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The Legal Services Corporation

A Report to the Bar

MARSHALL JORDAN BREGER

Austin

The American Bar Association and the organized bar generally have been intimately involved with the nurture and growth of legal services for the poor in the United States. Indeed, as Reginald Heber Smith suggested some 50 years ago, "Legal aid success or failure goes hand in hand with good or bad support from the bar." In the past some segments of the bar may have looked askance at legal aid activties. However, in recent years support has been freely forthcoming from the national bar leadership.

In the 1920's Harrison Tweed served as a paladin to those working to expand voluntary legal aid societies. Mr. Justice Powell—when president of the Bar Association—took a decisive lead in fostering legal services programs in the 1960's, protecting their independence and channeling their valuable idealism. More recent bar presidents have lobbied successfully to prevent their evisceration. The organized bar generally has kept a watching yet protective brief on the legal services program which has proved both bracing and supportive.

As you likely know, after much travail, the Legal Services Corporation Act was signed into law July 25, 1974. The Act creates an independent non-profit corporation for the purpose of providing financial support to local programs which offer legal assistance in non-criminal matters to low-income persons. The act also provides for a transfer of responsibility for the delivery of legal assistance to eligible clients from the Office of Legal Services, Community Services Administration (formerly called the Office of Economic Opportunity [OEO]), within 90 days after the Corporation's Board of Directors has its first meeting. We took that fateful step July 14 of last year, triggering that 90-day period and numerous other (often unexpected) events.

The significant difference about the Corporation is that it is now an independent non-profit entity, freed, except for the ever present exigencies of the budgetary process, from direct governmental control. We all are aware of the legislative history of this transformation and need not replay those alarums and excursions today. The key virtue of this shift, from my own perspective, has been the opportunity to underline the fact that this is a *professional* program of legal assistance to the poor accountable not to politicians but to the standards and mores of the legal profession. This concern for professionalism is highlighted in the statute itself, where a staff attorney's duty to adhere to the Code of Professional Responsibility is clearly articulated.

The Corporation is governed by a bipartisan eleven-member Board of Directors, appointed by the President with the advice and consent of the Senate. At present the Board is not at full strength. While the statute does not so require, presently all are law-

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yers. There are currently no women or members of the client community included. Board members hail from a variety of states with a strong representation from the South and Southwest. A wide range of perspectives and concerns, including that of the organized bar, is represented. Since last August, Board members have been meeting, almost bimonthly to sustain the nascent enterprise.

The first stage of our staff election process has been successfully concluded. We were most fortunate in attracting Thomas Ehrlich, the former Dean of the Stanford Law School, to take the corporate reins as President. Our Executive Vice-President is Clinton Bamberger, former Dean of the Catholic University Law School and the initial Director of the Office of Legal Services, Office of Economic Opportunity. The Corporation is presently staffing a variety of executive positions winnowing through the 2000-odd applications we have received for such slots.

I propose to take you on a short walk though this complex statute, refreshing your recollection as to the ways in which the Corporation differs from its prior incarnation. These differences while significant, in no way suggest a variance from the OEO program's core commitment—the provision of high-quality legal services to those unable to afford them. Then, I would like to turn to the pressing budgetary problem of the Corporation and finally to various concerns which are now preoccupying it in these early days.

In establishing the Corporation as the disbursing agent to local programs, the Act limits the ways in which legal services' attorneys may ply their trade. The Corporation's brief, of course, is representation in civil matters, and, as such, the expenditure of carefully husbanded funds in the area of criminal representation, is forbidden. Representation of clients in school desegregation, selective service, and in non-therapeutic abortion cases, is disallowed. Legislative advocacy is limited to requests from government bodies that a lawyer testify or to cases where testimony will serve the needs of a specific and identified client whom that lawyer presently is representing. Lobbying is otherwise restricted. Picketing and political organization, variously defined, are forbidden. The Corporation is presently engaged in litigation over the constitutionality of some of these statutory restrictions.

Procedures for review of proposed appeals and of proposed class action lawsuits must be developed to ensure the efficient utilization of the Corporation's scarce resources. Such limits need not, however, interfere with an attorney's professional responsibility to zealously represent the interests of his client. These limitations are not as severe as they may initially seem. In any large law firm a senior partner will review a young associate's proposals to initiate appeals or class actions on behalf of a firm's client. The decision to mount a class action could easily result in the bulk of a program's manpower being devoted to a particular case. Such decisions cannot be made haphazardly without reference to an office's total workload. They should not, of course, flow from any animus towards a client or desire to "pull punches" in a programs legal representation.

Many of the specialized research and support functions now engaged in by the so-called legal services "back-up centers" will have to be brought in-house to comply with the statutory mandate. The statute does not allow us to fund such research activities by grant or contract. Yet, all members of the Board are cognizant of the importance of the various functions presently performed by the back-up centers and wish, consistent with the requirements of the statute, to maintain as many of those functions unimpaired as may prove valuable. To that end, the Board has initiated an empirical study to inform it as to the specific activities of each back-up center so as to aid in the proper application of our governing statute. The Board will maintain a close scrutiny of remaining litigation support centers to assure itself that they do not veer off the course Congress plotted. Our primary concern in this matter must be the responsible organization of litigation support units to encourage the highest quality line delivery consistent with our statutory mandate.

The Corporation funds almost 270 field-operating programs, including eight Indian and ten migrant legal services programs, and 30 Headquarters' grants and contracts that support the field operations or provide for reseach, experimentation and the evaluation of such programs. Legal services has operated over the last four years on a stable budget of 71.5 million dollars. This sum should be compared with an earlier American Bar Association estimate in the 1960's that more than 250 million dollars was necessary to provide a minimally adequate national legal services program. The budget, however modest, has been considerably ravaged by five years of inflation. Not surprisingly, this loss has been reflected in the program's vigor and vitality. Thus the Board requested 96.46 million dollars from Congress for this fiscal year—not to extend the program but to catch up with five years of severe inflation. Congress responded with a fiscal 1976 appropriation of 88 million dollars.

Our budgetary submission did not include a request for an appropriation to cover the costs of our intended (and indeed statutorily mandated) study of alternative delivery systems, including judicare systems. Neither did it include the cost of assuming responsibility for migrant legal services programs and legal services programs (mostly in Washington and Oregon) funded directly through the discretionary funds of local Community Action Programs. We have submitted a supplemental budgetary request to Congress for 5.3 million dollars, so as to fund the above items.

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MARSHALL JORDAN BREGER

Professor Marshall Breger, assistant professor at the University of Texas Law School, is a member of the board of directors of the Legal Services Corporation. Previously he was law clerk to Marvin E. Frankel, U. S. District Judge for the Southern District of New York.

For the fiscal years beginning October 1, we have requested $140,300,000 from Congress. While a quantum funding leap in dollar terms, this in fact provides only a hesitant start toward meeting the generally agreed upon gap between need and service. It begins the catch-up processes for five years of static funding.

Some 13 million dollars additional has been requested for this catch-up operation. Monies, however, will not be passed out uncritically. Programs will undergo a critical evaluation prior to refunding. Innovative management and service techniques will be fostered at all levels. Training of paralegals will be stressed within the parameters of unauthorized practice laws. Attempts will be made to streamline the handling of high volume repetitive caseloads (e.g., SSI hearings) and to develop model systems for national use.

The Corporation has requested over 26 million dollars for the purpose of expanding access to legal services programs. In blunt terms, over one-third of the nation's poor have little better than paper access. The Corporation aleardy has in hand a large backlog of funding requests from community groups and bar associations in hitherto unserved areas. Such local initiatives cannot be ignored. At the same time, we are aware of the felt and objective need in those areas where existing programs are financially unable to respond to local need. Allocating funds between these legitimate interests present difficult choices which the Corporation cannot long put off.

Over the last four years the number of field attorneys has dropped by more than 400 to about 2100. The number of neighborhood offices has dropped 41% and now stands at 638. As a result, in three states with nominal statewide programs, many potential clients must travel in excess of 100 miles to receive any service at all. Economies in staff and office-siting have forced cutbacks in the quality of services. In some programs, four-week waiting periods for initial interviews are common. Maintenance of basic research libraries and office equipment has been severely retarded. Such service cutbacks result in working conditions that border on the unprofessional. Caseloads of 500 are not uncommon. Many attorneys lack private offices or even cubicles, forcing clients to report intimate facts of their personal lives in hearing range of both staff and the general public. The contrast with the experience and minimal working conditions of the private bar cannot but concern those wedded to the imperative of lawyering according to the Canons.

Turnover of attorneys has increased to upwards of 30 per cent a year, thus denying the program the wisdom of experienced, able lawyers trained in poverty problems. Program salaries, never competitive with the private sector, have fallen dangerously out-of-step. Legal services programs have become the training ground for the private bar and local prosecutor's office, spawning attorneys who expend themselves for some few years and then depart for greener, or at least, less frustrating pastures. Youthful zeal cannot be long maintained in the face of fiscal malnutrition and marginal working conditions. A 30 per cent attrition in staff whether in New York City or Lincoln, Nebraska, translates directly into the proliferation of frustration and misery among clients for whom the legal services lawyer is often the only or last hope to secure redress of perceived, and too often real, grievances.

These problems are critical to the health and vitality of the program. Hopefully, such fiscal difficulties can be soon overcome and legal services placed on a sound and healthy fiscal footing. Certainly this must be our first and primary concern.

While our budgetary problems are most severe there are yet four other areas of immediate concern to the Corporation where we desire and indeed rely upon your active advice and participation.

(1) The promulgation of regulations to interpret our statutory framework;
(2) The development and utilization of state advisory councils;
(3) The implementation of our congressional mandate to study alternative delivery systems; and
(4) The development of mechanisms by which the private bar can actively participate in our endeavors.

We are engaged in an extensive effort to develop regulations and guidelines to implement the statute under which we operate. This process is one of vital importance. It will provide the local staff attorney in the field with guidance as to what is licit and what is not. It will make clear to the Congress and the public at large our determination to run a professional operation. Bareboned interim regulations have already been proposed in areas related to freedom of information, picketing, demonstrations and the development of state advisory councils. The entire process of regulation writing will carry us for upwards of six months. We seek comment and consultation by interested parties in this effort.

A second area in which we look to the legal profession for participation and support is in the staffing of state advisory councils. Our statute requires that within six months after the first meeting of the Board, we request the governor of each state to appoint a nine-person advisory council to work with the Board of Directors. If one is not appointed within 90 days thereafter, the Board itself will choose their membership. On January 14, a letter was sent out to the various governors requesting that such appointments be made.

The precise functions of the advisory councils are still not fleshed out. At a minimum their statutory duty requires them to report to the Corporation any apparent violations of the statute or its implementing regulations. My own understanding, however, of the councils' potential role is broader. They may prove to be far more than the "eyes and ears" of the program and may develop as focal points for creative contributions to our efforts. The regulations require each council to report annually to the Board on its activities and on the health of legal services in those areas within its jurisdiction. As part of such reports

councils will be able to explore mechanisms and strategems for improving the delivery of legal services within their states. In this area, local initiative is vital.

Further, I bring to your attention our statutory mandate to report to Congress within two years regarding the feasibility and desirability of instituting alternative means of delivery of legal services to the poor—alternative, that is, to the present staff attorney system. This study will include an evaluation of judicare in a variety of contexts as well as an analysis of other delivery schemes including more extensive use of paralegals and lay advocates in certain contexts as well as the feasibility of prepaid plans and voucher schemes. We seek to canvass the creative and critical thoughts of all interested parties both as to substantive ideas and as to comments on the methodology the Corporation chooses to employ in designing the experimental phases of its study. This effort might prove to be the most far reaching of our various enterprises. Analysis and experimentation in this area could impact the future structure of the legal profession generally.

The Corporation is committed to taking a fresh look at a variety of delivery schemes. We shall not limit ourselves to different "payment" mechanisms but consider, as well, varying structurings of delivery systems, e.g., intensive use of paralegals, clinics, and other innovative efficiencies which may prove adaptable to our mission. The methodology of such investigations are exceedingly complex. Ultimately, they may include the use of selected "demonstration" projects as well as rigorous conceptual research.

In this regard the Corporation is well aware that any long-term legal services strategy must include varieties of roles for the private bar. Their impact on our endeavors could and should be substantial. Our 1977 budget allocates funds to support "sabbatical" leaves by private practitioners who would then bring their specialized skills to bear on poverty law issues. Already, in some areas, judicare programs directly involve private counsel in poverty law work. Other forms of possible renumerative involvement, including contracts with private law firms for discrete legal tasks, are being considered.

We seek, as well, to spur private practitioners to donate time and energy to our enterprise. Nascent efforts in Texas to organize retired attorneys in aid of their fellow elderly ought be explored in all 50 states. In New York, volunteer attorneys from large corporate law firms man a Harlem office and take work back to their Wall Street offices. In Baltimore, a major law firm has opened its own ghetto office while in other cities the private bar is coming to the aid of legal services programs beleagured with rising caseloads. Such pilot projects must be multiplied and such experiments developed as a permanent part of our professional fabric.

These are times of new beginnings for legal services in America. The turmoil of past years has abated. The Corporation offers and symbolizes a fresh start in the provision of legal services to the poor. Nonetheless, the program faces a variety of serious policy issues from its infancy. If we fail to address them we may well discover that we have chosen by default.

Foremost of these is the problem of eligibility, necessarily intertwined with the need to make decisions about the structuring of consumer access and definitions about "legal need." We have no choice but to make judgments as to who, in the best of times, falls within our catchment area and what "legal needs," in the worst of times, we are prepared to respond to on a priority basis. Recent research has suggested that many persons do not know that their problem is one which can be dealt with by lawyers. Shall the Corporation "beat the bushes" for clients? Should we take problems as they come through the door? Can we develop a rational perspective to deal with problems of eligibility and legal need? Is this an area for resource allocation by our client community and, if so, how should such decision-making be structured?

A second problem we face is that of access. The initial funding of the old OEO program was based neither on demographic nor geographic considerations. It was a catch-as-catch-can affair. Some areas of the country, the South and Southwest particularly, are grossly underfunded. Other areas, such as New York, have pressing and compelling needs. If we are to grow (and to argue otherwise is unthinkable) we must develop some planned policy towards access under conditions of foreseeable scarcity. Should we, as example, favor areas least well covered, areas where new infusion of monies will have the most impact or areas where allocations have been most efficiently used? These allocation issues will plague us over the next few years.

Certain lessons can be assimilated from the controversy of the past decade. Foremost among these is the recognition that much of the discussion surrounding legal services has been staked out on false terrain. The debate has reflected rhetoric as much as substance. The ideological lances raised for or against "law reform" misread the real issues and problems surrounding a government-sponsored legal services program. The indigent client desiring a divorce or seeking redress over a consumer grievance has the same right to effective counsel as do other citizens. If a lawyer need take on the government or a large corporation to vigorously represent his client's needs —so be it. Reins cannot be placed on creative and zealous advocacy. Our proper concern should become one of fostering, financially and otherwise, the atmosphere and work conditions which ensure professionalism at every level. It is from such a focus that a strong and vital legal services program will find sustenance.

The Department of Justice aside, the Corporation and its grantees are perhaps the largest collection of litigating lawyers under one administrative umbrella in the country. The scale of its operations make it a particularly appropriate vehicle to explore a wide range of issues of direct relevance to the future of the legal profession. The Corporation must find solutions to the press of business caused by "mass administrative justice" which will allow for both effective client representation and systemic efficiency. Similarly it must consider developing alternative means of dispute resolution in cases where the litigation model cannot prove workable for its client population.

Legal services is not merely another welfare program spawned out of the visions and fears of the mid-1960's. It is not an income redistribution device.

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firms' offices—files will be located in or immediately adjacent to each individual attorney's office, and monitored by a secretary rather than a file clerk. Some files—for instance those for large litigation cases involving several attorneys—may be centrally located while others—probate clients handled by a single partner and perhaps an associate—should be kept immediately accessible to those individuals. Wherever located, files should be secured. The most valuable documents may be kept in a separate bank vault rather than the firm's own facilities—a privately-owned full-security vault would be extraordinarily expensive and require a basement facility. In the future file systems may be replaced by microreproduction but, without dramatic revisions in the work process of the law office, actual paper copy will continue to be a necessity.

Administrative and general office functions may be grouped to facilitate intercommunication and avoid disturbance to other parts of the offices. These functions can include word processing—an increasingly important support function in many law offices—accounting, data processing and mail service. Design of word processing facilities should offer a comfortable as well as efficient setting for this systematized and oftentimes tedious work. After-hour heating, ventilating and air conditioning should be provided for any word processing or data processing facilities. Accounting will handle certain services for probate attorneys and should be convenient to this department, if applicable; accounting personnel should be provided with enclosed, private and secured facilities for their confidential work. The mail room may be combined with other support facilities—for example, photocopying equipment—for efficient use of clerical personnel at peak hours; since these services work with messengers, they should be located on or near an entrance/exit, preferably a location removed from the general office/reception areas.

In addition to these general office facilities, a lounge and/or coffee station should be planned where appropriate according to the traditions of the firm and the available facilities in the building or in the general community in which the firm is located.

Planning offices for a law firm requires not only definition of general layout requirements, but also definition of engineering requirements. Lighting, acoustics, heating, ventilating and air conditioning must be designed to meet the working requirements of the individual firm.

In general, lighting should be between 60 and 100 foot candles at desk level throughout the offices. This foot candle figure is lower than past figures which were often unnecessarily high; today concern for energy conservation and escalating electrical costs has forced a redefinition of general office lighting requirements. Specific areas of the firm, for example the library and stack areas, should be carefully designed to ensure that enough light is provided for the tasks involved. Task lighting—that is, an individual light source for a specific work area—may be considered for secretarial workstations but this type of light will not eliminate the need for general overhead lighting.

Fluorescent lighting is efficient and considerably less expensive than incandescent lighting; it produces less heat than the latter source, thus eliminating the need for additional air conditioning. However, incandescent lighting should be considered for nonworking areas such as the reception room or even certain conference rooms; this light source is warmer and produces a better quality of light appropriate to featured public spaces in the offices.

Acoustical privacy, as noted above, is a primary prerequisite for any law firm; construction details should be planned accordingly. In addition to slab-to-slab wall construction and sound treated mechanical systems, carpeting is a virtual necessity as a sound absorber throughout the offices. In the library the books themselves will absorb sound to a large extent.

After-hour work is common in many law firms and offices should be designed to accommodate these workers. After-hour heating, ventilating and air conditioning should, if required, be stipulated in any lease/workletter for the office space.

Again, all these requirements should be defined as early as possible. A law office is a diverse working operation; it houses a variety of functions, each of which necessitates certain planning details. The earlier these functions are defined and the planning details specified, the less time and cost will be expended to achieve a working environment which is convenient, efficient and above all, productive.

(Editor's note: A pamphlet on Law Office Layout and Design is one in a series of pamphlets on Economics of Law published by the American Bar Association, 1155 E. 60th St., Chicago, IL 60637). ■

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Nor does its importance lie merely in the dollar value of the service it provides to indigent clients. Rather, the program serves to reinforce the integrity or our judicial system. Indeed, legal services stands for a central premise upon which this nation was conceived—equal justice under law. The Corporation will provide the tools to ensure access to the legal system, access to those institutional mechanisms for resolving private disagreement and conflict to which we all adhere.

Over 100 years ago, Alexis de Tocqueville noted that we are a litigious people. The secure belief that wrongs may be remedied by resort to the courts has been one of our peculiar national strengths. It has served as an anchor for stability and an incentive to peaceful change. It is our duty and our privilege to extend that certainty to all segments of our population. I invite you to join the Corporation in its work and share in these new beginnings and new hopes.

(These remarks are drawn from a talk before the annual assembly of the General Practice Section of the American Bar Association, Montreal, Canada, Aug. 9, 1975. The views expressed are those of the author and are not meant as an official statement by the Legal Services Corporation or its board of directors.) ■