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The Expanding Horizons of Legal Services–I*

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In no country of the world are lawyers so important or so influential as they are in America. Lawyers dominate legislative bodies almost everywhere in the United States; they often provide executive leadership for business enterprize and voluntary associations. The best lawyers are respected highly and rewarded with the greatest prizes. The theme of this paper is that the services offered by the legal profession, a profession already engaged in hundreds of tasks, are rapidly expanding. Some new ways of working are emerging. Some old functions are being performed in a new manner. More resources are being provided for that which was not done but which ought to have been done.

LAWYERS FOR THE INDIGENT DEFENDANT

Let us begin with a look at an area of legal service where expansion will take place because the Supreme Court of the United States has insisted that the expansion must occur.

Counsel must now be made available in serious criminal cases at state expense for those who are unable to provide counsel for themselves. A 1963 decision of the Supreme Court of the United States, *Gideon v. Wainwright*,[1] has held that the right to counsel guaranteed by the sixth amendment to the Constitution is a fundamental right applicable to state criminal proceedings. Before the 1963 case the Court had given a negative answer to the question:

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[1] 372 U.S. 335 (1963).

"Is the furnishing of counsel in all cases whatever dictated by natural, inherent, and fundamental principles of fairness?"[2] But *Gideon* changed the law. The opinion affirmed the proposition that "[T]he right to the aid of counsel is of a fundamental character."

The Court saw itself not as breaking new ground, but as returning to old precedents, sounder than the ones most recently decided. The Court wrote:

> "In returning to these old precedents, sounder, we believe, than the new, we restore constitutional principles established to achieve a fair system of justice. Not only these precedents, but also reason and reflection require us to recognize that in our adversary system of criminal justice any person who is hailed into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him."[3]

The Court went on to point out that governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are a few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defense. Lawyers in criminal courts are "necessities, not luxuries." Furthermore, the noble ideals of a fair trial, a hearing before an impartial tribunal and equality before the law, "cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."[4]

Our task then becomes one of implementing a constitutional command. Where do we get the lawyers to defend those accused of serious crime, and how shall we organize the system for supplying them? By far the most widely used method of providing counsel is by court assignment. Each judge chooses a lawyer from the local bar to represent each needy defendant. The lawyer may or may not be paid, depending upon the local situation. If he is paid, he is rarely paid adequately. Means are not often made available to him to hire experts, to pay for investigations and to bear the other costs of preparing a proper defense in a proper manner. Typically, the appointment of such counsel is not made

[2] Betts v. Brady, 316 U.S. 455, 464 (1942).
[3] Gideon v. Wainwright, 372 U.S. 335, 344 (1963).
[4] *Ibid.*

until the time of arraignment, that is, the time when a charge is formally read to the accused and he is asked to plead guilty or not guilty. Almost every competent observer agrees that counsel, in such a system, is retained at far too late a time to assure the maximum effectiveness of legal advice.

The assignment system often fails to provide experienced, dedicated, and zealous counsel. Its most common defect is that too many young attorneys, inexperienced in law generally and in criminal law in particular, are assigned because they are less busy than the more prominent members of the bar. In short, an assignment typically comes too late and the assigned lawyer is often not a well qualified advocate. There is another point to be made. In those places where an assigned counsel is adequately paid, he may be chosen for political reasons rather than for reasons connected with his expert skill as a lawyer. When a fee is available, an elected judge may find the appointment one way to reward a supporter.

How is West Virginia meeting the constitutional requirement that persons seriously accused be afforded an attorney? As in many other places the appointment of counsel in West Virginia comes too late. If I understand the local law correctly, at the first appearance before a magistrate after an arrest for felony, the judge must *tell* the accused person that he has a right to counsel, but I am informed that an *appointment* of counsel for an indigent defendant takes place at a much later time. Generally speaking, a lawyer is not appointed until the time of arraignment or sometime between the filing of the indictment and the arraignment. Of course, a considerable period of time may elapse between a person's arrest and his indictment by a grand jury. Without counsel, it is unlikely that a poor person will be able to obtain a reduction of bail which would permit pretrial release. Valuable time may be lost in making an investigation for the defense. In contrast to West Virginia's procedure, the Second Draft of the Proposed Federal Rules of Criminal Procedure provides that counsel is to be offered in federal cases at the time of the defendant's *first appearance* before a judge. Typically, this will be an appearance before a United States Commissioner at the time of preliminary examination.

Where does West Virginia get the lawyers to perform the task which the *Gideon* case requires? It is by the system of assigning

counsel in an unsystematic way from among members of the bar. As we have seen, this probably entails the frequent appointment of young and relatively inexperienced lawyers to represent indigent accused persons, although the cases themselves may present complex problems of evidence, of trial tactics, or of criminal law.

If I may be so ungracious as to continue this criticism of my hosts' [West Virginia's—ed.] governmental arrangements, it seems clear that the fifty dollar allowance permitted assigned counsel for the defense of a felony charge is inadequate compensation for a lawyer in any but the very simplest of cases. I am told that the minimum fees recommended by county bar associations in West Virginia range from 150 dollars to 500 dollars for felony cases and seventy-five dollars to 155 dollars for misdemeanors. The maximum payment to an attorney appointed to defend an indigent in a felony case is, thus, well below these county bar minima. Further, there is no provision for reimbursing assigned counsel for any of the defense costs which arise in order to pursue an investigation or to hire an expert. The assigned attorney bears these expenses himself or this sort of defense effort is not undertaken.

The Federal Criminal Justice Act of 1964[5] can be consulted as a guide in any attempt to improve the situation and to make the right to counsel effective for all defendants. Under the Act there is a flexibility which permits adjustment to local conditions. In each federal district the judges are empowered to set up a "plan" designed to furnish counsel not to the "indigent" but to "those who are financially unable to obtain an adequate defense." The "plan" may permit the assignment of lawyers; it may undertake a contractual arrangement with a bar association or with a legal aid society. The rate of pay is not generous but it represents a substantial step toward reasonable compensation: fifteen dollars an hour for time in court and ten dollars an hour for time reasonably spent on the case out of court. There are maximums of permissible payment: 500 dollars for a felony case, 300 dollars for a misdemeanor. Additional sums of 500 dollars and 300 dollars respectively are available when an appeal is taken. If the trial of a case is protracted, the district court, subject to the approval of the chief judge of the circuit, may authorize "fair compensation"

[5] 18 U.S.C. § 3006(a) (1964).

in excess of the statutory limits. The cost of expenses other than counsel fees may be recovered up to a maximum of 300 dollars.

The original proposal submitted in 1963 by Attorney-General Kennedy contained no maximum limits to payment and also provided that "plans" could set up part-time or full-time public defenders. These proposals were changed in the House Judiciary Committee.

It is likely that any state which seeks to improve its system of securing justice for the poor in criminal cases will also want to consider the advantages of a public defender.[6] In many places, notably in California, this official has proved a zealous, expert advocate.

So far we have spoken about the West Virginia provision of counsel at the time of the trial. We must remember that the law is moving very rapidly in the area of criminal procedure. Each term of the Supreme Court seems to present some new material which is applicable not only to cases in the future but also to persons already in prison. Mr. Gideon had been in custody for some time before he was released on a habeas corpus, a remedy available to him after the normal time for appeal had expired.

A great many in the West Virginia prison population have legitimate legal points which ought to be aired in the courts of

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[6] See Harrington and Getty, *The Public Defender: A Progressive Step Toward Justice*, 42 A.B.A.J. 1139 (1956). See also, H.R. Rep. No. 864, 88th Cong., 2d Sess. (1964): "The deletion of the public defender option will prevent Federal courts from selecting a method of furnishing skilled legal representation which is gaining wide popularity. Public defender offices are currently found in cities or counties of at least 16 States. Congress itself has already recognized their value by its creation in 1960 by Public Law 86-531 of the Legal Aid Agency for the District of Columbia. The highly successful experience of such offices commends their inclusion in this legislation. This option is needed particularly in some of the larger Federal districts where, as in the District of Columbia, the volume of criminal cases involving indigents has outstripped the availability of experienced trial lawyers for court appointments. Employing public defender personnel to augment the services of assigned private counsel may also afford the only practicable means by which many districts will be able to implement H.R. 7457's requirement that arrested persons be afforded counsel beginning with their initial appearance before the U.S. commissioner. One of the major advantages of the current legislation as compared with legislation of past Congresses is that recognition is now being given to the fact that, that which is best, most efficient, and most economical in one district is not necessarily so in another district. Therefore, local option is provided for in the current legislation. To our way of thinking, each district should be as free to select a public defender-private attorney option as it is to select any other option."

this state if the ideal of equality before the law is to be accomplished. So far as I know there is no present provision for any legal assistance to these persons now in prison. Some attention must be given to this matter by the Bar Association or by the law school.

We have not yet finished our list. The due process clause may require that we furnish counsel for a first appeal as well as at the trial. If it does not, state-supplied counsel on appeal for indigents may be required by the equal protection clause.[7] We know, for example, that, on appeal, an indigent defendant must be given a free stenographic transcript of the trial if the state permits persons of means to purchase a transcript to assist in establishing grounds for reversal. (At least this is true if the poor person's point on appeal cannot handily be established without a transcript.)[8] What good is a transcript without a lawyer to analyze it? Rich men may buy transcripts and hire counsel. If the state maintains a legal system which, as a practical matter, requires transcripts and lawyers for the effective review of trial errors, must not the state offer the system to all? The establishment of a constitutional right to counsel on appeal seems inevitable.

Lawyers are needed at these and other points in the administration of criminal justice. Some of what is needed will turn out to be constitutionally required. It is important that the states not fight futile rear guard actions in the form of minimizing what the Constitution commands. Constitutional rights ought to be generously realized if only to prevent the loss of confidence in government which can affect those who possess a right but are effectively denied it.

These expanding needs for counsel will mean new career opportunities for law students. Every criminal law teacher knows of dozens of former students who wish to practice criminal law, but have been unable to find career opportunities in the field. For them, it is a sad fact that crime does not pay. Now the High Court has said government must provide the lawyers at trial. If government is to discharge its responsibility in a satisfactory manner, enough money and a satisfactory system of organization will have to be made available.

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[7] See Douglas v. California, 372 U.S. 353 (1963).
[8] Griffin v. Illinois, 351 U.S. 12 (1956).

LEGAL SERVICES AS A WEAPON IN THE ATTACK ON POVERTY

A principal weapon in President Johnson's war on poverty is the Economic Opportunity Act of 1964.[9] The Act contains a provision authorizing the financial support of urban and rural community action programs. A community action program,

> "is defined as one which mobilizes and utilizes resources, public or private, of any urban or rural, or combined urban and rural, geographical area . . . in an attack on poverty . . . which provides services, assistance, and other activities of sufficient scope and size to give promise of progress toward the elimination of poverty or a cause or causes of poverty, through developing employment opportunities, improving human performance, motivation, productivity, or bettering the conditions under which people live, learn, and work."[10]

Is there a role for legal service in the struggle against want? Can the work of lawyers improve "human performance, motivation, and productivity, or better the conditions under which people live, learn, and work?" An affirmative answer to the question comes from high places. "Poverty," said former Attorney-General Kennedy, "is a condition of helplessness—of inability to cope with the conditions of existence in our complex society."[11] Lawyers have a role to play in dealing with the helplessness. Attorney-General Katzenbach has asserted that to the poor, laws and regulations "are a hostile maze, established as harrassment, at all costs to be avoided."[12] Access of the poor to lawyers can gain advantage for the disadvantaged and can lay the base for a renewed faith in the efficacy of law on the part of all our people. Dr. Ellen Winston, the United States Commissioner of Welfare, has insisted that "[I]t is just as important to assure that legal needs will be met when they occur as it is to assure that financial, health, educational, and other essential needs will be met."[13] That these statements reflect official commitments is made plain by the fact that the government

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[9] PUB. L. No. 452, 88th Cong. 2d Sess. (Aug. 20, 1964).
[10] PUB. L. No. 452, 88th Cong. 2d Sess. § 202(a)(2) (Aug. 20, 1964).
[11] Address on Law Day, May 1, 1964, University of Chicago, quoted in Cahn and Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1336 (1964).
[12] Katzenbach, Address, CONFERENCE PROCEEDINGS, THE EXTENSION OF LEGAL SERVICES TO THE POOR, 9, 10 (1964) [hereinafter cited as CONFERENCE PROCEEDINGS].
[13] Winston, Welcome Address, CONFERENCE PROCEEDINGS 3 (1964).

is currently supporting community action programs which will provide legal services to the poor.

On December 4, 1964, the New York Times carried a story announcing a 3,000,000 dollar grant by the Ford Foundation to a community action program in the District of Columbia which will be carried out through an agency called the United Planning Organization.[14] The UPO has received an allocation of almost 1,500,000 dollars from the Office of Economic Opportunity. The agency has also obtained a 5,000,000 dollars funding commitment from the President's Committee on Juvenile Delinquency.

The news story reports that three neighborhood development centers will be opened in Washington, D. C.'s Cardozo area, a slum largely populated by Negroes. These centers will have a credit union to provide low cost loans to high risk borrowers, a consumer education office to advise poor persons on the problems of installment buying and on budgeting, case worker services for low income families and health facilities. In addition, there will be legal services available in the centers "to teach impoverished families their rights and obligations as citizens and to help them untangle their personal affairs."

The legal centers, to be staffed by full-time lawyers, will be supervised by a board of directors headed by Dean A. Kenneth Pye, of the Georgetown University Law School.

What is the nature of this lawyering for the poor? What is the need?[15] It is likely that poor persons have more need for legal assistance than middle class people. A poor person comes in contact with the government in many more ways than the average member of the middle class. The great majority of those arrested for felony are poor. Persons of restricted means may be the recipients of relief payments. They may live in public housing, and thus, are subject to the rules of the housing authority. The poor participate in the program of aid to dependent children. The children of low-income families find themselves in juvenile court more often than do the children of middle class families. Poor persons who are mentally ill are likely to be placed in public institutions often by the order of a court against the will of the patient.

[14] N.Y. Times, Dec. 4, 1964, p. 54, col. 1.
[15] See generally Corlin and Howard, *Legal Representation and Class Justice*, 12 U.C.L.A. L. Rev. 381 (1965).

In relations with government, the poor often are the victims of arbitrary administrative action. We read of night raids on the homes of welfare recipients wherein welfare investigators have entered a home in the middle of the night without a search warrant to determine whether a female recipient of welfare is entertaining a male guest who may be an undisclosed source of income for her.[16] While the state may authorize or not authorize certain benefits to the poor, typically it does not do so by leaving the questions of entitlement to the arbitrary action of administrators. There are rights to welfare payments and there are legal limitations on the arbitrariness of bureaucrats.[17] These rights and limitations present problems which require legal assistance for their resolution. Receiving welfare is not conditioned on a waiver of constitutional protections, yet without vigorous advocacy by lawyers the rights will not be respected.

The poor not only have legal problems which arise between themselves and government, but also must face others which arise in relation to private persons. The sellers of consumer goods often victimize the poor by high pressure installment selling, by the sale of shoddy goods for high prices, by oppressive credit arrangements.[18] Housing problems are likely to take on great importance to the disadvantaged. A middle class person will move out of an unsatisfactory rental arrangement. A poor person may not be able to afford the move. The difficulty of finding a new place may be too great for those without easy means to look. A move out of the city may result in the loss of welfare benefits.

Those who have worked with the legal problems of the poor have been impressed with the intricacy of some of those issues. The relevant laws, ordinances, regulations, and rulings are often hard to find. They have not been drafted by the best lawyers, and they have been compiled piecemeal. There is no unified, all embracive, code of Poor Law which is easy to work with. The lack of litigation in the past is the obvious cause for the lack of clarifying case material.

Legal services for the poor can provide benefits of the greatest

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[16] Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963).

[17] The importance of welfare benefits as "property" is suggested in an important article, Reich, *The New Property*, 73 YALE L.J. 731 (1964).

[18] See Caplovitz, *Consumer Problems*, CONFERENCE PROCEEDINGS 61 (1964).

possible importance. Whether or not eligibility for welfare is established may be a matter of the most extreme urgency. If housing codes are not enforced, living conditions can be intolerable, health can be endangered.

Any comprehensive program which seeks to assist poor persons must encompass a legal component which can offer the poor the skilled judgment of lawyers and the help of persuasive advocacy. The disinherited require a zealous spokesman who can cut through the tangle of problems created by the large-scale organizations which deal with the poor: the "increased formality, red tape, the delaying of gratifications, centralization, waiting lists, highly explicit eligibility requirements, and rigorous means tests, and an impersonal atmosphere which produces a loss of individuality."[19]

The legal aid societies throughout the country have been helping the poor for a long time; therefore, one might assume that additional funds supporting legal assistance to the poor might simply be made available to those organizations and the needed services would be provided. Such an assumption is probably unsound for a number of reasons. Legal aid societies typically maintain an office in the downtown area of a city. It is not their custom to advertise their services extensively. Such reluctance to advertise may be rooted in a fear that the society's resources would be swamped if the assistance of the services were widely understood. It may also be the result of a feeling that professional ethics do not permit widespread publicity. Whatever the reason, publicity shyness, as well as a centralized location, interfere with the access of poor persons to legal services. For a person to use a legal aid society, he must know of the society's existence, of its purpose to help him, and of its location. In addition, the poor person must be able and willing to seek out the office and to have confidence that the society, in fact, will assist rather than harm him. It is fair to say that the legal aid system is available to those who know they have a problem, who have the will to seek advice, and have the confidence that advice will be forthcoming. For many poor persons these requirements are not met. Most of the poor regard law and lawyers as something hostile rather than helpful in their environment. It must be remembered that a characteristic (perhaps surprising to us) of most of the American poor is passivity. Most

[19] Grosser, *The Need for a Neighborhood Legal Services and the New York Experience,* CONFERENCE PROCEEDINGS 73, 76 (1964).

of them have been poor so long and have such a feeling of hopelessness about the enterprise of life that it is not in character for them to be aggressive, to assert claims, or to find ways to solve their problems within the framework of society's laws.

Any system of legal assistance for poor persons which is to help those most in need must make an effort to reach out for the clients. A kind of aggressiveness in extending services will be required which does not suit the taste of most American lawyers. To put the matter another way, getting legal service to the very poor successfully probably involves the use of intermediaries. Service must be made available in close connection with trained social workers or non-professional neighborhood workers who come in contact with poor persons in their homes. Thus their legal problems can be discovered and perhaps most important, the legal problem will be identified by someone who has the confidence of the prospective client. The ordinary legal aid society does not regularly function this way.

Another fact which must be faced is this: The typical legal aid society is dependent upon voluntary contributions for its existence. Litigation on behalf of the poor is bound to stir up some community hostility if, to take an example, it is zealously pressed on behalf of those whose legal troubles have been spotted by social workers. Community leaders may be disagreeably surprised when welfare clients appear before relief agencies with lawyers pressing law points on behalf of the clients. The average legal aid society has non-controversial business to do which it ought not to jeopardize; it has established employees; it has a history in the community, a set of familiar practices, and an experienced board of trustees. The society is unlikely to reach eagerly for this new source of business, and its accompanying source of trouble for the agency. There is another point. In part, legal services for the poor must aim at constructive social changes. Part of the law work must be undertaken to attack established institutions, practices and rules, in order that social progress may be made. The focus of much of the work will be general reform rather than the special aim of assisting a given poor person with his particular legal difficulty. Few legal aid societies are geared to such work.

If the right kind of legal assistance is to be provided, it will often take the form of a new agency, the character of which we ought to see clearly in advance and which we ought to set up in

full recognition of its controversial character. As Attorney-General Katzenbach said, "Without disrespect . . . [to legal aid] we cannot translate our new concern into successful action simply by providing more of the same. There must be new techniques, new services, and new forms of interprofessional cooperation to match our new interest."[20] Legal aid societies, of course, should participate, but participation should be limited to the strongest and most adventurous societies. If new agencies are not set up the full benefit of the opportunity to benefit the poor by legal services may not be realized.

There is no reason that legal assistance to the poor should be a monopoly. Generally, competition gives a social advantage. New forms of institutions are able to exploit the enthusiasm which may be present in the solution of new problems. A new method of operating which would not now commend itself to an established legal aid society may prove feasible and beneficial so that legal aid itself may wish to adopt it later. Competition may even raise the salaries of lawyers and thereby improve the quality of the total effort.

Judging from the evidence which we have at hand, the forms of extending legal assistance to poor persons outside the ambit of services ordinarily provided by legal aid societies in the past are likely to be quite varied. Let me describe briefly the Legal Services Unit of Mobilization for Youth in New York City, which is the organization I know best because I have served as chairman of its Advisory Committee. The Unit is physically located in the main headquarters of Mobilization on the lower east side of New York City. Mobilization itself is a volunteer organization, funded by the federal government, by the City of New York, and by the Ford Foundation, designed to combat crime and delinquency. The means employed are many, including new ventures in education and job training. Mobilization is, however, animated by a theory which insists that the poor must gain influence themselves if they are to rise above the status of clients. The organization acts on the conviction that the poor must gain power by exercising their rights and by acting through community organizations of their own making, hence the importance of legal assistance.[21]

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[20] Katzenbach, *op. cit. supra* note 12 at 11.
[21] See Grosser, *op. cit. supra* note 19.

The Legal Services Unit, funded by special grant from the President's Committee on Delinquency, has been in operation since the fall of 1963. Its four full-time lawyers serve the residents of the Lower East Side area. Most cases come to the Unit through Mobilization's social workers and the non-professional community workers employed by the service agency. Policies of the Unit have been laid down by the Unit's Faculty Advisory Committee (a group of ten law professors, eight from the Columbia Law School, and two from New York University), by the board of directors and by the staff of Mobilization itself. Generally speaking, cases are not taken on by Mobilization if adequate service is available from the New York Legal Aid Society. The aim of the Unit is to add not to duplicate services. There is a second criterion which is employed to some extent. Does the case at hand give the opportunity to make new law which will have a substantial impact on the life of the poor who live in the area?

The Unit has been active in the field of welfare law, housing, criminal law, mental incompetency, unemployment compensation, and similar problems. Within the Unit itself, each of the four lawyers is a kind of specialist such as one might find in a small law firm. The director is engaged virtually full-time with those who are denied access to or are cut off from public assistance. The associate director is interested in landlord-tenant problems. A third lawyer is responsible for the criminal cases which involve youthful residents in the area, and the fourth is engaged in a variety of matters including unemployment compensation, consumer cases, and family matters. During the summer months a group of nine students worked on various aspects of the Unit's mission.

An important characteristic of the Unit is that most of the clients are referred by someone affiliated with the very agency of which the Unit is a part. Further, the case load is selected not merely with an eye to righting an individual injustice, but with the view of assisting as many persons as possible in the target area.

Cases are screened before they are accepted but once a case is undertaken, the commitment of the Legal Services Unit lawyer to his client is as complete as that of any lawyer. Under policies laid down by the Advisory Board of Mobilization as well as its board of directors, the Unit lawyer is free to give the same personal dedication to his client as he would give in private practice.

In New Haven, Connecticut, the mode of rendering legal services is somewhat different.[22] For a number of years, New Haven, under the leadership of its mayor, Richard C. Lee, has undertaken a comprehensive program of urban redevelopment and renewal. This effort, organized in a quasi-public corporation called Community Progress, Incorporated has set up community service centers in neighborhood schools. In short, the schools not only serve as centers for education, but function as centers for casework services, of youth groups, employment training programs, and the like.

Present plans for the New Haven legal units call for placing three neighborhood lawyers to serve in six Community Progress neighborhood centers in the most impoverished neighborhoods of the city. Each lawyer will serve two centers and have an office in each together with the secretarial assistance. He will operate a law office in each center as a single lawyer might operate a regular office, except that he will work closely with the social workers and neighborhood workers who will be alerted to legal issues and make references to the lawyer in appropriate cases.

It is hoped that this "team" concept of legal service may mean that a lawyer's advice will not be separated from the advice given by other members of the helping professions in the neighborhood centers. Not only will the lawyer represent clients in civil or criminal litigation, but he will refer others to the Municipal Legal Aid Bureau in New Haven, the public defender, or some other legal counsel which may be available. The lawyer is to look for the basic causes underlying sociological or legal problems found in the neighborhood. He is to see what can be done to prevent problems which might be on the horizon and to educate the neighborhood on matters of vital interest to them such as the law of arrest, the law of conditional sales, and the law respecting social service. The New Haven organization also hopes to use law students in its endeavors.

The present form of the New Haven experiment presents a distinct contrast with Legal Services Unit of Mobilization for Youth. The Legal Services Unit of Mobilization is operated directly by the parent organization. Community Progress, Incorporated began

[22] See Parker, *The New Haven Model*, CONFERENCE PROCEEDINGS 87 (1964). The New York Times of Dec. 20, 1964 reported that the New Haven Plan had been shelved pending a report from the Connecticut Bar Association in respect to some problem of professional ethics involved in the plan.

by operating the legal service directly but a local event generated public resistance and criticism which was harmful to CPI.[23] Now a separate law organization, entitled the New Haven Legal Assistance Association seeks to administer the neighborhood lawyer program for CPI. The Association is a membership group of over thirty lawyers. Eight directors representative of various interests determine the policies which are to be followed.

It is interesting to note that the Legal Unit of Mobilization for Youth had a similar experience, but solved the problem another way. During the spring of 1964, the Unit generated some bitter opposition from the Welfare Department of the City of New York because the Unit was preparing to bring litigation against the Department itself. It was important opposition because the City of New York supplies approximately one-third of Mobilization's total budget, although nothing toward the budget of the Legal Services Unit itself. There was a danger that the board of directors of Mobilization (a large proportion of the members were then city officials) might interfere with the judgment of the director of the Legal Services Unit in proceeding with this suit on behalf of a client who had been accepted by the agency. The Advisory Committee considered the possibility of attempting to form an operating unit separate from Mobilization, but decided that valuable experience was being gained which might assist in answering the question: How successful are legal services offered within the context of an operating agency? The Legal Services Unit remained within Mobilization but the Advisory Committee persaded the board of directors to adopt a declaration of principle which guarantees almost complete freedom in the operation of the Unit under the guidance of the Advisory Committee.[24] Since that early episode no extreme pressure has been put on the Legal Unit.

Boston also has an organization for the war on urban blight and

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[23] See p. 196 *infra.*

[24] The policy statement of the Advisory Committee, approved by Mobilization contains the following paragraph: "It is recognized, of course, that the Legal Services Unit functions within and under MFY. It follows that the Board of MFY may choose to expand or contract the scope of the Unit's activities, always subject to the limitations in the order of the Appellate Division. Nevertheless, when a Unit lawyer has once undertaken the representation of a client, the lawyer's primary obligation is effective and unswerving devotion to the client's interests. Subject to policies to be determined by this Committee, but with no control from any other quarter whatever, the lawyer must pursue the course best calculated in his professional judgment to achieve the result most beneficial to the client."

poverty entitled Action for Boston Community Development.[25] The Boston organization is not a direct service organization, but operates as a coordinating agency with a considerable amount of money at its disposal. Through the control over funds, ABCD is exercising its influence to improve the kind of services available to poor persons in Boston. ABCD is also setting up a number of multi-service centers in which many forms of assistance will be in one place: legal, educational, employment, family counseling, and child welfare services. Again, the theory of the center is that residents dwelling in low-income neighborhoods are unlikely to travel into the center of town when they need assistance. If service is to be rendered, in an efficient and comprehensive way, these services must be available in one place, in the neighborhood.

As a part of its program, ABCD will set up four law offices in Boston, three of them in multi-service centers. In each multi-service center, a lawyer will operate closely with the social workers and the others who are attempting to give help. Boston's plan, too, presents some special features. The lawyers operating in the multi-service centers will be employees of the Legal Aid Society and will operate within the framework of that organization. Secondly, an interesting experiment is being carried out. The fourth ABCD-Legal Aid attorney is to be located in downtown Boston. He will not function as part of a center but he will work alone in quarters which look exactly like any other storefront law office. Thus it will be possible to compare the results achieved by that sort of downtown office with those placed in the setting of a multi-service center.

The kinds of work done by lawyers for the poor can be both interesting and rewarding. Mr. Edward Sparer has written of his experiences as the Director of Mobilization for Youth Legal Services Unit.[26] He has told of a long struggle to clarify the law in New York in respect to welfare eligibility. New York does not have a residence requirement, but the statute does have a provision denying welfare aid to those who come to New York *for the purpose of obtaining welfare.* In 1964, a Mobilization lawyer became aware of the fact that a large number of welfare applicants had

[25] See Wells, *The Boston Neighborhood House Proposal,* CONFERENCE PROCEEDINGS 81 (1964).

[26] Sparer, *The New Public Law: The Relation of Indigents to State Administration,* CONFERENCE PROCEEDINGS, 23 (1964); Sparer, *The Role of the Welfare Client's Lawyer,* 12 U.C.L.A. L. REV. 361 (1965).

been denied assistance because of the "purpose" provision. This surprised him because, in the firm opinion of trusted social workers, very few people migrate in order to obtain welfare. Having interviewed many rejected applicants, he became convinced that most had not come to the state for that purpose. A pattern of administration emerged. The administrators had decided that anyone who comes to New York *without an adequate plan of support* had come "for the purpose" of obtaining welfare. Obviously, one can come to New York, perhaps to enter the Columbia Law School, without an adequate plan of support and yet not entertain the intention to go on relief. The Welfare law does permit emergency relief to be given to those who are in great need apart from their purpose in coming to New York. In case of this provision, Mobilization lawyers found that the administrators had presumed that emergency relief should be given only to those who agree to leave the state. The intervention of the Legal Services lawyers changed both of these results.

The Associate Director of the Legal Services Unit, Miss Nancy LeBlanc, has written of housing problems.[27] Tenants can be evicted easily and without recourse if alert advocacy is not available to them. It is lawful in New York to withhold rents and put the money in a bank until repairs are made or services improved. Concerted action of this sort, unfortunately called a "rent strike", can be aimed at the neglect of a landlord, but it requires legal advice to organize the action, to support it, and to guide it.

We have said lawyering for the poor engenders conflict. Two examples are at hand. In the City of New York, a pupil who has been expelled from school for misconduct bears a very heavy penalty. To be deprived of the right to go to school is a harsh deprivation in a society where school dropouts count as one of the greatest social ills. An expelled New York student does have the right to a hearing; however, lawyers have not been permitted to appear with him. When the Legal Services Unit sought to attend a proceeding as counsel for a youngster, the school system reacted as if each official had been personally attacked. School administrators saw the episode as an index of mistrust on the part of the whole Mobilization effort.

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[27] LeBlanc, *Landlord-Tenant Problems,* CONFERENCE PROCEEDINGS 51 (1964).

In New Haven, a litigated case was the immediate cause for separation of the lawyers activities from Community Progress, Incorporated, the overall service agency. A Negro boy was charged with raping a white girl. The Community Organization lawyer raised a defense of consent on evidence which was not wholly convincing. The incident caused a great outburst of indignation in the community.

Forceful advocacy on behalf of the poor, in the beginning at least, is likely to be explosive.[28] We must be ready to defend the lawyers and the system for providing them. An unpopular cause, nevertheless, deserves an advocate. Other kinds of conflict will arise. The landlords against whom suits are brought are likely to feel abused because the government is providing counsel in suits against them, while they pay their own bills. It is perfectly clear that welfare officials, school agencies, city and state regulatory bodies, are likely to question the role of such legal units. They will ask: "By what warrant do these lawyers, supported by foundation funds and by direct public appropriations, both local and national, attack us who are fed from the same hand and who are part of the same governmental effort to better the lot of mankind?" Established legal aid agencies, too, are likely to take a dim view of the new competitor. Many of them will wonder why the funds made available to the new institutions were not channeled into the established setup. They will be certain that if the resources now available were given to an established agency, a better job could be done.

The difficulties must be faced at the threshold. It is useful to affirm and to reaffirm that if these advocates are to be more than "paper tigers," a conflict is inevitable. True advocacy has an enormously useful function to perform in and out of court. The Report of the Attorney-General's Committee on Poverty and the Administration of Federal Criminal Justice pointed out, "[T]he essence of the adversary system is challenge . . . the values which it advances depends upon a constant, searching and creative questioning of all official decisions and assertions of authority . . . ."[29] This sentence was written about the adversary process in criminal cases, but it applies to the legal needs of the poor in civil matters.

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[28] See Sparer, *op. cit. supra* note 26.

[29] REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF CRIMINAL JUSTICE 10 (1963.)

Decisions made by administrators, by funding sources, and by government, are decisions which ought to be challenged from the point of view of those who are affected. No one enjoys a challenge to his authority but, unfortunately, the advantage of constant, creative, and searching questioning cannot be had otherwise. If we do not see the advantage of adversarial conflict and seek to stifle it, we merely succeed in cutting off an important means of communication between the mainstream of American society and its disadvantaged sector.

Legal services can translate the claim of an individual into some effective mode of compensation. Legal services can carry on litigation designed to change the law, to improve its administration, to gain beneficial interpretations for the members of the community in which the legal agency operated. There is another possibility. Lawyers can be used to challenge the decisions of a community action agency itself.

Edgar and Jean Cahn[30] have pointed out the dangers inherent in any community-wide action program mobilized by a monopoly or a near monopoly of all social services in an area. A monopoly program may become a means of perpetuating an unsuccessful agency rather than terminating it. Professionally trained experts, and not the community to be served, "designate the need to be filled and to establish the criteria for eligibility for aid." The monopoly may stifle new competing programs and create a kind of establishment in the community. Furthermore, the authors warn us of dangers which arise from overall planning—planning which includes an avoidance of risky programs, a unified command with clear lines of authority, and the allocation of resources in terms of an overall strategy.

To combat these effects, the Cahns suggest setting up "a university affiliated, neighborhood law firm which could serve as a vehicle for the civilian perspective" in the war against poverty. The firms would join the community services of professional advocates, who could "stimulate leadership among the community's present inhabitants." What would these lawyers do? They would learn about grievances of the neighborhood and give articulation to them. Lawyers can be partisan without seeming to be quarrelsome and vigorously assert a point of view to those in authority.

[30] Cahn and Cahn, *supra* note 11.

Lawyers understand cases and will be able to see the general problems which are reflected in the specific. Lawyers can help to clarify the law where it is vague or unduly complex and they can take the lead in law reform. Perhaps most important of all, they can be advocates in non-legal contexts. In short, the authors propose neighborhood law offices as a way of providing advocacy within a community action program, an advocacy which would articulate the point of view of those who are served by community resources.

Bringing legal services close to the poor need not in all cases involve setting up new legal agencies supported by foundation funds or tax money. There are ways in which individual lawyers can give important service through cooperation with others. In New York City, the New York County Lawyers Association has begun to set up a plan whereby attorneys will be available for consultation in settlement houses one or two days a week.

During the spring of 1964, a group of Chicago lawyers, convinced that many persons required legal assistance who had no understanding of how to obtain a lawyer, launched an "experiment in the ministry of legal aid." During the summer a weekly "legal advice clinic" was conducted in the basement of churches located in lower income areas of Chicago. At these churches, legal advice was given; cases requiring court action or continuing attention, were referred to the Legal Aid Bureau or the Lawyer Reference Plan of the Chicago Bar Association. The participating lawyers report "an unquestionable 'need' for such a clinic program."[31]

Lawyers are needed not only for advocacy but for education. By education of clients, legal problems can be avoided or, if they cannot be avoided, identified at an early time. Sometimes lawyers working in lower class areas have attempted to give legal information directly to those who may be affected by the impact of the law. So in Harlem in the summer of 1964, a group of law students composed a booklet respecting the law of arrest and distributed it widely in portions to that part of New York City. Although the pamphlet was created by a youngster thoroughly familiar

[31] Letter dated Oct. 6, 1964 signed by fifteen Chicago lawyers addressed to the President of the Chicago Bar Association. Letter on file in the Columbia Law Library. Attorney-General Katzenbach has urged that citizens become advocates to respond to injustice, and stand up for the poor and to help the poor. See Katzenbach, *op. cit. supra* note 12 at 14.

with the life of urban Negroes, the pamphlet is a failure perhaps even in the estimate of those who drafted it.[32] The writing is not related to an immediate situation involving the poor person who received the booklet. The educational effort had little effect on the choice of conduct when a policeman actually confronted a person supposedly educated by the pamphlet.

Mobilization for Youth has attempted education with another kind of design. They have not produced a booklet on the law of arrest. They have, however, produced a small card which can fit into a wallet. The card is printed on two sides with one containing its message in Spanish and the other in English. The card simply instructs the holder to follow its advice if he is under twenty-one and a resident of the Lower East Side (The Legal Services Unit staff is not large enough to permit a more generous offer of service.) The bearer, if arrested, is told to request permission from the police to make a phone call—a right afforded arrested persons under the New York law. The card further instructs the youth to call the telephone of Mobilization and to say, "I am arrested, I want a lawyer," and then to give the location of the precinct and the name of the caller.

The Legal Services Unit has also undertaken an educational function by appearing at meetings which were called for purposes other than legal instruction, and has presented information about the law connected with the purpose of the meeting.[33] For example, one of Mobilization's lawyers might appear before a group gathered to discuss problems regarding conditions in a certain building, and inform the tenants concerning the nature of the legal problems they face and the legal rights they possess. This knowledge is made available when it is needed, when people are ready to use it. It goes without saying that this is exactly the point at which middle and upper class people are most interested in learning about the law for their own purposes.

Sparer's staff also has a program of educating the social workers and non-professional neighborhood workers in respect to legal issues of which they might become aware from their contacts with people in the area. The Legal Services Unit, placed in the main

[32] Finney, *The Harlem Experience,* CONFERENCE PROCEEDINGS 108 (1964).
[33] Sparer, *Education on New York's Lower East Side,* CONFERENCE PROCEEDINGS 126 (1964).

headquarters of Mobilization for Youth, provides an easy point of contact for the Mobilization staff. The director of the Unit is one of the important staff members of the agency itself and therefore intimate daily contact is normal and easy. Educational opportunities need not be "organized" to be effectively offered.

Sparer insists that the best form of popular education is a demonstration that some lawyers care about the poor. Those who work hard in the neighborhood every day may kindle a spark of faith that someone is concerned.

The most important lesson about law which the economically deprived might learn is that law need not be a hostile force, but can be useful in improving their lot and in providing justice. No book, no paragraph, no word, can teach this lesson, but a group of lawyers who are zealous and dedicated can gain the trust of the community which they serve and by gaining trust can teach the lesson of the law's usefulness.