORT, *supra* note 84, at 2. But see Pelletier, *supra* note 80, at 29. The policy in the United States has always been to provide free access to the courts without unnecessary impediments. It is doubtful if the public or the bar in this country would consent to having a committee of lawyers determine whether a claim has sufficient merit to justify its being handled by a lawyer, particularly since weak cases often result in favorable judgments under our jury system.

⁹⁰ Utton, *supra* note 81, at 377.

⁹¹ SIXTEENTH REPORT, *supra* note 84, App. 17. This figure is based upon multiplying the 1966

cost of 120 pounds by an exchange rate of 2.8 dollars. The high cost of divorce has exceeded the expectations of the Lord Chancellor's Advisory Committee. TWELFTH REPORT, *supra* note 84, at 59. Although there are no comparable figures for the cost of handling litigated cases under the American system, it would appear as though these costs would be substantially lower. A gross comparison of the respective costs per case for all matters (including both litigated and non-litigated cases) discloses a figure of 119 dollars in England compared to 48 dollars for OEO-funded agencies and 14 dollars for all U.S. Agencies which include privately funded Legal Aid programs. Marsh, *supra* note 25, at 15. British figures are based upon 1966 statistics (see SIXTEENTH REPORT, *supra* note 84, App. 3, 16) which disclose a total of 165,940 cases of which 106,351 were litigated and 59,589 involved advice only. This compares with approximately one million cases handled under the American system for the year 1967. Standing Committee, *supra* note 15, at 3, Feb. 1968. It is difficult to draw any firm conclusions from these cost comparisons, however, because of the differences between the two legal systems including the maintenance of statistics, etc. In England a higher percentage of the cases are litigated, the figures being slightly less than 2/3 for Great Britain and 1/5 for the United States. (See statistics above for Great Britain and OEO, News Release, Dec. 17, 1967, for the United States which show that 58,000 out of 291,000 cases were litigated for fiscal year 1967.) However, such costs may well be offset by the fact that the English Plan has no expensive law reform program and its community education program appears more modest than that in the United States. The advice portion of the plan, however, is quite cheap, amounting to just 2.8 dollars per 1/2 hour. Liell, *supra* note 85. The overall cost of the British system for 1965-66 (the last year for which Law Society statistics are available) was 25.3 million dollars (SIXTEENTH REPORT, *supra* note 84, App. 16) versus an expenditure by the United States for fiscal year 1967 of 35 million dollars, of which 30 million dollars was contributed by OEO funding and 5 million dollars was received from private sources. Standing Committee, *supra* note 15, at 3, Feb. 1968. This total excludes the 7 million dollars worth of time estimated to have been contributed by American lawyers during that year. Total United

Sixth, administrative costs are high, amounting to seventeen percent of the total costs.⁹²

Seventh, in its seventeen years of operation, the plan has failed:

- (a) To develop an adequate program to inform the poor of their rights⁹³

and of the availability of the services;⁹⁴

- (b) To make much progress in overcoming the reluctance of the poor to consult lawyers;⁹⁵ and
 (c) To extend coverage to hearings before administrative tribunals.⁹⁶

Eighth, it has been slow to extend service. It has been criticized as granting aid "too sparingly" and has been termed a model of "conservatism" and "cautious advance."⁹⁷

States spending should increase to 43 million dollars due to expected OEO funding of 38 million dollars for fiscal year 1968.

⁹² Pelletier, *supra* note 80, at 34. Utton, *supra* note 81, at 377, has contrasted the twenty-two percent overhead (based upon earlier Law Society figures) with the thirty-five to forty percent overhead of an American law firm but overlooks the fact that under the English Plan the administration figure is in addition to the overhead costs of operating the individual British lawyer's office since his charges reflect his own individual overhead. Allison, *supra* note 82, computes administrative costs to be "almost . . . one-third of the government expenditure. . . ."

The difference between these figures is that Pelletier and Utton relate the costs of administration to all of the expenditures under the program, a substantial portion of which are contributed by assisted clients. Administration costs have even been estimated as high as sixty percent (Marsh, *supra* note 25, at 15) but the author can find no basis for this estimate. Pelletier, an advocate of the English Plan, concedes that it costs substantially more overall than neighborhood offices would. Pelletier, *supra* note 80, at 43.

⁹³ Liell, *supra* note 85, at 763; Heath, *supra* note 85, at 534; NEW SOCIETY, *supra* note 85, at 85-87; FIFTEENTH REPORT, *supra* note 84, at 53; SIXTEENTH REPORT, *supra* note 84, at 50, 51; Law Council unpublished Memorandum 1 (hereinafter cited as "Council Memorandum"). It seems probable that the small percentage of litigated cases other than divorce matters may be attributable to this failure.

⁹⁴ Zander, *supra* note 83; Scott, *supra* note 85; Heath, *supra* note 85; NEW SOCIETY, *supra* note 85, at 85; FIFTEENTH REPORT, *supra* note 84, at 53; SIXTEENTH REPORT, *supra* note 84, at 50; Council Memorandum, *supra* note 93, at 1, 13, 15, 21. Minor steps have begun to improve the situation (SIXTEENTH REPORT, *supra* note 84, at 3) and more are under consideration. Council Memorandum, *supra* note 93, at 13-22.

⁹⁵ Liell, *supra* note 85, at 763; NEW SOCIETY, *supra* note 85, at 85-86; Heath, *supra* note 85, at 534; Council Memorandum, *supra* note 93, at 13. Further steps aimed at correcting this are also under consideration. Council Memorandum, *supra* note 93, at 19, 21.

The English Plan has also been criticized for failure to develop an adequate education program for social workers. Heath, *supra* note 85, at 534. Some measures are under consideration for answering this criticism. Council Memorandum, *supra* note 93, at 17.

⁹⁶ Irvine, *supra* note 89; Scott, *supra* note 85; NEW SOCIETY, *supra* note 85, at 85; Heath, *supra* note 85, at 534; Pelletier, *supra* note 80, at 17; SIXTEENTH REPORT, *supra* note 84, at 52, 53.

⁹⁷ Irvine, *supra* note 89; NEW SOCIETY, *supra* note 85, at 85. Zander, *supra* note 83, charges that "most civil matters are concluded without the defendant having had the benefit of assistance from any lawyer." Eligibility standards are reportedly too low and the contributions required of clients too high. Council Memorandum, *supra* note 93, at 3. Cf. FOURTEENTH REPORT, *supra* note 84, at 2; FIFTEENTH REPORT, *supra* note 84, at 3; SIXTEENTH REPORT, *supra* note 84, at 3, 52.

Ninth, the ponderous administrative machinery for certifying cases has been criticized and has resulted in a recognized need to simplify procedures.⁹⁸

The shortcomings of the British System have been attributed in part to its failure to effect changes in the legal system and its failure to reduce costs by the use of salaried lawyers.⁹⁹ These defects have prompted reform proposals for the adoption of a full-time neighborhood lawyer plan.¹⁰⁰ Thus far, the British have refused to accept such drastic action¹⁰¹ but recommendations are under consideration to use salaried legal aid secretaries

⁹⁸ THIRTEENTH REPORT, *supra* note 84, at 7; SIXTEENTH REPORT, *supra* note 84, at 3, 4, 50. A two-month delay is reported in obtaining civil aid certificates. Liell, *supra* note 85, at 764. *Cf.* FIFTEENTH REPORT, *supra* note 84, at 52. Obtaining a certificate authorizing assistance is said to cost up to twenty pounds (56 dollars). Council Memorandum, *supra* note 93, at 4. The paper work is sufficiently burdensome so that solicitors reportedly do not bother to claim a fee in simple matters. *Id.* (For an outline of the various administrative procedures see Pelletier, *supra* note 80, at 24, 28, 29, 33.) Yet the Lord Chancellor's Advisory Committee concludes that the administration of the Plan is a "smooth running machine." FIFTEENTH REPORT, *supra* note 84, at 52.

⁹⁹ Irvine, *supra* note 89; Zander, *supra* note 83; NEW SOCIETY, *supra* note 85, at 86. It has been said that the defects are inherent in the British system itself. Liell, *supra* note 85, at 763. *Cf.* NEW SOCIETY, *supra* note 85, at 86. ¹⁰⁰ Irvine, *supra* note 89; Zander, *supra* note 83; NEW SOCIETY, *supra* note 85, at 86; Liell, *supra* note 85, at 765.

Michael Zander and Professor Brian Abel Smith have undertaken a study of the feasibility of using the neighborhood law office in Great Britain financed by a Ford Foundation Grant. Liell, *supra* note 85, at 764.

¹⁰¹ SIXTEENTH REPORT, *supra* note 84, at 51, 52; Council Memorandum, *supra* note 93, at 13.

to render a limited amount of advice.¹⁰² However, it is unlikely that the present system will ever be entirely replaced since it has become entrenched and the Bar has become dependent upon it as a means of support.¹⁰³

Choice of Plans in Rural Areas and Small Communities

Because of the emphasis by the Legal Aid movement and the Legal Services Program on urban areas, we know too

¹⁰² An advisory liaison service is thus being considered to be staffed by the local Legal Aid secretaries. Pelletier, *supra* note 80, at 15, 16, 26, 27; Council Memorandum, *supra* note 93, at 15, 16. Secretaries would give some advice but would mainly be used to assist clients in locating a solicitor. *Id.* *Cf.* SIXTEENTH REPORT, *supra* note 84, at 52. This is because of an increasing recognition that the poor are not able to exercise an informed choice from among members of the bar generally and that they need assistance in the selection of attorneys qualified to handle their cases, especially in connection with "special" problems. This changing concept also embodies the notion that attorneys skilled in handling particular matters should be grouped in panels. Council Memorandum, *supra* note 93, at 15, 17-19.

¹⁰³ The surprising fact is that one hundred percent of British attorneys recently polled reported that the system was operating satisfactorily despite its many obvious difficulties. The Law Society itself has been slow to face these problems as indicated by the absence of real reform proposals prior to the time Messrs. Zander, Irvine and others began to publicize the weaknesses in the system. Even now the proposals under consideration by The Law Society set forth in the "Council Memorandum" are rather mild considering the apparent dimensions of the problems.

Two-thirds of all British lawyers reportedly participate in the "scheme" and receive an average of 840 dollars a year which is more than sixty percent of per capita income in England. Pelletier, *supra* note 80, at 38-39.

little about the best manner of rendering legal services in the country and in the smaller communities.¹⁰⁴ OEO-funded rural programs, most of which use full-time staff lawyers, have generally utilized three basic approaches: (1) permanently staffed regional or local offices;¹⁰⁵ (2)

circuit riders paying periodic visits to smaller communities;¹⁰⁶ and (3) a combination of both.¹⁰⁷

In rural areas typically we find some of the most formidable obstacles to an effective program. These problems include: few, if any, lawyers in private

¹⁰⁴ Cf. CONFERENCE ON LAW AND POVERTY PROCEEDINGS 112 (1965). Although the special problems of the various segments of the rural poor, such as the southern Negroes, the poor whites of Appalachia and the Ozarks, the Indians and the migrant and other rural workers differ widely (*see* note 117, *infra*), they have many common civil problems:

- (1) Tenants, *e.g.*, unlawful evictions, substandard housing;
- (2) Debtors, *e.g.*, consumer fraud, garnishment, bankruptcy and wage earner plans;
- (3) Welfare and social security, *e.g.*, residency requirements;
- (4) Employment, *e.g.*, compliance with labor legislation, improper wage deductions, protection of strikers' rights;
- (5) Education, *e.g.*, discriminatory state practices;
- (6) Public agencies, *e.g.*, securing equitable portion of municipal services;
- (7) Land ownership (since many of the poor own modest homesteads and small farms), *e.g.*, surveys, title problems, preparation of wills and deeds;
- (8) Family, *e.g.*, divorce, separation, adoption, custody. *See* CONFERENCE ON LAW AND POVERTY PROCEEDINGS 92, 102-10 (1965); THE POOR SEEK JUSTICE 12 (1967); Speech by Earl Johnson, Jr., *supra* note 61, at 59; Gibson, *supra* note 12, at 481.

The legal problems in Appalachia, where seven million people reside (CONFERENCE ON LAW AND POVERTY PROCEEDINGS 89 (1965)) center around land ownership, welfare, employment, garnishment, wage earner plans and family law problems. *Id.* at 92, 97, 101-02, 104-05.

¹⁰⁵ California Rural Legal Assistance (CRLA) which employs thirty-two attorneys in its Los Angeles headquarters and nine regional offices is the most comprehensive of these; it covers 25,000 square miles and concentrates largely on farm and migrant workers. OEO Public

Affairs Release, Jan. 12, 1968; CRLA Re-funding Proposal, 47, 49, 54, 56 (Fall 1967) on file in Legal Services Division Office, Washington, D.C. A similar plan, South Florida Migrant Legal Services, Inc., will operate out of six regional offices in fourteen counties of southern Florida.

¹⁰⁶ Programs of this type operate in such places as Michigan (UPCAP) where seven lawyers ride circuit in fifteen counties of the upper peninsula, on Indian Reservations in northern Wisconsin and Tuscarawas County, Ohio, in Montana and in Sandoval County, New Mexico. *See, e.g.*, JUSTICE 13, 14 (1966); Johnson Memorandum to Community Action Program Director, Aug. 15, 1967.

A variant of the circuit rider is the mobile law office, a trailer equipped with office and library facilities, one of which operates in Delaware and Adair Counties of Oklahoma. Speech by Earl Johnson, Jr., *supra* note 61, at 59; THE POOR SEEK JUSTICE 12 (1967).

¹⁰⁷ The largest of these is the Navajo Legal Services Program (DNA) which, when fully staffed, will employ fifteen attorneys operating out of five regional offices servicing 96,000 poverty stricken Indians over the 25,000 square mile area of the Navajo Indian Reservation in Arizona and New Mexico. *See, e.g.*, JUSTICE 14 (1966); THE POOR SEEK JUSTICE 11 (1967). However, DNA has not implemented the circuit riding portion of the program as yet because of staff limitations and the large caseload being generated at its permanent regional offices. Conference by author with Ted Mitchell, Director of Navajo Legal Services Program, Jan. 30, 1968.

practice;¹⁰⁸ poor roads and transportation facilities;¹⁰⁹ difficult communication problems;¹¹⁰ tremendous poverty;¹¹¹ minimal education and a high rate of illiteracy;¹¹²

a deep-seated distrust, impatience and hostility toward the law;¹¹³ almost no contact with lawyers;¹¹⁴ little inclination to consult lawyers;¹¹⁵ and strong language and cultural barriers.¹¹⁶

These obstacles are magnified in the more remote areas, such as on Indian reservations and places frequently occupied by migrant farm workers.¹¹⁷ Circuit riding is essential here in order to reach the isolated population. Staff lawyers should definitely be used since special skills and training are required to cope

¹⁰⁸ Barvick, *Legal Services & the Rural Poor*, 15 KAN. L. REV. 537, 551 (1967); Haveman, Kurtz Edelen & Stephan, *Midwestern Rural Poverty, Human Rights, & the Need for Legal Services*, 15 KAN. L. REV. 513, 527, 532; Gibson, *supra* note 12, at 485. Recruitment of able staff lawyers in rural areas has proved a major problem. Johnson Memorandum, *supra* note 106. Prodigious efforts have produced remarkable results for CRLA, the largest rural program, which has succeeded in attracting a full complement of excellent young lawyers. CRLA Refunding Proposal, at 55-57; OEO Public Affairs Release, Jan. 18, 1968. The Navajo Legal Services Program, however, the second largest rural program, located in one of the remotest areas of the United States, has been unable thus far to complete its staffing although it was funded in early 1966. Lack of housing and other facilities on the Reservation has been a serious drawback. The lawyers hired, however, have been of a high caliber. Conference by author with Ted Mitchell, Director of DNA, Jan. 30, 1968.

¹⁰⁹ *Testimony of Shriver, supra* note 12, at 15; Barvick, *supra* note 108, at 546; Gibson, *supra* note 12, at 481; Haveman, *supra* note 108, at 526.

¹¹⁰ CONFERENCE ON LAW AND POVERTY PROCEEDINGS 91, 112 (1965); Haveman, *supra* note 108, at 525, 526.

¹¹¹ Gibson, *supra* note 12, at 470-72; Haveman, *supra* note 108, at 515; Lorenz, *Application of Cost-Utility Analysis to the Practice of Law*, 15 KAN. L. REV. 420 (1967); *Testimony of Shriver, supra* note 12, at 8, 15. Although comprising only twenty-nine percent of the population, the rural poor account for forty percent of all poverty problems in the nation. *Id.* at 7. A vital part of the problem involves a lack of social, welfare, economic, medical and other resources and facilities which are usually found in cities. *Id.* at 8, 9, 12; Gibson, *supra* note 12, at 473; CONFERENCE ON LAW AND POVERTY PROCEEDINGS 98 (1965).

¹¹² *Supra* note 12; CRLA Refunding Application 10; Gibson, *supra* note 12, at 472-73;

Haveman, *supra* note 108, at 521, 527-28; Mittelbach & Short, *supra* note 12, at 462-63.

¹¹³ CONFERENCE ON LAW AND POVERTY PROCEEDINGS 104, 112 (1965); Gibson, *supra* note 12, at 481; Speech by Earl Johnson, Jr., *supra* note 61, at 59. See CRLA Refunding Application 12.

¹¹⁴ Speech by Earl Johnson, Jr., *supra* note 61, at 59.

¹¹⁵ Haveman, *supra* note 108, at 531, 532; Report by the Committee on Public Information of the State Bar of Texas, *What Texans Think of Lawyers* 7.

¹¹⁶ Speech by Earl Johnson, Jr., *supra* note 61, at 59; THE POOR SEEK JUSTICE 11 (1967). See, e.g., CRLA Refunding Proposal 11, 12; Mittelbach & Short, *supra* note 12, at 464, 465.

¹¹⁷ Olguin & Utton, *The Indian Rural Poor: Providing Legal Services in a Cross-Cultural Setting*, 15 KAN. L. REV. 487 (1967). For example, the Navajo Reservation embraces 105,000 Indians occupying more than 25,000 square miles. DNA Refunding Proposal 1 (Summer 1967), filed with Legal Services Division, Washington, D.C. Migrant workers are often found in areas where the largest towns do not exceed 2,500. CONFERENCE ON LAW AND POVERTY PROCEEDINGS 111 (1965). OEO has devoted a large part of its rural budget to both migratory workers and Indians. For example, 1.3 million dollars of a total 8.5 million dollars annualized rural budget has gone for Indian Programs; and two programs, CRLA and South Florida Migrant Legal Services have accounted for 1.2 million dollars and 800,000 dollars, re-

with these serious problems.¹¹⁸ Using a different lawyer each trip into these re-

spectively, of the balance for fiscal year 1967. See Johnson Memorandum, *supra* note 106. CRLA has since been refunded at 1.4 million dollars. OEO Public Affairs Release, Jan. 18, 1968.

Poverty levels for both groups are exceedingly low. Average 1964 income for migrant workers was less than 700 dollars (CONFERENCE ON LAW AND POVERTY PROCEEDINGS 112); average income for Reservation families is reportedly only 1,500 dollars and the unemployment rate is forty to fifty percent, some seven or eight times the national average. Olguin & Utton, *supra* at 487.

Indians face special problems of remoteness, lack of opportunities, discrimination, particularly poor housing, illiteracy, cultural and language barriers and domination by tribal authorities and codes without the benefit of constitutional safeguards. CONFERENCE ON LAW AND POVERTY PROCEEDINGS 114 (1965); Olguin & Utton, *supra* at 488-92; Mundt, *Indian Autonomy and Indian Legal Problems*, 15 KAN. L. REV. 505-11 (1967). See, e.g., DNA Refunding Proposal 28-34, 40-45.

The 7.5 million migrant and seasonal farm workers have all the problems of the rural poor (see *supra* note 104) compounded by discrimination against them because they are foreign to the locality, unusually poor housing and all the problems of a tenant without some of the corresponding rights. THE POOR SEEK JUSTICE 12 (1967). See, e.g., CONFERENCE ON LAW AND POVERTY PROCEEDINGS 113 (1965); Lorenz, *supra* note 111, at 421, 422, 424-45; CRLA Refunding Proposal 16-20, 25, 26; *Testimony of Shriver*, *supra* note 12, at 2. Shriver has described them as being "among America's most deprived rural citizens." Cases handled by CRLA, the largest migratory workers program, have involved thirty percent consumer employment problems, 1/3 welfare and other government agency problems and the balance of slightly more than 1/3 primarily housing and domestic relations difficulties. CRLA Refunding Proposal 6, 7.

¹¹⁸ Speech by Earl Johnson, Jr., *supra* note 61, at 59; THE POOR SEEK JUSTICE 111 (1967). See CONFERENCE ON LAW AND POVERTY PROCEEDINGS 103 (1965).

more areas, as would be the case under Judicare, would produce a lack of continuity and inefficiency. Furthermore, the poor are not likely to make much use of the service if they must get accustomed to a new face each time.

The staff lawyer plan is also preferable in the smaller rural towns and communities¹¹⁹ although the advantages may be somewhat less pronounced here. It is, of course, arguable that Judicare is a reasonable alternative in such towns and communities where the caseload is not large enough to justify hiring of a full-time lawyer,¹²⁰ where there are already resident lawyers in private practice able and willing to render effective assistance, and

¹¹⁹ See, e.g., Barvick, *supra* note 108, at 551; CONFERENCE ON LAW AND POVERTY PROCEEDINGS 103, 107 (1965). But see Remarks of Professor Mooney, CONFERENCE ON LAW AND POVERTY PROCEEDINGS 92-95 (1965).

¹²⁰ This criterion limits consideration of Judicare to communities of less than 20,000 to 30,000 people under ordinary circumstances since a full-time lawyer normally will be required for larger communities. Under current NLADA standards a full-time attorney is needed where the annual caseload exceeds 400. See NLADA HANDBOOK OF STANDARDS 8 (1965). The foregoing estimate as to the size of such communities assumes a caseload of 15 to 20 per thousand population which would fall within a normal range. See Silverstein, *supra* note 77, at 41, 41-a. Barvick, *supra* note 108, at 547-48, quite properly points out the marked advantages of using full-time staff counsel as distinguished from part-time staff counsel or retained counsel. Part-time staff counsel would conduct the poverty business at a regular Legal Services office but would engage in private practice in his own private office as well. Retained counsel would conduct both poverty business and his normal practice out of the same private office.

where the language and cultural barriers may not be quite as great. The advantages of expertise, economy and accessible neighborhood offices, which are so readily apparent in large city programs, may be reduced here.¹²¹ From the standpoint of direct services to the client it may well be more economical to use Judicare, employing lawyers as and when the problems arise, rather than to keep a full-time or indeed a part-time lawyer, investigator, secretary and office which is only used occasionally.¹²² The "downtown" lawyer's office may be just as accessible to the small town dweller as a neighborhood one where there is no clearly defined poverty area or where one can walk downtown in a few minutes. Similarly, there may be less reticence to consult a lawyer in private practice in the smaller community where everyone knows everybody else.¹²³ However, other factors tend to counter-balance these considerations. The overall cost may actually be greater for Judicare when the other vital aspects of the program, such as law reform, administration, attorney and community education, attorney training in poverty problems, related research and the like are considered. Even under

¹²¹ See *supra* note 79.

¹²² Development of neighborhood centers in rural areas has been more expensive "due to the handicap of distances." *Testimony of Shriver, supra* note 12, at 13.

¹²³ CONFERENCE ON LAW AND POVERTY PROCEEDINGS 93 (1965); See, e.g., E. KOOS, *THE FAMILY AND THE LAW* 11, 12 (1949); *What Texans Think of Lawyers, supra* note 115. This is to be distinguished from the more remote rural areas where few people have had any contact with lawyers. See Speech by Earl Johnson, *supra* note 61, at 59.

Wisconsin Judicare these functions are performed by staff lawyers.¹²⁴ Some centrally located office must provide these services to groups of smaller communities which are not large enough to provide such an office of their own. The expense of maintaining this additional office, coupled with the field trips into the smaller communities by its staff lawyers to perform these needed functions, may well more than offset the limited economies involved in using private lawyers for the direct services. Indeed, these expenses would rise in inverse proportion to the size of the community, that is, the smaller the town the more the private lawyer will require these "central" services, including particularly training in poverty law and research assistance. This is because the lawyer in the small community is apt to be more isolated from facilities and sources of information, such as bar associations, law schools, libraries and other lawyers working in the poverty field with whom he can exchange ideas.

Likewise, the smaller the community the more serious are the inherent conflicts of interest. More difficulties will be encountered in locating, from among the few private practitioners, a lawyer who will accept and vigorously prosecute cases against the established political and commercial forces in the community which usually comprise an important part of his clientele. Indeed, the small town lawyer because of his superior education and influence will himself often be an integral

¹²⁴ See *supra* note 22.

part of the power group¹²⁵ which a good Legal Services Program may find necessary to challenge.¹²⁶

Where the choice is between bringing in a non-resident circuit riding lawyer or using resident Judicare attorneys, consideration must be given to factors other than the normal "staff versus Judicare lawyer" arguments. In this circumstance the Judicare lawyer has the advantage that:

(1) The non-resident lawyer as an "outsider" is less likely to know the community as well or to be accepted by it or by prospective clients;¹²⁷

(2) A circuit rider is normally available in the community only at stated times convenient to him rather than when

¹²⁵ Barvick, *supra* note 108, at 550; Haveman, *supra* note 108, at 532. This group in some areas has been characterized as a "narrow" and "feudalistic" structure and a holdover from the "factory town." CONFERENCE ON LAW AND POVERTY PROCEEDINGS 111, 112 (1965).

¹²⁶ See Note, 80 HARV. L. REV. 805, 849 (1967). This very power by the small town lawyer may make it difficult to install a Legal Services Program over his active opposition. The country lawyer is apt to reflect the provincialism and conservatism of his contemporaries and to take the position that "we take care of our own—there is no problem here." Without the support of the local lawyers, raising of the requisite twenty percent local share contribution may be most difficult. Although large regional programs, such as CRLA, are difficult to develop and coordinate, they can draw upon support from broader statewide resources and thereby help to overcome the apathy or resistance which is presently impeding many rural programs. Possibly in recognition of these factors OEO's plans emphasize increased reliance on such programs. Johnson Memorandum, *supra* note 106.

¹²⁷ See CONFERENCE ON LAW AND POVERTY PROCEEDINGS 92, 93 (1965).

needed by the client;

(3) The circuit rider may be used less efficiently due to the loss of time incurred in transit especially where he has a broad area to cover.

These advantages in some circumstances could, of course, outweigh the other disadvantages of Judicare in such areas.

Choice of Plans in the Smaller Cities—Legalcare

Despite the advantages of the staff lawyer over Judicare, is a possible marriage of the two systems feasible¹²⁸ as a compromise between the divergent viewpoints? Sufficient evidence is not available to provide any solid answers. However, despite some obvious problems, further study of such a match is worthy of consideration in smaller cities where at least two full-time lawyers would be required to service the poor, that is, cities having populations of perhaps 50,000 to 200,000. Such a plan does not appear feasible in the larger and medium size cities where the staff-neighborhood lawyer has almost overwhelming advantages of specialization and operating efficiencies.¹²⁹ Nor does it appear to be feasible in the

¹²⁸ "Integration" of the private bar into the neighborhood center plan has been suggested earlier. Utton, *supra* note 81, at 377-78. OEO has made a timid start by funding one plan of this type in Mississippi which has been referred to as a "panel office." Note, 80 HARV. L. REV. 805, 850 (1967). Although private attorneys handle about half of the caseload, it is contemplated that staff attorneys will ultimately render most of the services. Interview, *supra* note 45. A second project in Durham, N.C., never got into operation.

¹²⁹ See *supra* notes 45 and 79.

smaller communities where the cost of retaining private lawyers in addition to a full-time staff and office would seem prohibitive.¹³⁰ The small city, however, is large enough to capitalize on some of the advantages of the staff-neighborhood lawyer system but may not be sufficiently large to rule out a modified form of *Judicare* entirely as a feasible vehicle. "Legalcare" might be a suitable name for such a combination. The plan would include a full-time staff which would administer the entire program, handle a large part of the direct services to clients and refer other matters to private lawyers. The staff, comprised of well-trained professionals in the law of poverty, would man the central and neighborhood offices handling all initial interviews, making determinations of eligibility and rendering advice where advice only is indicated. The staff would also take all cases for which it had particular expertise not shared by general practitioners in the area, such as those involving complex welfare and social security regulations, tenant and debtor problems and the like, and direct referrals of related problems to other agencies. It would engage in law reform, public relations, community and attorney education, and professional training programs for lawyers participating in the plan. It would be the staff's responsibility to maintain a library, research facilities, a file of briefs and legal memoranda, and forms of practice and procedure. It would also have to be available for consultation with lawyers in private practice, and offer central services to lawyers handling poverty

cases, such as investigators. In short, the staff would coordinate and weld all of these efforts into a concerted and comprehensive legal services program.

The problems normally handled by lawyers in private practice in that area, such as domestic relations and bankruptcy matters, would normally be referred to panels of lawyers who are certified by the local bar association as competent to handle them. To minimize the serious problems of accessibility of the services and unnecessary referrals, however, the client would be offered the option of using either the staff lawyer or the lawyer in private practice on these commonly encountered problems. If referral were desired, the client would be furnished the names of private lawyers having offices nearest to his home or place of employment. Costs would be kept in line by fixing fees of private lawyers at perhaps two-thirds of minimum fee schedules. "Legalcare" would partially preserve some of the better features of both plans, such as expertness, accessible offices and lower costs, as well as engaging the experience and continued support of broader segments of the bar and a limited freedom of choice.

"Legalcare" would, however, raise a number of questions, such as:

(1) Would the poverty cases receive good attention and would the more competent and experienced lawyers participate? Fee limitations, seemingly necessary to make "Legalcare" reasonably competitive with the costs of using staff lawyers, might result in relegating the problems of the poor to the less experienced and less competent members of the Bar. It might also place the

¹³⁰ Note, 80 HARV. L. REV. 805, 850 (1967).

problems of the poor in a position of secondary priority in competition with the better paying matters in the private attorney's office.

(2) Would it be possible to continue to attract high quality staff lawyers if their jobs were "downgraded" by limiting the scope of services they could perform?

(3) Would serious friction develop between staff and private lawyers because of possible competition concerning which cases should be handled by each group?

(4) Could the difference between the fee paid and the amount of a reasonable fee be credited as a contribution against the local share requirement? If not, would lawyers continue to donate time to help meet this requirement once they got used to being paid for such services? If contributed time were made a condition of participation in handling poverty cases, would it restrict the number of lawyers who would participate?

Answers to these and other questions about "Legalcare" could be provided by adequately funding a number of them.

Conclusion

The conclusions¹³¹ of the writer may be summarized as follows:

(1) The present full-time staff neighborhood lawyer concept plainly seems best suited to meet the needs of the poor in the large and medium sized cities.

(2) The experience in England furnishes no assurance that such a plan could be effective in the United States.

(3) Sufficient data is not available to determine which will prove ultimately to be the best plan in rural areas and in the small cities, although the staff lawyer appears to have definite advantages here as well.

(4) Careful study and evaluation of the various funded plans, including Judicare, in the rural areas is called for.

(5) "Legalcare," involving a combination of staff attorneys and Judicare, should be tried in some of the small cities.

¹³¹ All views expressed herein are solely those of the author and do not necessarily reflect the views of the American Bar Association.

