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E. Clinton Bamberger

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THE LEGAL SERVICES PROGRAM OF THE OFFICE OF ECONOMIC OPPORTUNITY

*E. Clinton Bamberger, Jr.**

“Laws grind the poor; and rich men rule the law.”

Oliver Goldsmith

Speakers coming before distinguished forums such as this symposium to speak about some aspect of the War on Poverty — now, a year and half after the passage of the Economic Opportunity Act¹ — face audiences of mixed sophistication in terms of what and where the poverty effort is. We risk boring the more sophisticated with fundamental statements of Office of Economic Opportunity (OEO) policy. If to satisfy this group we start with a set of implicit assumptions we risk underinforming — or worse, misinforming — the less sophisticated. I confront something of a Hobson's choice, but I choose a restatement of the fundamentals.

The OEO Legal Services Program is, in simplest terms, a program to enable local communities to offer free legal assistance to the poor as part of community action in the War on Poverty. The OEO does not render legal services or furnish lawyers. It does not initiate or conduct programs for free legal assistance. Neither does it send federal attorneys to offer such assistance. Essentially, it is a source of funds with certain fundamental objectives to be pursued.

To date, too few communities have sought OEO funds, but the number has increased significantly in the last four months. By June 30th of this year the OEO expects to have funded nearly 125 projects totalling at least twenty million dollars. The President of the American Bar Association and the National Advisory Committee have recommended to Congress that fifty million dollars be allocated for the conduct of programs in fiscal 1967. Approximately half of the present grants have gone to existing legal aid societies, with the remainder to bar associations or bar association sponsored groups, to law schools or simply to groups of lawyers who have developed a component agency to affiliate with a community action program.

The money is being used to provide legal assistance to the poor. It means national recognition that the least affluent members of our society have at least as many legal problems as the rest of us, and probably more. It means national recognition that the poor are least equipped with the resources and resilience to obtain fair treatment and, accordingly, least able to cope with the landlord, the merchant, the welfare official, the policeman — people you and I handle with relative ease in the unlikely event we ever see them — and that competent advocacy in the form of a lawyer — an articulate friend — can improve the lot and dignity of the poor. The OEO seeks the achievement of some greater approximation of equal justice for the poor — equal significance as human beings

* Director, Legal Services Program, Office of Economic Opportunity.

1 78 Stat. 508 (1964), 42 U.S.C. §§ 2701-2981 (1964).

and citizens — than has ever been achieved before. The lawyer's actions can be formidable in a number of arenas: substandard housing, retaliatory evictions, evictions without notice, unconscionable adhesion contracts, usurious loans, foreclosures and repossessions, irrational administrative agency action denying or terminating statutory benefits, invasions of privacy, anachronistic treatment of juveniles and, simply, economic force out of balance. These are facts of the lives of the poor — the city slum dweller, the mountaineer, the racial outcast — effects and causes of their destitution and the deprivation of that decency and dignity we find so casually in our daily lives. Lawyers can change this scene. They are already doing so in New York where the courts finally destroyed the odd administrative presumption, by which thousands had been denied public assistance, that a person coming to a city without employment must have come for the purpose of receiving welfare in violation of the statute. They are changing the scene in Washington, where a court ruled as valid a defense to a landlord's possessory action that the landlord's sole purpose for seeking the eviction was to punish the tenant for informing the government of unlawful housing conditions on the leased premises. In Oakland, where a lawyer stopped a campaign of unreasonable harassment by creditors and obtained a just settlement for a family of five under serious financial pressure, the family was then referred to another service of the community action agency for family and debt counseling.

This kind of service will become increasingly commonplace as more and more community action programs add the skills of lawyers to their arsenals. Perhaps the arsenal image suggests something which cannot be emphasized enough, that we are engaged in giving arms, not alms, to the poor. Service in thousands upon thousands of additional individual cases is of course inevitable. Certainly the individual client's case and his need must always be the focal point of the lawyer's work. Legal service in the context of the War on Poverty, however, must mean something more as well. Defending the poor against the evils from which lawyers regularly insulate the rest of us is only part of the job. Lawyers must excise the evils that prey on the poor — challenge that minority of disreputable and unethical businessmen until their values and their actions conform to the high standards of the remainder of the commercial community and pierce the complacency of those federal and state bureaucrats who administer benefit programs arbitrarily on the premise that what the statute calls a right is really only a privilege subject to their Olympian discretion. By educational efforts in schools, churches and neighborhood groups, lawyers must spark a recognition in the low-income community that just because you are poor doesn't mean you aren't a human being or a citizen, doesn't mean that you haven't any rights, doesn't mean that your rights can be disregarded, doesn't mean that the law is, as Marx told us, the instrument of the landed gentry alone.

It is not that lawyers must now join the picket lines but simply that lawyers for the poor must do no less for their clients than does the corporation lawyer checking the Federal Trade Commission for sloppy rulemaking, the union lawyer asking Congress for repeal of 14(b) or the civil rights lawyer seeking an end to segregation in bus stations. The dormant meaning of unconscionability must obtain widespread recognition among merchants; the building code must be

made a rule for landlords; the legislatures must be persuaded to end irregular presumptions governing the administration of public assistance. I speak of results with long-range significance for large numbers of people, not just individual service of limited impact.

If we are in agreement as to what has to be done, let me proceed to discuss how it is to be done. First, there is no standard national model promulgated by OEO for the offering of legal services to the poor. The *Guidelines for Legal Services Programs*² and the OEO booklet on how to apply for a grant³ stress that local communities should use ingenuity and local initiative to design programs. Needs will obviously vary from locale to locale. Washington, D.C., has ten neighborhood law firms established with a full complement of thirty-five attorneys, but the OEO has also funded a one-attorney operation for harvest season service to migratory workers in Ulysses, Kansas. The differences between urban and rural settings obviously require variety in approach. The applications received reflect an understanding of this principle.

Most of the programs funded to date have been in cities and have followed, with some variations, the form adopted in part here in South Bend, the neighborhood law office. Although the neighborhood law office possesses the key characteristics of accessibility and visibility to the low-income community, it may not always be the most suitable vehicle for service. Accessibility to the low-income group is one key characteristic of the structure of a legal services program. There are numerous other important aspects of a program's form and substance which are examined with each application. The program should offer a full range of service, in every type of civil case for which a private attorney cannot be obtained, and the service should range from advice to trial and appeal. The poor must have the same kind and degree of legal help as the non-poor.

Eligibility standards should be set in terms of weekly or monthly income for an individual, with appropriate additions for each dependent. Such standards should be administered flexibly, with debts and assets considered in determining whether service can be offered. Persons just above the income eligibility standard should not be turned away if their total financial portrait makes it plain that counsel will be unobtainable elsewhere; conversely, persons below the standard should occasionally be referred to private sources when an ability to pay in fact exists.

Certain segments of the bar have felt threatened by the expansion of free legal assistance for the poor. It is not the object of this program to deprive practitioners of clients, however. It will provide assistance for a part of the population of which only a tiny fraction has ever been served before. If this program even approaches general success, it will inspire such an appreciation of law in the community that people moderately able but previously unwilling to employ a lawyer will do so — to the obvious benefit of the same lawyers who now perceive an economic threat.

I have spoken primarily about service being offered by full-time salaried lawyers. This system is preferable to the proposed alternatives for providing legal services to the poor, specifically, the so-called "English system" or its varia-

² OEO, *GUIDELINES FOR LEGAL SERVICES PROGRAMS* (1966).

³ OEO, *HOW TO APPLY FOR A LEGAL SERVICES PROGRAM* (1966).

tions. Under the English system a branch of the state or local government or some other organization certifies the indigency of a potential client, who may then consult the private attorney of his choice. The private attorney is then compensated, in whole or in part, directly by the government.

At first glance, such a system seems attractive. It would involve the whole bar. With only a relatively minor change in our present system of legal representation, it might permit more people to consult a lawyer. It would also make every lawyer in the community available to the poor, instead of the few practicing in the legal services office, giving clients a "freedom of choice." Finally, the lawyers who perform services for the poor are guaranteed payment, a virtue which needs no further explanation.

Despite these attractive features, there are several inescapable doubts. The cost of the English system, given the level of OEO funds available for legal services, seems prohibitively high. The OEO roughly estimates that free legal services would cost at least two to three times more under an English system than with salaried full-time lawyers. Another disadvantage of an English system is that the procedure for certifying indigency would probably be administered by another bureaucracy for the poor to combat. This might well cause many prospective clients to shy away. It is as important to the poor as to the bar that legal services are not regarded as just another arm of a welfare department. In addition, the procedure for certification is bound to conflict with the ability of lawyers to give, and clients to obtain, fast emergency legal assistance—the kind of help that is usually required in situations common to the poor, such as arrests, evictions, repossessions and attachments.

The most important reason why full-time lawyers offer the best vehicle for rendering effective legal assistance to the poor is that they will provide the poor with the full scope of services that a lawyer renders in our society. The poor should have lawyers who will be able to devote the time, achieve the perspective and accumulate the knowledge to attack the legal problems of the poor on a broad and deep scale. This is what lawyers do for other groups in our society. The law has been the instrument for orderly social change throughout our nation's history, and lawyers have always been more than mere agents directed by others. They have been the architects as well as the artisans of social reform—redesigning, reforming and creating not only legal institutions but social, economic and political institutions as well. Wearing a wide variety of hats in American life, lawyers are not only counselors to our large corporations, business councils and cooperatives, trade unions and suburban neighborhood improvement associations, but more often, policymakers and strategists as well. Lawyers are our most effective public servants in all areas of government, in foundations and in other institutional public service. Lawyers are our lobbyists. Lawyers are our legislators. Lawyers sat in more than sixty percent of the seats of the Congress which passed the Economic Opportunity Act. In each of these functions, lawyers do more than handle a particular legal matter bounded by a particular isolated set of facts. They take the common threads of social, economic and political problems affecting large groups of people and weave the test case, remedial statute or administrative reform to solve the pervasive problems and

eliminate the cause for the future.

Similarly, the poor must be represented on a broad and deep scale. An English system which parcels out the legal problems of the poor to lawyers — however dedicated to the resolution of the case at hand — will not so easily focus upon the issues, produce the research and marshal the facts to give this kind of representation. Twenty lawyers selected by twenty poor clients on twenty different days to defend eviction notices may never realize that each eviction was in retaliation for the tenant's complaint of housing code violations and so may never solve the underlying problem and eliminate the cause of the repeated legal difficulties.

Some have cried that group representation and broad research looking to law reform — at least when done by attorneys in legal services programs — are sinister and a departure from the accepted role of lawyers. They call it "social reform." It is social reform in the sense that all changes in the law are social reform, and it is social reform in the sense in which lawyers have historically advocated and effected changes — reform in the law — for every interest or segment of our society except that of the poor.

The OEO will approve some limited English system grants, evaluate the costs and results and assess their comparative success. It has received several such proposals already. I doubt that it will approve all of them, and there is little likelihood that any additional applications will be approved, except possibly in sparsely populated areas where there is no other feasible method to provide free legal assistance. My attitude about the English system is best described by the remark a judge once made about my argument before him: "Mr. Bamberger, I have an open mind about that point — but not necessarily an empty one."

There is another aspect of representation of the poor for which the OEO looks in applications. Section 202 of the Economic Opportunity Act calls for the development and administration of community action programs "with the maximum feasible participation of residents of the areas and members of the groups served."⁴ In the legal services setting this means participation of the poor or their representatives as members of a program's policymaking board as well as on closely related advisory committees. No fixed percentage of a board or committee is required; there must simply be meaningful representation — representation which will bring to the councils of charity voices angry with the failures of charity and which will produce a fruitful dialogue between groups that may have never talked to one another before. The agency should have a responsible, informed and active governing body selected from the community as a whole, a majority of which should be practicing lawyers. The governing body should meet at regular intervals, at least quarterly. To the extent feasible and for the purpose of establishing community participation, representation of the areas covered and people served should be included on the agency's governing body or on a separate community advisory group.⁵

⁴ 78 Stat. 516 (1964), 42 U.S.C. § 2782(a)(3) (1964).

⁵ Standards and Practices for Civil Legal Aid, Adopted by the National Legal Aid and Defender Association Delegate Assembly, Nov. 19, 1965, and approved by the American Bar Association.

This principle of participation is not a conversation piece; it has been applied. Residents of the area and members of the groups to be served or their representatives constitute a significant proportion of the policymaking bodies of all legal services programs funded to date. The American Bar Association and the National Legal Aid and Defender Association have formally adopted the principle as a guide in the creation of legal aid society boards.

The poor are also participating at the employment level. New jobs, such as those of investigative aides, secretaries and registrants, have been filled by community residents in legal services programs. The Missouri Bar Association has submitted a proposal for the training of legal technicians to provide attorneys with assistance analogous to that offered physicians by nurses and laboratory technicians. Participation here and at the policymaking level is more than therapeutic for the participants. It can add a positive contribution to the process of community education in the law — preventive legal education — which is another key aspect of every program. Participation can open new lines of communication to the low-income population.

Much of this article assumes a final major point of legal services development. To the maximum extent possible these services are to be coordinated with general community action agency activity in a given locale. "Community action" under title II of the act means concerted action against all the features of poverty — from malnutrition and disease to limited education and employment skills — and it means interrelated action by many different disciplines. Thus, a legal services program, typically a delegate agency of the central organization, must make every effort to coordinate with other services being offered in the community. This effort presupposes no compromise of the traditional independence of lawyers. That independence must be preserved — indeed, this program would be useless without it. No program lawyer will suffer the direction of an outsider; the client is his, the service is his, the judgment must always be his. This independence will not be abandoned by cooperation with the multitude of other people in the community whose help the client may need.

The law is more than rules of rights and repressions. The law is a dynamic force for social change. Lawyers must be not only advocates for individuals trapped by poverty but also the articulate spokesmen for the fifth of our population which suffers from being poor — invisible, inarticulate, unrepresented, depressed and despairing — living the emasculating contradiction of poverty in an affluent society.

It is not only the lack of money that makes a man poor. The shackles that bind to poverty are ignorance of rights, disregard of personal value as a human being, a sense of being abandoned, a conviction of despair as an object manipulated by a system. Lawyers committed to the finest traditions of the bar can speak for the inarticulate, can challenge the systems that generate the cycle of poverty, can arouse the persons of power and affluence. The OEO program marshals the forces of law and the power of lawyers in the War on Poverty to defeat the causes and effects of poverty.