7-1-1966

Introduction

Orison S. Marden

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.nd.edu/ndlr/vol41/iss6/1

This Introduction is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
INTRODUCTION

Orison S. Marden*

We are gathered here, under the auspices of a great law school, for frank and full discussion of the Legal Services Program of the Office of Economic Opportunity (OEO). No subject is of greater interest to the lawyers of America today. This interest is quite understandable, for in addition to our traditional concern for the progress of the legal aid movement, who would have dared predict—even two years ago—that the federal government would offer to finance legal aid work in a substantial way?

We lawyers discovered long ago that the poor have substantial legal problems and that they badly need the advice and assistance that only lawyers can render. Since the beginning of our profession, we have attempted to meet these needs largely through the voluntary efforts of individual lawyers. As our cities grew and society became increasingly complex we learned that the legal requirements of the poor in populous areas could best be met by community law offices, manned by lawyers and directed by lawyers and other community leaders. Thus, in recent years legal aid societies have been established in most of our major cities, largely through the efforts of the organized bar. They have received their principal financial support from lawyers and the Community Chest or United Fund. To an increasing degree, however, tax funds are now being contributed from city, county and state sources, especially for legal services in criminal cases.

I have often thought of legal aid as the "lawyers' 'Red Cross'" but it is far more than that. Indeed, the achievement of justice between human beings transcends in importance virtually every other value we have. "Justice," said Daniel Webster, "is the great interest of man on earth."1 Leaders of the legal aid movement have acknowledged for years that our efforts as a profession have not, and could not, meet the full need. Public support has increased substantially but service in most places is woefully inadequate. Too few have realized the true importance of providing legal services to poor people. Reginald Heber

---

* President-elect, American Bar Association.
1 3 Writings and Speeches of Daniel Webster 300 (Little, Brown & Co. 1908).
Smith, the legal aid pioneer, put his finger on its significance when he said: "Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with; but injustice makes us want to pull things down." A similar observation was made at the turn of the century by the distinguished editor, Lyman Abbott:

If ever a time shall come when in this city only the rich man can enjoy law as a doubtful luxury, when the poor who need it most cannot have it, when only a golden key will unlock the door to the courtroom, the seeds of revolution will be sown, the firebrand of revolution will be lighted and put into the hands of men, and they will almost be justified in the revolution which will follow.  

Although lawyers must guide and lead this community service, the role of the bar is not unlike that of the medical profession with respect to public hospitals and clinics. Legal assistance which assures equal access to justice for the poor is the concern of all segments of the community and not that of lawyers alone. As Whitney Seymour has said, to the extent that legal assistance is not provided, "poverty, and not the judge, may be deciding the case." It is no exaggeration to say, as Judge Learned Hand did some years ago, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." These philosophical and historical considerations demonstrate that there is sound reason and precedent for the use of public funds to support community law offices serving the poor in both civil and criminal matters. Today some thirty-five million people are members of families with annual incomes under three thousand dollars. The need is obviously too great for private charity. Yet, when the OEO announced its willingness to assist in financing legal services for the poor, many lawyers were skeptical and suspicious. These are some fairly typical reactions: "What is big brother up to now?" "Is our precious independence in danger?" "Are we going to be 'socialized' by snooping 'feds' from Washington?" "Will the federal program help or hurt our Legal Aid Society?" "Will the federal program compete with the bar, especially with the struggling neighborhood lawyer?" These and similar questions were the natural concern of many lawyers and bar associations throughout the land.

This was the situation which confronted the national leadership of our profession in late 1964. Lewis F. Powell of Richmond, Virginia, was then President of the American Bar Association (ABA). Conservative by nature and environment, he saw the opportunities as well as the dangers in the new program. Should we take off our gloves and fight a program formulated by the Congress of the United States and enthusiastically endorsed by the executive branch of our national government — or stand on the sidelines and pout? The example set by the medical profession was fresh in the minds of all of us.

The proposed program was subjected to careful study by President Powell

---

2 Smith, Introduction to Brownell, Legal Aid in the United States at xiii (1951).
3 Address by Lyman Abbott, Twenty-fifth Anniversary Dinner, Legal Aid Society of New York, 1901, in Smith, supra note 2, at xiii.
5 Address by Learned Hand, Seventy-fifth Anniversary Dinner, Legal Aid Society of New York, Feb. 16, 1951, in Smith, supra note 2, at xviii.
and other bar leaders. They concluded that if the program was properly implemented along professional lines, it would merely involve financial assistance to local communities for more and better legal aid—a movement which the organized bar had been actively promoting for many years. The precious independence and traditions of our profession would not be in jeopardy so long as the implementing rules which affect the services of lawyers were controlled by the bar. Accordingly, the Board of Governors of the ABA recommended that the organized bar tender good faith cooperation to the OEO and seek participation in creating and directing the program along proper lines. This recommendation was enthusiastically endorsed by the House of Delegates of the ABA in February, 1965. The House is composed largely of representatives of all state bar associations and the major city bar associations and, therefore, in a real sense represents the nation's lawyers.

Our offer of cooperation and participation was warmly received by Sargent Shriver, the OEO Director, and since that time officers and staff of the ABA have worked closely and intimately with the staff of the Legal Services Program. In addition, a National Advisory Committee of twenty-three members meets regularly with the OEO staff. All but one of the Advisory Committee members are lawyers; five are official representatives of the ABA.6 The National Bar Association is represented by its President, Revius O. Ortique, Jr., and the National Legal Aid and Defender Association by its President, Theodore Voorhees, and Director Edward Q. Carr of the New York Legal Aid Society.

In a few moments, you will be addressed by E. Clinton Bamberger, Jr., the distinguished Maryland lawyer who is Director of the Legal Services Program. We are satisfied that Mr. Bamberger is just as keenly interested as we are in preserving the independence and traditions of our profession. We have good reason to believe that neither he, nor the fine staff he is building, would knowingly do anything to weaken the profession of which they too are members.

I will not go into the details of the program since you will hear these from the Director himself. However, I would again emphasize that the program in its essentials is simply more and better legal aid, financed in part with funds you and I pay in federal taxes. The lawyers participating in this program, as Dean Page Keeton of the University of Texas Law School said the other day, will be helping "to preserve the free society in which we live."7

All programs are controlled locally. The Canons of Ethics remain intact. If the canons are not observed in any particular, the fault will lie with local enforcement. Indigency standards are established locally and if any competition with practicing lawyers should develop, it will not be the fault of Washington.

In assessing the impact of the Legal Services Program, I hope that the bar will have faith and confidence in its national leadership. We have no intention of bargaining away any of our precious traditions or independence. On the contrary, we would fight tooth and nail any attempt along these lines. We are

---

6 Edward W. Kuhn, President; Lewis F. Powell, former President; John W. Cummiskey, Chairman, Legal Aid Committee; F. William McCalpin, Chairman, Committee on Availability of Legal Services; and the author.

7 Address by Dean Page Keeton, University of Texas Law School, "The Need for Legal Aid Services to the Poor," Symposium on Law and Poverty, Austin, Texas, March 24, 1966.
working closely with Mr. Bamberger and his staff. If he objects to our looking over his shoulder, he has given no indication of it. On the contrary, I am confident that he and his chief, Sargent Shriver, genuinely welcome our participation.

The Legal Services Program gives to our profession a golden opportunity to move forward more rapidly than we had ever thought possible in serving the legal needs of the poor. The program, as ABA President Edward W. Kuhn has pointed out, "offers new opportunities for extension and improvement of legal assistance for the poor in cities and counties, large and small, throughout the nation." 8

The ultimate success of the program will depend largely on the character and strength of participation by the bar at the local level. Bar associations should be working closely with community leaders in the preparation of programs tailored to community needs. Where possible it is wise to build upon existing facilities, especially the local legal aid society. A great deal of information and help in planning these programs is available from the ABA, the National Legal Aid and Defender Association and the OEO staff. 9

If we do not take advantage of these opportunities I have no doubt that we will regret it and that history will not deal kindly with our default. The program will sharply advance the progress of the legal aid movement, one of the most cherished projects of the organized bar. We are freely given a strong voice in its operating policies at the national level. Actual operations will be controlled at the community level where lawyers will be in the driver's seat. Our independence and traditions are not in fact threatened. In helping to carry out a program established by our national government, dedicated to the principle of equal justice for all, we have nothing to lose and much to gain in terms of public service and good will for our profession.

---

8 Kuhn, Foreword to OEO, Guidelines for Legal Services Programs at ii (1966).
9 See also Westwood, Legal Aid's Economic Opportunity, 52 A.B.A.J. 127 (1966).