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LEGAL SERVICES FOR THE POOR: A POLITICAL PERSPECTIVE

P. VAUGHN GEARAN *

THE RIGHT TO JUSTICE for the poor is no longer a long-range goal; it is an immediate demand. It is a demand upon our consciences, our governmental, economic and social institutions, and upon our legal system and profession. The justice of the demand requires a total response from within, adopted to our political realities, structures, and traditions, and viewed from a political perspective.

The Legal Services Program of the Office of Economic Opportunity deserves by experience, performance, and support to be the political base of operations for the mobilization of a comprehensive extension of legal services to the poor. Within four years it has guided the establishment and development of 266 locally controlled projects with more than 2,000 full-time staff attorneys, serving in community law offices, in practically every state in the Union. It has earned the endorsement of the American Bar Association, enjoyed continued Congressional support, and won the trust and confidence of over a million clients plus uncounted residents in poverty areas. The Office of Economic Opportunity itself has recognized its Legal Services Program as "one of the most successful, most imaginative and direct of all the programs in the nation's War on Poverty."¹

As currently constituted, however, the Legal Services Program cannot do the whole job alone, namely:

1. provide quality legal services for the fourteen to twenty million legal problems the poor face each year;
2. educate twenty-seven million poor people about their legal rights and responsibilities;

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¹ AMERICAN BAR ASSOCIATION NEWS, July 15, 1966 at 1.

3. convincingly demonstrate to an increasingly impatient poverty community that the legal process is an effective instrument for orderly social change;

4. provide sufficient numbers of legal specialists to the potential number of self-help groups seeking a share of the American economic system;

5. advocate for and involve the poor in the social decision making process;

6. encourage attitudinal, procedural, and substantive change in law schools, lawyers, and the legal and judicial system; and,

7. provide a political climate in which all of the foregoing can flourish.

There are neither the financial nor professional resources available to the present program to implement directly this comprehensive mission. The Legal Services Program's budget allocation from the Office of Economic Opportunity of \$45.5 million generally prohibits the funding of applications for new projects and has required a concentration on bringing certain selected projects closer to adequate staffing levels. Also, there are limits on the number of capable and committed lawyers who are willing to make careers in poverty law or to serve in the full-time community law offices of the Legal Services Program, particularly in the less celebrated or more remote projects.

Recognizing its limitations, the Legal Services Program must distinguish between direct and supportive roles, and, with political sensitivity, order priorities that are at once uncompromisingly responsive to the needs of its clients and realistically capable of effective implementation.

A Broader Base

In delineating its direct and indirect program activities, the Legal Services Program must be mindful of those political objectives necessary for success. Success might be defined as the broad application of lawyers' skills and the legal process to the causes and effects of injustice and poverty so as to effectuate orderly and permanent improvement maximally responsive to the problems perceived and the solutions proposed by the poor.

The first objective politically, professionally and programmatically must be to earn, develop, and maintain the confidence and support of the broadest possible client constituency, and to merit increasing respect and credibility in the community as an effective and constant advocate for the poor. This objective can never be compromised.

A philosophical second, but a practical concomitant, however, is the objective of providing stimulation, coordination, and assistance for the building of a broader political base of support for the program. To the extent that justice for the poor alleviates poverty, the Legal Services Program must alleviate unfavorable reaction to anti-poverty efforts, particularly from heretofore ignored middle income people. In transforming the legal system into a friend of the poor, we must not make it an enemy of the middle class which constitutes the vital political center of American politics. Adversary proceedings are inherently necessary in channeling the energies of the disenfranchised through the legal process, and the ruffled feelings of litigants must be accepted as a desirable alternative to

anarchy or suppression. But there are ways the Legal Services Program can focus upon and ameliorate middle income resistance to the extension of legal services to the poor.

Two prototypes of potential political resisters are the wage earner above the poverty line who is hard pressed to pay for private, comprehensive legal services, and resents those who are eligible for free legal advice and representation; and the middle income attorney who has seen his sources of income threatened by banks, insurance companies, accountants, proposed legislation for absolute tort liability, publications on avoiding probate, as well as the possible loss of marginally poor clients to the Legal Services Program. An open and active alliance with both of the above to relieve their difficulty without detriment to legal services for the poor would enhance significantly the already substantial support for the Legal Services Program.

Some areas for consideration in this joint venture should include the coordination of a concerted effort by organized labor and private industry for the massive and effective implementation of group legal services arrangements for the benefit of employees and union members. A carefully developed and mutually acceptable plan could do much to extend the middle income working people and their families' quality, and even specialized, legal services at lower cost for the client; and also provide a tax deduction for industry, an added fringe benefit for labor, and a stable and substantial source of income for private attorneys. Group

legal services arrangements have been upheld by the United States Supreme Court,² and encouraged by leading members of the legal profession as a method for reducing the cost of needed legal services, easing the problem of finding a lawyer, and providing the client with a lawyer in whom he has reason to have confidence.³ This could be made more palatable to the sole practitioner if accompanied by support for the development of private legal protection insurance which could bring to the legal profession and its clients the benefits that Blue Cross—Blue Shield type plans have brought to doctors and their patients, and the implementation of such a plan beyond the experimental stage in a cooperative effort with the organized bar and the insurance industry. Similarly constructive would be the stimulation of a push by the private bar to obtain tax credits for the reasonable value of any free legal services they provide. A fair allowance by the Internal Revenue Service would be a timely incentive to the private practitioner to continue in his tradition of providing service regardless of ability to pay.

Political realities also encourage a call for significant contributions of service

² See, e.g., *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967); *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963). See Note, *Group Legal Services: The Ethical Traditions and the Constitution*, 43 ST. JOHN'S L. REV. 82 (1968).

³ See Report of the American Assembly on Law and the Changing Society, March 14-17, 1968.

and funds from the private sector of our economy, a primary value of these efforts being the building of bridges of understanding and commitment between the poor and influential segments of the political power structure.

The Legal Services Program should launch a national effort to involve prestigious law firms in economic development, bringing to the neighborhood groups and corporations the Wall Street kind of expertise in the development and maintenance of economic power; these services ideally being coordinated with a neighborhood attorney who establishes a closer and more general relationship with the groups served. Large law firms also should be encouraged to give one or more employees leaves of absence with pay to serve in legal services projects. These activities can round out continued efforts to recruit volunteer attorneys, and to sharpen the focus of law schools—their students, faculty, curricula, publications, and legal internship programs—on the problems of the poor and poverty law.

The financial community should be encouraged in the development of private, non-profit investment partnerships designed to operate on the stock market and to plow profits into legal services projects and their ancillary activities. Such enterprises already have been organized in support of anti-poverty objectives. Increased attention to legal services in the budgetary priorities of private funding agencies should be fostered, and guidelines of interdisciplinary cooperation should be developed with private social agencies for a firmer mutual recognition

that poor peoples' legal and social problems often are intertwined. And, of course, there should be a coordinated and systematic sharing of information with those private organizations already committed to the causes of the poor, such as the Legal Defense Fund of the NAACP, the Roger Baldwin Foundation of the American Civil Liberties Union, and the Urban Coalition and its lobby corporations—the Urban Coalition Action Councils.

The marshalling of private resources, however, should be implemented with logical programmatic priorities, and local legal services projects particularly should be allowed to order these priorities in light of the other goals of the project, unfettered by the present statutory requirement that 20 per cent of the working budget be provided from non-federal sources.⁴ Rather than encouraging local projects in the mobilization of local resources in a total community effort to eliminate poverty, the present non-federal share requirements on legal services and other poverty programs are conditions precedent which give established local interests effective control, rather than a partnership interest, over the existence and size of what should be a common effort. While the mobilization of private resources is an appropriate support activity of the Legal Services Program, at the local project level it properly should be a work program matter subject to evaluation based on local conditions.

The Legal Services Program can enlist additional legal services for the poor

⁴ Economic Opportunity Act, Title II, § 225(c).

from the public sector in ways which require no additional public funds (always politically popular), and can win allies in more traditional and politically stronger public agencies and their employees. For example, on the federal level, the Legal Services Program can proceed with negotiations with Health, Education and Welfare; Housing and Urban Development; Social Security; Veterans Administration; Agriculture; Federal Trade Commission; the Community Relations Service of the Department of Justice; etc., to arrange for legal and other expert personnel to be detailed for limited periods on a rotating basis to the Legal Services Program and its projects. This cross-fertilization and coordination could bring legal and administrative expertise to the Legal Services Program and a better understanding of the plight of the poor as perceived in legal services to other governmental agencies. Even within the Office of Economic Opportunity, the lawyer projects of the Volunteers in Service to America (VISTA) could be more closely coordinated with legal services projects, with benefits to both.

There is no escaping the fact, however, that the public sector must be the financial generator of any significant extension of legal services to the poor. The full time community law office approach of the Legal Services Program on balance is preferable and, while public monies are limited, should receive priority funding to the extent that it can reasonably expand.⁵ Certain alternative and

supplemental mechanisms for the accelerated extension of legal services to the poor, however, offer advantages to both the middle income attorney and the poor, and therefore can contribute to a favorable political climate. Of primary interest should be various "judicare" proposals, by which eligible clients' fees are paid to the private lawyer of their choice, and particularly the "legalcare" approach suggested by the chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, which would combine features of a full time staff project with supplemental "judicare."⁶ The Legal Services Program and the private bar jointly can promote "judicare" and "legalcare," paying particular attention to the enforcement and creative application of statutes and regulations requiring the public provision of necessities to the poor so as to include needed legal services, and to the advancement of the concept of the right to counsel in civil cases and minor crimes.

Statewide Coordination

A promising opportunity to integrate the various approaches to legal services is presented by the recently announced legal program of the U.S. Department of Health, Education and Welfare, which will fund acceptable state plans for the provision of legal services to welfare applicants and recipients, preferably to be coordinated with the projects of the Legal

⁵ For a full treatment on "judicare," "legalcare," and a comparison with the full-time

neighborhood office, see Robb, *Alternate Legal Assistance Plans*, 14 CATHOLIC LAW. 127 (1968).

⁶ Economic Opportunity Act, Title II, § 225(c).

Services Program.⁷ Cases not requiring expertise in poverty law or beyond the caseload capabilities of independent legal services projects could be referred to the private bar for service for a fee. Where no legal services project can be made available, the Legal Services Program could assist in establishing a "judicare" type referral service with adequate safeguards for attorney and client. Elementary in the development of any plan must be the protection of an independent lawyer-client relationship in a situation where both the lawyer and the client have financial ties to an agency with which the client may take legal exception. Prescinding from any other advantages, the demonstrated independence of the local, private corporations of the Legal Services Program is a compelling reason for favored status in the implementation of the H.E.W. proposal. Statewide private, non-profit corporations, fashioned after local legal services governing boards, similarly would be the most appropriate vehicles for developing and delivering coordinated, independent and professional statewide legal services plans funded by H.E.W.

Statewide technical assistance, research, training and coordinating facilities have had their advocates within the Legal Services Program for some time, and the advent of the H.E.W. proposal is an added incentive to fund them on a priority basis. Proponents of statewide backup units have presented their case on

⁷ For details of this program, the reader's attention is directed to the APPENDIX, *infra*, and the provisions of State Letter 1053, Department of Health, Education and Welfare.

purely programmatic terms which, coincidentally, have taken on the political weight of an expected increased emphasis on state and local delivery systems for federally funded service programs.

In addition to providing coordination for plans for H.E.W. and other appropriate federally aided programs, the statewide units of the Legal Services Program should be adequately funded and staffed:

1. To provide appropriate technical assistance to, and enter into contracts with, existing legal services projects in the area served for the more effective implementation of specific programs of reform, community action, and economic development, defined in the community served and consistent with the policies of the legal services program of OEO, which are responsive to the needs of their clients, those living in poverty.

2. To serve as a clearinghouse and distribution center of information for all legal services projects in the area served.

3. To undertake special projects of reform, community action, and economic development not inconsistent with the efforts of existing legal services projects when it is deemed inappropriate for the legal services projects to undertake them; and to enter into contracts with appropriate organizations other than existing legal services projects within the area served to provide funds for technical assistance in, or to demonstrate the value of, special projects of law reform, community action, and economic development consistent with the policies of the legal services program of OEO.

4. Within the scope of the foregoing purposes: (a) to assist neighborhood and other legal services lawyers throughout

the state in backup research, brief writing, and as co-counsel or counsel in representation of individuals and groups in problems which involve reform opportunities for persons living in poverty; (b) to assist appropriate local and state legislatures, executives, administrators, and committees with their consent in conducting studies and marshalling information which affect the lives of the poor, particularly when such information is the potential basis for legislative, executive, or administrative action; and to draft and present proposed legislation representative of and responsive to the needs of those living in poverty; (c) to develop methods for increased education about legal rights and responsibilities of persons living in poverty and persons who work with such persons, such as neighborhood aides, probation workers, social workers, lawyers, the police, and general public; (d) to assist in the development of groups and neighborhood corporations and private agencies for neighborhood control and economic growth; (e) to retain private, legal, and other expert services.

5. To survey the problems faced by the existing legal services programs, and the poor, and other groups representative of the poor, as a basis for establishing priorities for the expenditure of funds under this grant; and to determine which priorities can best be carried out in the communities served, which local efforts could be to some degree coordinated, and which could be best carried out on a statewide basis.

6. To conduct training programs restructured to implement emerging priorities with close coordination between the

Legal Services Program and others involved in anti-poverty efforts, particularly those related to legal services. This would not only avoid duplication of effort, but would also provide opportunities for lawyers, neighborhood aides, social workers, and other professional and non-professional staff to relate their role to a common cause.

In most cases these statewide units would supplement rather than supplant existing local projects. The first fully funded facility of this type was established in Massachusetts, July 1, 1968, with the assistance of directors of existing projects, and its preliminary performance has been outstanding. In some instances, the backup unit may be built into existing statewide legal services projects, as in Maine and Vermont; and this course of action has in fact been incorporated in the planned conversion of three local projects in Rhode Island into a new statewide structure. The jurisdiction of two projects presently encompasses the State of New Hampshire, making the introduction of statewide technical assistance and coordination a relatively simple task. The Connecticut project directors participated in the summer of 1968 in drafting a generally acceptable statewide proposal, and an active and representative project directors' association in New Jersey has the capability of developing a statewide structure. The re-funding of New York City's legal services program, effective October 1, 1968, includes a similar city-wide support unit for the city's neighborhood law offices; and sufficient staff for statewide legislative coordination was built into the Al-

bany project through a supplemental grant in June, 1968. Thus, the Northeast Region of the Legal Services Program, including New England, New York, and New Jersey, with over seventy legal services components and nearly one-third of the national allocation for the program, has been moving in the direction of statewide technical assistance and coordination which may well be applicable nationally.

The Group Priority

The Legal Services Program, while providing funds for statewide coordination and support, should focus upon the local poverty community as the political forum for identifying and resolving its own substantive problems. Generally, therefore, the decisions properly reserved for determination and promulgation nationally and regionally should be primarily procedural, involving techniques for establishing local and statewide priorities, and effective mechanisms for implementing them.

From the early days, the Legal Services Program developed its priorities in a direction which culminated in Congressional recognition in the fall of 1967, when the Committee on Labor and Public Welfare of the United States Senate, in its consideration of the Economic Opportunity Amendments of 1967, concluded:

The legal services program can scarcely keep up with the volume of cases in the communities where it is active, not to speak of places waiting for funds to start the program. The committee concludes, therefore, that

more attention should be given to test cases and law reform.⁸

This focus on "law reform" had been sharpening for several years and was enunciated clearly by the National Director of Legal Services in the spring of 1967 in his keynote address to the Conference on Law and Poverty at Harvard Law School:

The primary goal of the Legal Services Program in the next few years should be bringing about changes in the structure in which poor people live. The purpose is to provide, in the largest scale possible and consistent with our limited resources, a legal system in which the poor enjoy the same legal opportunities as the rest of the society.⁹

On February 29th and March 1st, 1968, The National Project Groups, composed of 24 project directors and staff attorneys from across the nation, emphasized the primacy of law reform as the highest priority, if not the only goal, of the Legal Services Program.¹⁰ Moreover, the group recommended that this policy be enforced at the national level by using law reform as the chief criterion in evaluating and in funding legal services projects. The group defined "law reform" as including test cases, other litigation, negotiations with administra-

⁸ S. REP. No. 563, 90th Cong., 1st Sess. 40 (1967). See also Johnson, *The O.E.O. Legal Services Program*, 14 CATHOLIC LAW. 99, 100 & n.5 (1968).

⁹ Address by Earl Johnson, Jr., former Director, Legal Services Program, Harvard Conference on Law and Poverty, March 17, 1967.
¹⁰ Report of Legal Services Project Advisory Group, March 1, 1968.

tions, legislation, constant accumulated pressure, and group representation.

At the project level, the law reform priority evoked unanswered questions as to what was "acceptable" as law reform, what percentage of time should be devoted to law reform, whether the standard would be variable in terms of the capability of the project and the community. The response from the projects to the law reform priority has varied greatly. A factor in this variation has been the ability of the project to deal with the national pressure for law reform and the local pressure to respond to case-load demands.

To some extent this dilemma polarized into a law reform-caseload dichotomy which, as recently as the October 29-November 2, 1968 conference of the National Legal Aid and Defenders Association, was still the subject of intense debate among those involved in legal services to the poor. Additionally, the term "law reform" has conjured up images of violent revolution on the one hand and great white paternal planning on the other among certain segments of our citizenry.

In establishing programmatic priorities for the legal services projects it funds directly, the Legal Services Program must avoid the pitfalls of the divisive law reform-caseload dichotomy, and remember that its first professional responsibility and political objective is to earn, develop, and maintain the confidence and support of the broadest possible client constituency.

A most effective general national guideline would be a procedural priority for poor people's organizations as pref-

erential clients over eligible individuals. Within this group priority, legal services projects should offer to the groups and to the communities being served a full spectrum of advocacy, including direct individual services, test cases, other litigation, negotiations with administrations, legislation, constant accumulated pressure, and group representation.

The first priority of its community education program should be to fully acquaint the groups and the community of the financial limitations on the Legal Services Program, and the advantages and disadvantages of applying the various techniques of advocacy to the problems presented for resolution, considering the capabilities of the legal services project, and the availability of supportive resources. As the poverty communities, particularly as represented by the various organizations and groups which *they* control, come to understand *their* rights and responsibilities and opportunities, *they* can determine a hierarchy of long range and short range goals and select the legal approaches *they* wish to employ. Some groups and some communities may perceive the direct treatment of the immediate effects of poverty as their first priority; others may choose a long range attack on the root causes of their fundamental problems; and others may seek to balance the two.

Giving priority to the choices of poverty groups, the Legal Services Program should respond, within the framework of professional standards, to the wishes of the poverty community. Thus, local initiative is extended to the neighborhood community and its representative groups, maximum feasible participation of the

poor is applied to the definition and resolution of the problems of poverty and arbitrary limits on the extent of individual services or law reform activities is precluded, the decision being left to the client. This client-oriented approach, operating within the privilege of lawyer-client relationship, guarantees that professional atmosphere described by Justice Brennan in which "lawyers can counsel and help in accordance with their own best judgment, and in accordance with the ethical principles requiring undivided loyalty to the client . . . freed not only from local pressures but also from Washington pressures."¹¹

In addition to responding to the stated needs of poverty groups and organizations, direct legal services to individuals, to the extent that time and money permit, can be valuable in themselves and particularly as a means of developing the confidence of the poverty community, demonstrating the effectiveness of legal services as a way out of poverty, and as part of a continuing effort to identify, reach, and serve the hard core poor in each community in the full realization that these efforts will be more difficult, more costly, and disproportionately less visible in results.¹² The effectiveness of group representation in itself, however, should encourage the hard core poor to seek ways to move out of poverty.

The priority for poverty groups over

an arbitrary preference for direct individual services is consistent with the basic purpose of the Legal Services Program of stimulating greater and more responsive use of other resources to fight poverty in their respective program areas. As poverty groups, and others in the community, recognize the extensive need for direct individual legal services for the poor, increasing pressure can be brought to alleviate the need by eliminating the root causes and by demanding increased response by all available local, state, private, and federal resources to meet the need.

The group representation priority also has the additional political advantages of being less threatening to the middle income private attorney because fewer individual cases would be serviced, and it incorporates both the "piece of the action" and the "participatory politics" positions. Furthermore, to the extent that the governing boards of the local legal services projects implement the group priority, the legal services staff will be responding directly to the stated needs and priorities of the poor, while the Board of Directors continues in its role as fiscal overseer, appellate board of review, buffer from and sounding board for all elements of the community and bulwark of local control. Moreover, as poverty organizations are formed and strengthened, the representation of the poor on the legal services boards should improve qualitatively and quantitatively.

At the heart of the group priority approach, of course, is the premise that the poor, once opportunities are adequately explained and methods effectively demonstrated, will seek more permanent solu-

¹¹ Address by Justice William J. Brennan, Jr., Legal Services National Conference, November 15, 1966.

¹² Report of the National Advisory Council on Economic Opportunity, March 31, 1968, 39-40.

tions and be increasingly motivated towards long range approaches to get themselves out of poverty. There is evidence that properly informed poverty organizations will make these choices, even at considerable personal sacrifice.

Only a small percentage of legal services matters have involved groups. Implementing a poverty organization priority, therefore, is something of a monumental task. Initially, there must be an intensive and extensive campaign to promulgate the new priority. Each legal services project should participate in a survey of existing and potential poverty organizations in the area it serves, including their purposes, structure, membership (size and relative poverty), connection with the community action agency, the extent of representation by the legal services project and the reasons for *not* representing them or helping them organize. Detailed quarterly status reports should follow and weigh heavily in the evaluation of the project.

A priority for poor peoples' organizations responds to a clearly demonstrable need. For example, fully fifty percent of the 34 million Americans who were poor in 1964 were dependent children below the age of 16 and women between the ages of 16 and 64 who were keeping house, all of whom were not in the labor market.¹³ The great majority of clients in the existing legal services projects are in this category and they pose, directly or indirectly, virtually every legal, social, and economic problem of the poor. By giving assistance, including individual contacts with clients eligible for welfare,

in the formation and representation of organizations of welfare mothers and their families, legal services projects have the opportunity to be maximally effective in bringing the full spectrum of advocacy to their positions.

Economic development programs, with special emphasis on augmenting the economic status or earning capacity of the poor male, are emerging as necessary vehicles for breaking the cycle of poverty. The development and representation of "effective and useful economic organizations [which] will create for the poor the power they need . . ." as a "matter of first priority within the legal services programs"¹⁴ has been suggested for some time, melding the professional skills of the neighborhood lawyer with the special expertise of corporate and financial lawyers. Similarly, the legal services projects should support and serve organizations controlled by the poor which form to respond to a variety of public programs, *i.e.*, model cities, or particular needs, *i.e.*, tenant unions, which affect the lives of the poor.

Furthermore, the Legal Services Program has been functioning as a National Emphasis Program within, but separate from, the Community Action Program of the War on Poverty, sharing the same purpose of community action: "to stimulate a better focusing of all available local, state, private, and federal resources upon the goal of enabling low income families to obtain the skills, knowledge, and motivations and secure the opportunities

¹³ *Id.* at 4-5.

¹⁴ See Proceedings of the Harvard Conference on Law and Poverty 27-35 (March 1967).

needed for them to become fully self-sufficient."¹⁵ Whether or not the Legal Services Program continues to operate within its present framework, it can contribute to maintaining and reinforcing this purpose and the basic ideas of community action, such as local initiative and maximum feasible participation by all elements of the local community, upon which the future of community action may well depend.¹⁶ As a method of achieving its objectives, community action has sharpened its focus on building the capacity of poor peoples' organizations,¹⁷ and assisting in the formation of neighborhood corporations controlled by representatives of the poor and separate from the community action agency, to implement a program of neighborhood service systems. To the extent that the Legal Services Program also focuses on these poor peoples' organizations, the potential impact of community action can be seen in the light of legal process.

Within the Legal Services Program, the organization and representation of poor peoples' organizations has long been an allowable function,¹⁸ a principal mission and criterion for evaluation,¹⁹ and an element of the concept of law reform.²⁰ The Legal Services Program well

¹⁵ Economic Opportunity Act, Title II, § 201 (a).

¹⁶ See Report, *supra* note 12, at 27-28.

¹⁷ OEO Instruction 1105-1, page 3, August 7, 1968.

¹⁸ GUIDELINES FOR LEGAL SERVICES PROGRAMS 7.

¹⁹ Legal Services Evaluation Manual, p.1.

²⁰ *Supra* note 10.

could rephrase its original commission²¹ so as to emphasize procedural priorities for a full spectrum of advocacy, with no arbitrary limit to the scope or type of civil legal services to organizations composed primarily of the residents of the areas and members of the groups served, as well as to eligible individuals.

Conclusion

The Legal Services Program of the U. S. Office of Economic Opportunity must respond, directly and indirectly, to the demand for justice for the poor in ways which are adapted to our political situation.

As a base of operations, it can be the catalyst and coordinator of public and private efforts to extend quality legal services in a manner which will reduce existing political and professional resistance; increase the availability of lawyers to all Americans, and particularly the poor; and allow present and projected legal services projects to concentrate on responding to the economic, political, and social issues raised by poor people, using the legal system as an instrument of social justice.

The suggested priorities listed here are by no means exhaustive, but they do point in a general direction. In the last analysis, however, abstract priorities, programs, or principles attain reality through the people committed to them. Hopefully some of these suggestions will elicit that commitment.

²¹ GUIDELINES FOR LEGAL SERVICES PROGRAMS 7.

A P P E N D I X

PRINCIPLES FOR A PROGRAM OF LEGAL SERVICES FOR PUBLIC WELFARE CLIENTS

The Social and Rehabilitation Service supports and strongly encourages the provision of legal services financed through the federally assisted public welfare programs. The following objectives are sought:

- Legal services of high professional quality.
- Complete independence of the attorneys to serve the client's interest.
- Representation of the client in a broad range of circumstances and actions.
- Close coordination and complementary relationships with the Legal Services Program of the Office of Economic Opportunity and with other community legal assistance services.

Achievements of these objectives will require cooperative relationships between the State and local public welfare agencies, the Department of Health, Education and Welfare, the Office of Economic Opportunity, the organized bar associations at national, State and local levels, and a great number of agencies that provide community legal services.

1. *Legal Services — Professional Program*

This is to be a professional program. It will be administered in accordance with the standards and ethics of the legal profession.

2. *Statutory Basis*

The "services" sections of the various public assistance titles of the Social Security Act provide the bases for Federal participation in the funding of legal services furnished or made available by public welfare agencies. In general, services may be provided through the public welfare program, with Federal sharing, to needy individuals who are 65 years of age or over, blind or disabled, or who are members of families with children where a parent is dead, absent, incapacitated, or unemployed.

3. *Scope of Services*

"Legal services" are defined to mean the services of a lawyer, made available to the eligible individual or family, for help with legal problems confronting them, including representation in court, and in court appeals where appropriate. The option is left to the States whether or not to provide legal services. (However, effective July 1, 1969, States must make available the services of lawyers to welfare clients who desire them in public welfare agency hearings under the fair hearing section requirements of the Social Security Act.) Basically, a total spectrum of legal services to clients is contemplated, but the State may determine for itself those categories of problems for which it will provide service. Fee-generating cases are excepted from the definition. Matters in which the State has an obligation to furnish counsel to the

indigent, such as in certain criminal and in juvenile matters, are also excepted.

Legal services under the program are directed to the benefit of the client, to provide him with an advocate in situations where he needs the services of a lawyer. Legal activities primarily benefiting the administration of the public assistance program are not encompassed within the definition. Non-support and paternity actions, in particular, present a problem as to whether the client or the agency is primarily benefited. Accordingly, such actions may be included only as part of a program providing comprehensive legal services, and only where the lawyer represents the individual client.

States are urged to support broad programs of legal services required by public welfare clients.

4. *Relationship to the Bar*

The support of the American Bar Association and the National Bar Association will be solicited in regard to national objectives of the legal services program; and States will be encouraged to seek the support of State and local bar associations.

5. *Relationship with OEO*

The Department of Health, Education, and Welfare's support of legal service programs will be closely coordinated with OEO. State programs supported by H.E.W. must be

so designed as to complement, and not compete with, programs in the State supported by OEO.

6. *Methods of Providing Legal Services*

It is expected that the services will be provided through purchase arrangements by the public welfare agency. The priority method is the purchase of legal service from an existing community program *e.g.*, OEO-funded law office or other community legal assistance service, etc. This would include the purchase of service to enable such existing program to expand the scope of its services, the geographical area it serves, or both. In the absence of an existing community program, the welfare agency may wish to explore with local bar or other groups the possibility of creating such a program.

Agreement will need to be reached with such resources to assure a level of service by them for public assistance clients, financed from other sources, which is not diminished by reason of the public welfare agency's purchase. Reimbursement may be made through any equitable method, which is supported through sample cost analyses or other objective justification.

Where this priority method is not feasible—where no community legal assistance type of service now exists or is arranged—services may be purchased from private attorneys.

This situation may arise most frequently in rural areas.

Attorneys on the staff of the public welfare agency, or under full or part-time retainer by it, may be used to provide legal services under the program only upon a showing satisfactory to the Federal agency that the professional nature of the program will be maintained. Such attorneys may in no event be used in matters that could give rise to a conflict of interest, as in disputes between the client and public agencies.

Whatever the method employed to deliver the legal service by the public welfare agency, the attorney-client relationship will be preserved and the independence of the attorney to represent his client's interest will be assured. Regardless of the method of delivering the service, lawyers may not be subject to the control of lay persons in the exercise of their professional responsibilities.

7. *Federal Financial Participation in Legal Services*

- a. Federal financial participation in the cost of legal services as described above for families with dependent children under Title IV, Part A, of the Social Security Act, as amended, is available at the 85 percent rate up to July 1, 1969, and at the 75 percent rate thereafter, as

a family service or child welfare service.

- b. For the adult categories (aged, blind, disabled)—Federal financial participation is available in the cost of legal services, as described above, at the 75 percent rate, if the agency furnishes federally prescribed services for the particular category and if the State, in addition, includes legal services; and the 50 percent rate would be applicable if the State does not furnish federally prescribed services, but does include legal services.

The non-Federal share must be in cash from public sources.

8. *Methods for Making Legal Services Known*

Methods for making the availability of the legal service known to the potential client and the community will need to be developed by the public welfare agency. Such techniques would include the orientation of public welfare agency staff to recognize possible legal problems of the poor, through clients and their representatives, liaison with the organized bar, use of various communications media, etc.

9. *State-wideness*

The provision of legal services can comply with the State-wide statutory provision through the delivery of the service by different methods in different areas of the State. *The State-*

wideness requirement can be waived for an experimental, pilot, or demonstration project designed to show how legal services can be carried out in a State.

10. *Advisory Committee*

It is planned that an advisory committee to the Social and Rehabilitation Service will be appointed to provide consultation in regard to the development and operation of the legal services program and will meet periodically.

It is anticipated that the committee will be representative of the organized bar associations (including the American Bar Association,

National Bar Association, etc.), practicing attorneys from the poverty law field, representatives from the National Legal Aid and Defender Association, from OEO and other federal agencies, public welfare representatives and other persons active and interested in programs of legal services for the poor, including representatives of welfare client groups. Likewise, public welfare agencies should utilize State and local advisory committees in the development of their legal services programs, where feasible. Most of the members of the national, State, and local advisory committees should be lawyers.

