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A ROLE FOR LAW SCHOOLS IN OEO'S LEGAL SERVICES PROGRAM

Thomas F. Broden, Jr.*

A breath of fresh air has blown into many law schools because of the national antipoverty program in general and the Legal Services Program of the Office of Economic Opportunity (OEO) in particular. The antipoverty program has quickened the consciences of many legal educators who for the first time clearly see how little they have done to focus attention on the legal problems of the poor.

The main focus of legal education has been on the typical problems of paying clients. Consequently, there has been little effort to teach law as a helpful instrumentality for the indigent except perhaps in the administration of criminal justice and family law. For example, bankruptcy has often been taught in a course entitled Creditor's Rights and has been treated accordingly — significantly, we have had no courses on Debtors' Rights. Some commercial law courses, such as Contracts, Sales, Negotiable Instruments and Commercial Transactions, do bear upon the rights of debtors, and much of the skill and knowledge traditionally imparted in legal education is equally relevant whether employed on behalf of the indigent or the affluent. We have not, however, focused attention on the law as an instrumentality for protecting the rights of the poor; much less have we sought to motivate students in this direction.

In his address to the Law and Poverty Conference last year, Monrad Paulsen described the opportunity presented to law schools by the antipoverty program:

The "War on Poverty" has awakened a new conscience in many of us. We have, I believe, a new awareness of "forgotten men." Ironically, today there are even new professional opportunities, offered by legal services units serving the poor, which our students can embrace. This prospect for new ways of making a living happily serves both our conscience and our traditional commitment to the training of self-supporting practitioners. Now we can put more teaching emphasis on the problems of the poor not only because it is right but because it is a way of properly training professionals for employment.¹

Just as the focus of teaching has not been on the legal problems of the indigent, there has been little significant research or scholarship in this area, again with exceptions for certain areas of criminal law and family law.² Moreover, law school action programs such as legal aid or defender programs have been mere stepchildren in the curriculum.

Past Law School Interest in Legal Aid

Candor requires questioning the burst of enthusiasm over OEO's Legal Services Program by many in law schools who, over the years, have coolly ignored

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1 Paulsen, *The Law Schools and the War on Poverty*, in OEO & U.S. ATTORNEY GENERAL, CONFERENCE PROCEEDINGS: 1965 NATIONAL CONFERENCE ON LAW AND POVERTY 77, 78 (1966).

2 For evidence that the situation is changing, see Bellow, *Selected Readings in Law and Poverty*, in *id.* at 175.

legal aid. Legal aid on a somewhat organized basis has been with us for almost a century. Harvard³ and Northwestern⁴ law schools have had legal aid bureaus since 1913. Many other schools have established similar clinics during the past fifty years.⁵ A perusal of current law school bulletins reveals that approximately one-third of the nation's law schools now have some kind of legal aid program.⁶ Although most of these are modest efforts, there have been examples of truly ambitious law school involvement in clinic work. Almost thirty years ago Duke University Law School had a legal aid clinic which was significantly related to the life of the law school. The director and two or three of the five lawyers in the office were full-time members of the law school faculty although they did not give full time to the work of the office. There was a definite and meaningful effort to supervise the work of the law students and to integrate the work of the law office into the curriculum.⁷

Law school interest in legal aid offices has been building during the past few years. Beginning in 1962, before the advent of the antipoverty program, the Ford Foundation sparked interest among some law schools through support for the National Council on Legal Clinics. A wide variety of approaches was thereupon established or extended.⁸ Law schools at Northwestern University, Ohio State University, Southern Methodist University and Tennessee University have developed or expanded legal clinics for the poor and involved their students in the work of the offices. Northwestern emphasizes counseling training: law students interview clients of the Chicago Legal Aid Bureau, discuss and diagnose the cases with faculty supervisors and then refer the clients to other welfare agencies or to a staff attorney if legal relief is indicated. Students at the other schools assist staff attorneys in the handling of cases by investigation, research, etc. In addition, Wisconsin Law School places a small number of students in

3 BROWNELL, LEGAL AID IN THE UNITED STATES 108 (1951).

4 SURVEY OF THE LEGAL PROFESSION: LEGAL AID CLINIC REPORTS 56-57 (Johnstone ed. 1951).

5 BROWNELL, LEGAL AID IN THE UNITED STATES 32 (Supp. 1961).

6 Baylor University School of Law; Boston University School of Law; University of California School of Law (Los Angeles); California Western University School of Law; University of Chicago Law School; University of Cincinnati College of Law; University of Colorado School of Law; Columbia University School of Law; University of Connecticut School of Law; Cornell Law School; Cumberland Law School of Howard College; University of Denver College of Law; DePaul University College of Law; Drake University Law School; Duke University School of Law; Franklin University Law School; George Washington University Law School; Georgetown University Law Center; Harvard Law School; Howard University School of Law; Lamar School of Law, Emory University; University of Louisville School of Law; Loyola University School of Law (New Orleans); John Marshall Law School; University of Maryland School of Law; University of Michigan Law School; University of New Mexico School of Law; New York University School of Law; State University of New York at Buffalo School of Law; Northwestern University School of Law; Notre Dame Law School; University of Pennsylvania Law School; University of Pittsburgh School of Law; University of Southern California School of Law; Southern Methodist University School of Law; Stanford University College of Law; Stetson University College of Law; Temple University School of Law; University of Tennessee College of Law; University of Texas School of Law; Tulane University School of Law; University of Tulsa School of Law; University of Utah College of Law; Vanderbilt University School of Law; University of Virginia School of Law; Washburn University School of Law; Washington University School of Law (St. Louis); Washington College of Law (American University); Wayne State University Law School; Willamette University College of Law; Yale Law School.

7 SURVEY OF THE LEGAL PROFESSION, *op. cit. supra* note 4, at 116-17.

8 See NATIONAL COUNCIL ON LEGAL CLINICS, SUMMARIES OF LAW SCHOOL PROJECTS (1965).

prisons or probation and parole offices during the summer to get the "feel" of the programs and problems of these institutions and to open up channels of communication between prisoners needing legal advice and the local legal aid or volunteer attorney programs. Last year the University of Chicago Law School began to grant summer fellowships to students working in various agencies, including legal aid and antipoverty offices. On their return to law school, the students report their experiences in an existing law school curricular activity.

In the evaluation of these programs, one thing stands out — the need for meaningful supervision of student work if the program is to be educationally beneficial. This is important not only for the success of these programs but also as one reason for lack of law school interest in clinic programs in the past. Whether right or wrong, law schools and universities are unwilling to dedicate the time and salary of faculty and supporting personnel to legal aid activities. Most legal aid staff attorneys were so busy that meaningful supervision could not be expected from them, and the offices were not sufficiently large to accommodate any significant number of students, volunteer attorneys or faculty supervisors. There is a vast difference between law office activity in which an experienced lawyer wisely guides the efforts of a fledgling and a program in which the student putters around with no real guidance or direction. Law school legal aid programs of the past largely fell into the latter category and inspired little enthusiasm.

The Law Schools' Interest in OEO Programs

OEO's program has sparked enthusiasm because of the magnitude of the effort and a willingness to confront the really difficult problems. OEO is not only willing to provide financial support, but it also insists that these programs be of high quality. For law school programs this means OEO will support a competent and adequate staff to provide meaningful supervision for students working in the office. There will also be adequate facilities to make the program function professionally. Twenty million dollars has been budgeted for legal services for the indigent in the first year of OEO's operation, a sum considered inadequate by many informed persons but a large step forward compared to the annual eight million dollars before OEO.

OEO is willing to confront some of the difficult problems in supporting and, indeed, insisting upon effective programs of educating the poor to their legal rights and responsibilities. Likewise, it insists upon the development of a rapport with the indigent to encourage them to use the services that are available. The program encourages legal research and efforts at law reform to make law a helpful rather than oppressive institution for the indigent. Even though legal aid programs may have attempted this in the past and OEO may fare no better, at least it is now an explicitly stated goal which has captivated the imagination of many in the schools who before were unmoved.

Another aspect of OEO's program which appeals to many in the schools is its commitment to equal justice under law. Previous programs were not indifferent to this, but this goal too is strongly emphasized by the OEO program. There are, of course, the obvious possibilities of rendering legal advice to poor

persons who may be the victims of racial or other discrimination. More important, the OEO Legal Services Program stresses the mature implications of providing assistance to those who have traditionally feared and hated the institution of law and lawyers as oppressors and of demonstrating that equal justice under law is not just a meaningless slogan but truly the creed of the institution of law and the legal profession. In many ways poverty is not only a lack of material goods but also a state of mind. Many clergymen, Peace Corps volunteers and others would qualify under any standard of poverty, yet no one would give them advice and direction on how to escape their condition. A feeling of alienation and oppression in part — hopefully in small part — can arise from fear, insecurity and a lack of confidence in the justice and fairness of those in positions of authority. To the extent that a legal services program can instill confidence in the justice of our legal order, it will make a basic contribution to the alleviation of the psychological conditions of poverty, even though not contributing measurably to the material well-being of its clients.

Business interests, labor unions, farm groups and others employ lawyers to serve as their advocates in our society; the OEO seeks to employ lawyers to serve as the advocates of the poor. This means handling the law business that comes into the office as well as establishing imaginative and effective programs to educate the poor to their legal rights and the availability of legal services. The program includes educating those who work with the poor in these areas. It means working with a sensitivity to the way in which the law as it exists or is administered works injustice or is inadequate to provide justice to the poor. In these cases the lawyer will embark upon a program to change the law or the way it is being administered so it will more closely approximate justice.

A further reason for the law schools' interest in OEO programs may be found within the schools. For some time there has been an awareness that something is wrong with the third year of law school. The students instinctively know what is the matter — they want to get out of class and into the real world of the legal profession. They demonstrate this in a number of ways, not the least indicative of which is cutting class. They also show it by working very hard on the law review, in moot court, on their practice trials and by volunteering for participation in legal aid and defender work. Student involvement in an OEO legal services program under faculty direction is an ideal way to harness this enthusiasm and desire for meaningful educational experiences. Upon graduation, law students are well trained in legal theory and in research and writing techniques, but they are weak in the ability to apply their skill and knowledge to practical law office problems. Bringing students into the work of the law offices for the poor will not only provide a bridge between legal theory and practice, but it is also the most promising device available to alert students to the legal problems of the poor and the lawyer's obligation to assist in their solution.

The Nature of Law School Involvement

A school will get no more out of the program than it puts into it — a token involvement will be largely a waste of time. Although approaches may vary, it is essential that at least one member of the faculty consider it his major

responsibility to relate the work of the law office to the program of the law school. His classroom teaching responsibilities in the traditional sense should not exceed more than half the usual academic load. In addition, other interested members of the faculty should look to the work of the law office as a valuable resource for giving greater public service orientation to their courses and seminars. This requires a change in the exclusive image of the law teacher as an appellate case, library oriented person. Legal educators, however, should be a bit uneasy that all other disciplines have expanded their horizons beyond book learning alone. Just as students are involved in brief writing, oral argument, trial technique and legislative drafting, so should they be involved in and made aware of the work of the neighborhood law office. Details concerning the staffing and administration of the office should depend upon the circumstances of the community, but the relation of the work of the office to the program of the school must be intimate and pervasive. Through the impact of this program it can be expected that the myriad legal problems of the poor which have thus far been largely ignored will come to the surface and force a reorientation of many areas of the law — just as interest in the indigent criminal defendant has reoriented much constitutional and criminal law.

Law schools have as great an obligation as any other segment of the legal profession to contribute to the improvement of the administration of justice. OEO's Legal Services Program affords an opportunity for law schools to make a significant contribution by showing students the entire range of legal problems in society, not just the problems of the affluent. Affiliation with the program can also make legal education and legal research more relevant to the real problems of society. It can bring legal education, the practicing bar and the community in general closer together for mutual benefit.

Hopefully the work of the law offices for the indigent will be stronger because of law school involvement. The availability of students to assist the staff attorneys in the handling of cases should be helpful, as should the assistance of faculty members. The greatest contribution of the law schools, however, in terms of service to the community may be a long-range one. If lawyers graduate from law school with a deep sense of the professional obligation to assist the indigent and of the desirability of fashioning new and ingenious techniques for doing so, no greater contribution could be desired.

Law schools are particularly fortunate that the advantages of their involvement are fully appreciated by those responsible for the administration of OEO's Legal Services Program. The administrators welcome and insist upon law school involvement in programs wherever feasible. They are keenly aware that token involvement or unsupervised student participation is of no value. They are ready, willing and able to support meaningful educational experiences with adequate staff and faculty supervision, with no compromise of the responsibility of the school's educational role.

Standards for OEO Programs

The OEO encourages local communities through community action agencies to develop the kinds of antipoverty programs most appropriate for their particular

circumstances. Consequently, a wide variety of community action programs has been developed. The same can be said for legal services programs. In large metropolitan areas such as Washington, D.C., the general approach has been toward neighborhood law offices in poor areas of the city. In smaller communities the law office may be in the center of town, and programs for the rural poor have involved circuit-riding lawyers. The basic purpose in each case, of course, is to make the program readily accessible to the poor. Although the OEO encourages and insists upon local planning of the kind of legal service program each community thinks best for itself, there are five basic requirements in this area, some established by Congress.

First, Congress insists on maximum feasible participation by the persons and groups in the area to be served, often called representation of the poor. The representative need not always be poor, but he must be truly representative, for example, the pastor of a church whose congregation is drawn from the poor neighborhood to be served. This participation of the poor must be meaningful. It may involve representation on a board of directors or a board empowered to direct certain features of a neighborhood law office program or any other device to give meaningful influence on policymaking. In addition, it is recommended that residents of the area to be served be employed in the program to the maximum extent feasible.

Second, the OEO insists that attorneys in the program have that independence which is necessary to maintain the traditional lawyer-client relationship. The lawyer must be totally committed to the cause of his client. For this reason, the legal services program must be administered by an independent entity — not by the local community action agency.

Third, the program must give some hope of having a significant effect on the problems of poverty. The OEO would not be interested in a relatively insignificant increase in the effort to provide legal services. OEO's interest in high-quality, ambitious programs has been clearly emphasized. Essential to this is comprehensive education to apprise eligible people of their legal rights and obligations.

Fourth, the OEO will not replace existing programs. Congress has provided that, in general, the local community must maintain its past efforts in this area. The OEO seeks to bring about a significant expansion of legal services for the poor, not merely an exchange of programs.

Fifth, the program must be conducted and all program facilities operated on a nondiscriminatory basis as required by Title VI of the Civil Rights Act of 1964.

The Variety of Law School Programs

Law school programs have differed widely thus far. The University of Detroit Law School operates the first OEO law school program established and anticipates the most extensive poverty orientation yet suggested. It will not only operate a legal clinic but also plans to orient its entire curriculum to urban legal problems. Most law schools plan to become involved in OEO programs only to the extent of supplying law students to work in the law offices for the indigent

without any clear indication of faculty supervision.⁹ A few other law schools have adopted programs about halfway between the University of Detroit's and the majority's in terms of involvement. The main ingredient present in these plans, in addition to law student participation, is the commitment by one or more faculty members of a significant amount of his attention to the program.

Southern Methodist University Law School has been manning two legal aid offices in Dallas in cooperation with the local bar association. This program will be substantially expanded under an OEO grant. Notre Dame Law School and the law schools of the universities of Michigan, Minnesota, Mississippi and Texas also have OEO programs, each consisting of two legal aid offices. In most of these programs the project director is a member of the law school faculty and students work in the offices under the supervision of the director and staff attorneys. Each program also calls for special law school courses or seminars and research work on the legal problems of the poor. Also, it is anticipated that the work of the law office will be reflected in the traditional courses taught by faculty members involved in the program, such as Property Law, Family Law, Criminal Law, Administrative Law, Business Associations and Legislation. It is also expected that research and law reform proposals will be generated by the program.¹⁰

At one time, Howard Law School administered a training program for lawyers working in law offices for the poor in Washington, D.C. Marquette, Miami and Berkeley law schools are offering continuing legal education programs for practicing lawyers to improve their skills in dealing with the legal problems of the poor. Marquette is also planning a law student internship program and research studies on Wisconsin law. The Universities of Kentucky and Tennessee Law Schools are involved in a multistate program to train lawyers to serve the rural poor.¹¹

South Dakota Law School is actively involved in the development of a program for American Indians on the reservation at Rosebud, South Dakota. Harvard Law School has received a grant to study various law school programs and, on the basis of this information, to establish a model law school neighbor-

9 A substantial number of programs that have been funded call for the involvement of law students in the law offices for the poor. The offices are not administered by the law schools but by other groups. Some of the law schools are Connecticut, Detroit, Duquesne, Emory, Georgetown, Illinois, Loyola (Los Angeles), Louisville, Miami, Missouri, North Carolina College, University of North Carolina, Oklahoma City, Pittsburgh, Rutgers, St. Louis, South Dakota, Southern California, Stanford, UCLA, Villanova, Washington (St. Louis), and Yale. Other law schools considering such involvement include Columbia, New York University and Virginia.

10 The organizational structure of the Notre Dame Law School program may be of interest. It is the legal services program for St. Joseph County, Indiana, embracing South Bend, Mishawaka and some smaller towns. Prior to OEO financing there was a Legal Aid Office in downtown South Bend with one lawyer and a stenographer. The local OEO community action agency, the county bar association, the Legal Aid Society, the United Community Services (United Fund agency which had been supporting the Legal Aid Office) and the University agreed on a single expanded legal services program which would create one or more neighborhood law offices in the poor sections of the county in addition to the downtown South Bend office. A new 24-man board was created with representation as follows: 10 members to be selected by the county bar association; 8 representatives of the poor; 4 members of human rights and human relations groups; 2 faculty members of the Notre Dame Law School who are members of the county bar association.

11 The project is administered by the Oak Ridge Association of Universities, Inc.

hood law office. Boston University Law School is also engaged in research in this area. It bears repeating that law school involvement in legal aid activities pre-existed OEO and that many law schools are active in this field even though not participating in OEO programs.

The Role of Law Students

There is quite a difference of opinion in the legal profession as to the appropriate role of law students in legal clinics or law offices for the indigent. In some jurisdictions third-year students are permitted to handle all aspects of cases including court appearances, often with a requirement that such work be carefully supervised. In most jurisdictions students are permitted to handle preliminary aspects of a case under the supervision of a licensed attorney, but under no circumstances may they conduct courtroom activities. The controversy here involves disagreement as to whether third-year students are competent to be responsible for the legal rights of persons in our society.

Opinion differs also as to whether law school legal clinics should be strictly student activities with no extensive supervision by staff or faculty attorneys. Harvard's program is without faculty supervision but has rather loose staff supervision. On the other hand, Duke's program includes significant involvement of three faculty members. Although much experimentation remains to be done in this area, the consensus is that maximum educational benefit can be derived when there is a significant faculty participation in the program.

Dissolving the Wall Between Town and Gown

Formal legal education today is almost exclusively located in the law schools, with the apprenticeship method practically extinct. This is not wholly inappropriate because a balanced law school education is superior. Nevertheless, there were some strengths in the apprenticeship method which have been lost. If they are ever to be regained, the law schools and the practicing bar must be brought closer together. Moreover, a person who has a problem requiring legal assistance often is in need of assistance from other professions and disciplines. Because the complex problems of modern society require the attention of many professions and disciplines, techniques to bring the law and other disciplines to bear on problems such as poverty must be found. OEO's Legal Services Program is one such technique. Under it a joint venture may be established involving many groups, such as the OEO community action agency, bar association, legal aid society, united fund group and the University. The main purpose of the venture must, of course, be quality service to the client. An important collateral benefit is its educational possibilities. Even though it may not be the final answer it offers a valuable opportunity to move ahead today.