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The Private Bar And The Public Lawyer: An Essential Partnership

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Abstract

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The Private Bar and the Public Lawyer: An Essential Partnership

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Historically, the leadership and momentum for making legal services available to the poor came from the organized bar. Public interest law emerged with the first legal aid society in New York City in 1876, and its development was fostered in the mid-1960's by the creation of the first publicly funded effort under the auspices of the Offices of Economic Opportunity Legal Services Program. It is now the Legal Services Corporation that is the movement's successor.

Today, fifteen years after the publicly funded poverty law movement began, there are over 6,000 full-time lawyers and more than 2,000 paralegals working in about 1,000 LSC funded legal services offices in every state, the District of Columbia, Micronesia, Puerto Rico and the Virgin Islands. Currently, the Corporation's congressional appropriation is \$300 million; a substantial increase from the \$88 million when the Corporation began operations in fiscal year 1976, after having been frozen at \$71 million for the previous five years.

Although this is phenomenal growth, and it will allow, for the first time in our country's history, some access to our legal system for every poor person in every state, it does not provide sufficient resources to address all the legal needs of all eligible clients in a program's service area. The \$300 million budget for the 1980 fiscal year is only enabling the Corporation to complete its minimum access funding plan. It makes possible the provision of the equivalent of two lawyers per every 10,000 poor persons throughout the country.

It is gratifying to be here among so many friends who share the common concern of how to provide legal representation to those persons who cannot afford an attorney. Many of you have worked long and hard to provide legal assistance to the under-represented in the

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areas of civil rights, public rights, and/or poverty law.

Today we find that the common thread among all types of public interest representation is that the partnership of the private bar and the public lawyer is essential to this endeavor. It is urgent that the private bar aggressively support, and become more involved in, public interest practice if we are to live up to our nation's promise of equal justice under law.

When the Corporation began operations, less than 2 million of our nation's 29 million poor persons lived in areas with minimum legal access. It was not uncommon in certain areas of this country to have one lawyer per 23,000 poor people. The Corporation is currently engaged in expansion activities in many parts of the United States to rectify this situation. However, even with completion of the minimum access plan, only 15 percent of the indigents' need for civil legal assistance can be met.

We know that public funds will not be available in the amounts necessary to completely meet all the legal needs of the poor; therefore, efforts involving the private bar, like Florida's Public Interest Law Bank, are going to be essential throughout the country. We commend this activity and know that there is a great deal of volunteer work being done in many other locations. The Denver Bar Association operates a volunteer program involving 1,200 private attorneys. Salaries and administrative overhead are paid for entirely by the membership dues of the Denver and Colorado Bar Associations. The Hillsborough County Bar and Bay Area Legal Services program in Tampa, Florida have an excellent volunteer program. The Chicago Volunteer Lawyers organization has over 300 private lawyers volunteering services in a project supported by law firm contributions, foundation and charitable funding, and by a Chicago Bar Association dues check-off.

In its Delivery Systems Study, which was mandated by Congress to examine both the staff attorney model and alternative and supplemental methods of delivering legal services to the poor, the Corporation has funded six pro bono demonstration models: the Bar Association of San Francisco Volunteer Lawyers Project; the Bet Tzedek project serving elderly poor in Los Angeles; the Boston Bar Association Volunteers Lawyers Project; the New Hampshire Bar Association's Citizens Rights Committee Project; Community Law Offices in New York City; and the Legal Counsel for the Elderly operated by the National Retired Teachers Association and the American Association

of Retired Persons in Washington, D.C.

In each of these projects, hundreds of private lawyers are donating their time to delivering legal services to the poor. For example, the New Hampshire project, which is a statewide referral system utilizing a WATS phone system, has 700 out of the 1,000 lawyers in the state, participating.

In addition to direct client representation, the Corporation is funding several other demonstration projects, involving the private bar, to provide training and other support services. In its Quality Improvement Project, for example, the Corporation is funding a professional development project in Greenville, South Carolina. The legal services program will supplement its staff's ability to provide skills training, and litigation support, to staff attorneys and paralegals through contracts with local private law firms.

The New York Lawyers for the Public Interest, and the Council of New York Law Associates, are undertaking a LSC funded Quality Improvement Project that is matching the pro bono services of private law firms with legal services programs in the areas of management assistance, staff development and specialized expertise. Library and research facilities of private firms, for example, are matched with legal services offices.

Additionally, the Corporation is working with the Litigation Section of the ABA to develop a pilot project in about 20 locations whereby experienced private litigators will be matched on a one-to-one basis with legal services lawyers to provide trial advocacy assistance. The Atlanta Legal Aid Society currently has such an experimental project underway and it is finding it very beneficial.

Other methods of involving private lawyers in the delivery of legal services to the poor are also being examined in the Corporation's Delivery Systems Study. Contracts with law firms, judicare, prepaid legal services, and legal clinics are included. The Delivery Systems Study's main objective is to determine the extent to which delivery models involving the private bar differ from the traditional staff attorney legal services programs, based on cost, quality, client satisfaction, and impact on the poverty community. The Study is scheduled to be completed and submitted to the Congress in mid-1980.

To help increase access to our legal system for the average person, other groups are examining the utilization of alternative methods of dispute resolution which include small claims court, arbitration and

mediation, and neighborhood justice centers. However, even with all this effort involving the private bar and experimentation with other legal remedies, there is need for much more private bar activity if we are to begin to make equal access to justice a reality for the millions of poor people who are now being denied justice because they cannot afford an attorney.

There is considerable debate taking place about whether pro bono work should be mandatory. The New York City Bar, for example, is discussing a proposal to require each lawyer to provide 40 hours a year. The California State Bar had a similar proposal that was defeated in the state legislature. Bar leaders, like Chesterfield Smith, have proposed disciplinary sanctions if lawyers do not contribute volunteer services. The discussion draft of the new ABA Code of Professional Responsibility calls for a contribution of volunteer service annually by each lawyer to meet his or her Canon 2 public interest obligation. Also, a self-policing regulations is proposed.

It is gratifying that the American Bar Association has just launched a major pro bono activation program. Under the sponsorship of the ABA Standing Committee on Legal Aid and Indigent Defendants, and the ABA Special Committee on Public Interest Practice, the ABA has hired a full-time staff person to work with state and local bar associations to establish, in cooperation with legal services programs, viable volunteer projects where none exist and to increase participation where such projects are underway. The ABA program will provide: strong centralized leadership at the national level; technical assistance to develop and implement local pro bono "matching mechanisms" that will bring needy clients and volunteer lawyers together; and resource and clearinghouse services to facilitate communication and technical assistance among bars about new and developing programs and concepts. We hope to work very closely with the American Bar Association, as well as with the National Bar Association, the National Legal Aid and Defender Association, the National Clients Council, legal services programs, and other interested groups.

We are close to completion of a compilation of existing pro bono projects that we hope will serve as a "how to" manual for starting others. Considerations such as recruiting and retention of private lawyers, coordination, training of volunteers, and evaluation and quality control to assure the provision of quality legal services in volunteer programs are some of the issues that will be examined. Funding, too,

will be discussed as it also is a major element. With repeated messages from the Congress and the administration that funding for legal services will not be increased in the increments of the past, and that more reliance must be put on the private bar for support, we must concentrate on innovative ways to finance volunteer programs.

The Florida plan to use the interest from client trust funds to finance such activities is gratifying. In Atlanta, the volunteer program of the Atlanta Bar Association and the Atlanta Council of Young Lawyers that is funded by charging an additional \$1.00 filing fee in all civil actions in the Fulton County State Court, is promising as a prototype for the rest of the country.

Our preliminary research for our pro bono manual involved surveying all of our programs to find out what types of pro bono projects they were undertaking with the private bar. Responses from about 75 programs revealed five basic models: the utilization of private lawyers to handle case overload; private lawyers who take conflict of interest cases; private lawyers who take certain categories of cases; private lawyers who provide training and resource assistance; and rotation plans whereby private law firms loan lawyers and support staff to a legal services program for short periods. Added to these, were models utilizing retired lawyers and preliminary plans for using in-house counsel and government lawyers. These models were operated by legal services programs, bar associations and other independent organizations, and by law firms.

Unfortunately, even though there is encouraging momentum and many private attorneys are already doing their share to meet the legal needs of the poor in their communities, and despite the fact that there has been a history of strong national leadership supporting this kind of activity, there is resistance by significant numbers of private lawyers and even opposition to such legal services by some segments of the private bar. We are finding, in connection with the Corporation's expansion activities, that in certain areas of the country where there has never been publicly-funded legal services, the same opposition exists that was prevalent when the publicly-funded movement began in the mid-sixties.

Of course, for the most part, providing legal services to the poor is accepted. However, we need to renew the dedication and the commitment of the private bar and public officials to the concept that equal justice under law is more than just words that appear on the facade of

the United States Supreme Court. It is a right that belongs to everyone regardless of race, religion, or economic circumstance. We also need to stimulate the concern about public interest law that was present in the sixties and early seventies. We are at a crossroad as we enter the 1980's; we have seen the pendulum swing from the aggressive private bar activities undertaken to help pass the Public Accommodations Act, the Civil Rights Act, the creation of the Lawyers' Committee for Civil Rights Under Law, and the establishment of the poverty law movement, to a more complacent, comfortable posture.

It is my strong feeling that we cannot let this happen while millions of people in this country still have no place to turn for legal assistance. It is time for all of us to join together to make the ideal of equal justice under law a reality. The private bar and the public lawyer are an essential partnership if we are to achieve this. It is vital that we build that partnership. I ask your support and counsel.