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WHAT PRICE JUSTICE: THE CIVILIAN PERSPECTIVE REVISITED

Edgar S. and Jean Camper Cahn*

In The War on Poverty: A Civilian Perspective, we attempted to analyze the failure of our society to provide any systematic form of redress for persons whose lives were circumscribed by institutional unresponsiveness. Underlying our exposition of the neighborhood law firm was the belief that we had provided a blueprint for an institution which would be responsive to the poor because of the nature of the obligation of the lawyer to the client. But in relying upon this relationship, we failed to consider that in theory all instrumentalities of law are founded upon a principle of responsiveness—but nonetheless they have not worked. And slowly, but surely, neighborhood law firms, while paradoxically shedding light in an effective manner on the problems of the poor have already begun the long road to unresponsiveness. So we are forced in this article to ask why? The answer is very simple. In our zeal, and out of pride in our profession’s commitment to the role of advocate for the poor, we had forgotten to grapple fully with the age-old question: qui custodiet ipsos custodes?

This piece then deals with neighborhood law firms—but only in a sense. Because in the face of mounting evidence, the exhortation of the prophet: “Justice, Justice Shall ye pursue” will not let us rest content with this, or any other single innovation. We—all of us—and particularly the legal profession—will have to go still further afield. And yet, not afield at all. For, in the words of T. S. Eliot:

We shall not cease from exploration  
And the end of all our exploring  
Will be to arrive where we started  
And know the place for the first time.¹

I

As the latest issue of the Legal Aid Briefcase so quaintly puts it, “neighborhood law firms are here to stay—with or without OEO.” At present, at least

* The opinions expressed herein are the personal views of the authors and in no way represent the position of the United States government or any agency thereof.

We dedicate this piece to our father, Dr. John E. T. Camper, whose life has been an affirmation of his abiding faith in the capacity of the people of the ghetto to make democracy work. To our father, the late Edmund Cahn, we owe the term, the consumer perspective—and the concept it embodies.

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This article was completed after the 1965-66 Lawyer staff had completed its editorial responsibilities. Assistant Dean Thomas Broden, Jr., of the Notre Dame Law School faculty and Symposium Chairman, performed the editorial work on the Cahn article and we wish to express our personal appreciation to him for his assistance and patience.

0 73 YALE L. J. 1317 (1964).
1 ELIOT, Little Gidding, Four Quartets in Complete Poems and Plays 145 (1952).
550 neighborhood law offices in 160 communities staffed by more than 700 attorneys are now either funded or actually operating.

The term, neighborhood law firm, does not refer to a homogeneous class. Nonetheless, certain characteristics have emerged which indicate a common pattern. The typical neighborhood law firms today look very much like the legal aid offices they were to improve upon with the exception that they are decentralized and take cases heretofore not handled by anyone.

The case load mounts steadily. Demand begins quickly to edge past the point of conscientious performance — and neighborhood staff lawyers shortly find themselves inundated with demands for service.

The client is almost invariably an individual already in some kind of difficulty. Assistance is typically after the fact.

Achievements by and large must be counted in terms of individual clients helped — and occasionally, new precedents established — but not in terms of administrative or commercial practices demonstrably altered.

Little if any research is being carried on that could effect significant legal change unconnected with specific cases.

There is a pervasive absence of any relationship between legal service programs and the organization of citizen groups such as tenant councils, welfare mothers’ organizations, or consumer groups.

Paid staff attorneys provide virtually all of the service with relatively little use for volunteer members of the bar or part-time lawyers with marginal incomes receiving some form of subsidization.

Nonprofessionals are receiving very little training that would enable them to carry out functions now performed unnecessarily by lawyers because few offices have been established with a lead time for planning or a built-in training and internship program.

To the extent that these characteristics are viewed as deficiencies, we can

2 There are many other variables which make the neighborhood law firm less than a homogeneous entity. They include: relationship to marginal lawyers and ethnic bar; relationship to Legal Aid as a partner, competitor, or antagonist; use of nonprofessionals (read: poor people serving in auxiliary roles); emphasis on civil versus criminal and/or juvenile cases; emphasis on service function versus test case law reform or social change function; extent of training provided for staff lawyers; use of volunteer lawyers, extent of preventive law education and counseling; use of legal advice clinics; coordination with social services and other community action antipoverty programs; subject-matter emphasis of cases taken; areas of cases ruled out; rigidity of referral agreement on fee generating cases; indigency standards; militancy, extent of accessibility, referral policies; representation of poor on board or policy advisory committee.

Each of these variables render vulnerable any attempt to generalize on neighborhood law firms. Thus, for instance, the newly financed Houston program provides for designating one lawyer as Ombudsmen or grievance counsellor who reviews all instances where a person is aggrieved with the legal services program — e.g., on questions of eligibility, and is authorized to take an appeal, review it from the aggrieved person’s point of view and make the final and binding decision.

3 Pye, The Role of Legal Services in the Anti-Poverty Program, 31 LAW & CONTEMP. PROB. 211, 231-249 (1966)

4 One reason for this is that there has been previously little effort to coordinate communication between attorneys so that there is an awareness of recurrences of particular problems; and even in the few cases where communication occurs proposals have failed to establish units within such systems devoted to law reform rather than to the handling of cases.

5 And optimal use is not made of this limited manpower supply. For example, motions are matters which can be handled expeditiously by one attorney on a rotation system. There is nothing in this that violates the sanctity of the attorney-client relationship or should be offensive to the courts.
expect the evolution of a series of ad hoc solutions: more dollars and more staff; more extensive use of nonprofessionals; development of form books in "poor law" areas; grievance mechanisms to review refusals to accept a particular client or a particular case; greater use of volunteer lawyers; better coordination with nonlegal services; experimentation and group representation; massive enforcement of newly established precedents as a priority item; preventive law programs; family legal checkups; utilization of marginal lawyers on a part-time retainer basis as a means of expanding the available manpower supply and of providing continued education. All of these are important and necessary improvements. Some have already been undertaken or at least the need for them has been acknowledged by some programs.

Notwithstanding the significant contribution that these neighborhood law firms have begun to make and will continue to make, it is the authors' contention that the ends of justice will not be served if all that neighborhood law firms do is foist on the poor a legal system which the middle class has rejected as obsolete, cumbersome, and too expensive in money, psychological strain and investment of time. This would be true, even if particular legal doctrines were less biased against the poor.

It is our contention that the difficulties now being experienced by neighborhood law firms go to deficiencies in the nature of our legal system itself—deficiencies experienced by the middle class as well as the poor.

To use an economic model, we, as a profession, merchandise a line of products: rights, remedies, protection, entitlements are among the chief items set forth in West's equivalents of mail order catalogs.

Law offices, courts, legislatures, administrative agencies are among the industrial plants which produce our line of merchandise.

And the product might be said to be manufactured through various processes including the adversary process, the legislative, executive and administrative process. By and large, courts might be viewed as the "law industry's form of quality control"—our underwriters label with respect to fairness, constitutionality, and appropriateness of application.

The manpower for this industry includes legislators, bureaucrats, elected officials. But, in a narrower sense, the manpower supply for the legal business all carry LL.B. union cards.

This is in short the system for producing or manufacturing law in this society. Neighborhood law firms are only a part of that system—a new method of distribution of the product—a new way of expanding retail outlets to meet the needs of the market for justice under law.

But, if we avoid myopic preoccupation with the new retail outlets we have...
devised, we must ask ourselves how good is the entire system—the producer, the production system, the manpower supply.

And, we would contend that

— the product we are selling—quality legal services—is virtually unusable for the purpose for which sold.

— the production and distribution system we are currently attempting to expand is basically obsolete.

— And, the manpower supply is curtailed sharply by unnecessary, non-functional protectivist guild restrictions.

Let us turn to a brief examination of each.

A. The Product

On the most general level, rules which offer guides to action are among the chief products of the legal system.

But in practice this product offers remarkably little guide to action. This is in part because of the complexity of the rules, in part because they are not known or knowable to people who must use them without benefit of counsel, in part because of the infinite refinements which experience engrafts on general rules, and in part because each rule is the product of at least two or three contending and competing policy considerations which emerge only through specific cases or the kind of hypotheticals found in the Restatement of Law.7

We have taken the fundamentally sound principle that like cases should be decided alike—and perverted it into a license to proliferate distinctions, to define and redefine what cases are alike and what cases are different.8

As a consequence, the consumer can neither read the catalog of rules nor comprehend what rights and remedies are suitable or even available.

A second major product of the legal system is remedies. These remedies purport to be adequate and effective, but they are not. They are available only

7 Grant Gilmore has analyzed the breakdown of the case law system—and suggested that the excrescences of that system have been curbed by the drafting of uniform codes. Gilmore, Legal Realism, Its Cause and Cure, 70 YALE L.J. 1037 (1961). But uniform codes cannot be said to be models of lucid prose and certainly are not intelligible to the layman. And these codes, quickly become encrusted both with new interpretive decisions and with speculations as to the extent to which they incorporate prior distinctions and lines of precedent.

8 (MICHEL DE MONTAIGNE, ESSAYS—"Of Experience," 292-3 (Classics Club ed. 1943)

"Therefore I do not much like the opinion of the man who thought by a multiplicity of laws to bridle the authority of judges, cutting up their meat for them. He did not realize that there is as much freedom and latitude in the interpretation of laws as in their creation.

"... For we have in France more laws than all the rest of the world together, and more than would be needed to rule all the worlds of Epicurus: As formerly we suffered from crimes, so now we suffer from laws [Tacitus]. And yet we have left so much room for opinion and decision to our judges, that there never was such a powerful and licentious freedom. What have our legislators gained by selecting a hundred thousand particular cases and actions, and applying a hundred thousand laws to them? This number bears no proportion to the infinite diversity of human actions. Multiplication of our imaginary cases will never equal the variety of the real examples. Add to them a hundred times as many more: it still will not happen that a single future event will find one, in all the many, many thousands of selected and recorded events, that will fit and match it so exactly that some circumstance and difference will not remain, which will require different consideration in judgment. There is little relation between our actions, which are in perpetual transformation, and fixed and immutable laws. The most desirable laws are those that are rarest, simplest, and most general; and I even think that it would be better to have none at all than to have them in such numbers as we have."
on an all-or-nothing basis, require considerable effort and risk to secure, are not available speedily enough to do any good, and do not necessarily correspond to the quantity or the quality of the harm they purport to redress. Moreover, the cost of the remedy frequently exceeds its worth.

In short, by any test that "Consumer Reports" might impose, the products merchandised by the legal system fit into the "Unacceptable" category. Those tests might be said to include: simplicity and speed of operation, availability, dependability, risk involved in use, uniformity of quality and satisfaction (both actual and psychological). The legal profession's products—"rights and remedies"—do not by and large live up to the implied warranty of merchantability: useful for the purpose for which sold.

B. The Production System

Rules and remedies are produced by many processes: legislative, judicial, executive, administrative.

Each of these systems requires scrutiny from two points of view:

its present effectiveness in functioning (in doing what they hold themselves out as doing);

its ability to respond to new needs, and to initiate change.

In terms of present effectiveness, we shall concentrate, perhaps unfairly, on the courts as the chief "symbolic" dispenser of rules and remedies.

We recognize that courts handle only a very small portion of legal problems—and moreover, that legislatures and administrative agencies dispense more rules and make more "adjudications" than courts.

But courts, because they sit in judgment on issues of interpretation, constitutionality, and application or administration of rules, are in effect the "quality control" system of the entire legal process. The presence, absence or availability of the judicial imprimatur of fairness, due process, equity, and legality shapes the actions, or at least the outer limits of action, by other rule makers and remedy dispensers.

Winston Churchill is said to have remarked that you cannot win at the bargaining table what your troops could not have won in the field. The courts are our society's legally constituted battlefields—the trial, our own legitimated form of combat.

As such, the courts tend to set the outer bounds of what one can win in other rule-producing or remedy-dispensing arenas.

Both in their broadly normative role and their narrowest adjudicative one, courts are not a particularly effective or efficient "justice producing" mechanism.

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9 These defects present no great impediment to the sophisticated legal practitioner—but then the lawyer's counterpart in other fields (e.g., medicine, electronics, and automotive engineering) is similarly equipped to deal with the defects and danger detected by Consumer Reports.

10 We are here considering only how effective the system is—at any one moment in time. In this context it is more appropriate to deal with entitlements and rules as "static" and fixed. With respect to any particular action or injury, the existence of broad areas of discretion with which courts do not tamper or of legislative freedom to change rules—does not make the presence or absence of effective recourse to the courts less central. With respect to the second issue—the legal system's ability to respond to new needs and to initiate change—courts admittedly play a far less central role.
The jury has been described by Thurman Arnold as a body of twelve men chosen to decide which side has the better lawyer.

In addition, juries appear equally to serve an “error producing function” — acting to correct the Draconian implications of a rule of law by creating grounds for appeal so that the rule may be rescrutinized and hopefully made more rational and compassionate in the process. But a system that depends so heavily on the production of “error,” delays and appeals is not necessarily the most efficient.\textsuperscript{11}

The system’s method for obtaining the relevant facts is significantly hampered by evidentiary rules which, taken altogether, compose less than an ideal epistemology. Jerome Frank, Robert Hutchins, and others have commented on how poorly our fact finding system does in reconstructing the past — in getting at the “truth” involved in a litigated case. Edmond Cahn has suggested that those apparent disortions in our search for the past really serve the cause of justice by inserting the equities and perspectives of the present into that fictional reconstruction of the past. Maybe, he suggests, we do not really want to find the past. We believe that analysis to be correct. But it then becomes particularly odd that we should attempt to do justice by going through a ritual we do not want to go through. The fact that justice can sometimes be done despite the procedural apparatus established to do justice is not the strongest possible recommendation for that apparatus. For the most part, litigation is a way of viewing the past through the eyes of the present. But perhaps justice is best done by starting with the present — with present needs and present demands — and using the past only where it reveals equitable considerations which will provide guidance in shaping a remedy or significantly altering the nature of the solution which on its face appears fairest. In other words, we do not begin with a present-oriented — or a future-oriented — method of dispute settlement.

We are still — in contract law, in domestic law, in landlord tenant law, in tort law — engaged in a quest for fault, for “who did what when” as a way of deciding how the risk should be borne and who should pay, perform or provide remedy. Yet, in domestic relations, industrial injuries, automobile accidents, we are finding that the quest for fault is time consuming, elusive and not particularly productive in terms of enabling human beings to get back on their feet and to cope with the present or chart a rational course for the future.\textsuperscript{12}

There is a reason for this. Fault, ever since the Garden of Eden, has been mankind’s way of allocating limited resources on the basis of moral desert — of finding justifications for making peace with the unsatisfactory.

Fault tends to operate as an all-or-nothing doctrine, as an invitation to delay, and as a disincentive to mitigate injury.

\textsuperscript{11} Viewed psychologically, this error-producing function is our society’s means of reinstating ego control when either the id or the superego has gotten out of hand.

\textsuperscript{12} The righteous is not innocent of the deeds of the wicked, . . . You cannot separate the just from the unjust, and the good from the wicked;
For they stand together, before the face of the sun, even as the black thread and the white are woven together.
And when the black thread breaks, the weaver shall look into the whole cloth, and he shall examine the loom also.

It is in essence the way men have dealt with limitations — of apportioning resources when someone had to suffer and there was not enough to go around.\textsuperscript{13} There is, we have found, an alternative to fault based on alleged moral desert as a distributive and risk-sharing principle — namely, insurance. The principle of insurance is based on the assumption that it is possible to define some classes of injuries where there is \textit{enough} to go around — that probability studies and sharing of cost is a better way to distribute risk and is more consistent with our increasingly complex and sophisticated appreciation of causation.\textsuperscript{14}

In short, there may be ways of asking “how can we make a person whole,” how can we distribute risk, how can we create incentives to socially desirable behavior and sanctions for undesirable behavior without antiscientific notions of responsibility and without resort to distorted and fictional reconstruction of the past?

But the present system for the production of rules and remedies — so far as the courts can be taken as illustrative and focal — does not permit of this kind of inquiry. Thus, from the point of view of the individual aggrieved — or the individual in need of guidance, the production system is woefully inadequate to give prompt satisfactory delivery.

The production system, however, must be judged by a second test — its ability to respond to new needs, to initiate change, and to modify itself.

In assessing this capability, three separate issues arise:

how well equipped is the system to detect the need for changes

how disposed is the system to welcome change

and

how cumbersome are the mechanisms for effectuating the change.

With due respect to the admirable work of bar committees drafting commissions, etc., in recommending and securing needed reforms, the system is significantly defective on all three counts.

Its own institutional structure and doctrines constitute an epistemology which declares what needs do and do not exist. The capacity of the system, therefore, to take judicial notice of changing circumstances is circumscribed because the legal system defines the universe of legal need. Thus doctrines of

\textsuperscript{13} We can see, running throughout the statute books of the nineteenth century, ... attempts to affirm the notion of man's moral responsibility for his economic well-being, even as action inconsistent with that proposition was taken. Exception after exception has been piled onto the proposition that [every able-bodied] man is morally responsible for his economic well-being. And ultimately that proposition was to be virtually transformed by society's coming to equate the notion of “able-bodied” with one who is well-fed, decently clothed, medically attended, emotionally adjusted, adequately trained or educated, and provided with ample job opportunities as well as being physically strong.

From a twentieth-century vantage point, these “exceptions” served two functions. First, these humanitarian reforms provided a rational scheme for gradually contracting the available labor supply at a time when technological unemployment made a contraction mandatory. And second, these exceptions expanded the class of the “deserving” poor — those whose plight resulted from circumstances which society acknowledged to be beyond their control — thereby progressively redefining the groups who were to share in the augmented wealth of the nation at a pace consonant with the changes in reality. In short, such humanitarian exceptions rationalized both the decreasing demand for human labor and the increasing need for consumers of the new industrial wealth. (C. Woodard, \textit{Reality and Social Reform} 72 Yale Law Journal 286, 311 (1962))

\textsuperscript{14} Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 NE 99 (1928) (Dissenting opinion). The couplet “In Adam's Fall We Sinned All” at least dispenses with the need to look further for “proximate cause.”
privilege and largesse deny the legitimacy of new kinds of entitlement; doctrines of administrative discretion prevail over demands for disclosure and accountability; the doctrines of clean hands nullify all claims for remedy by defining the claimant as belonging to the great unwashed; doctrines of contractual consent and bona fide purchaser for value effectively proscribe certain forms of empirical inquiry regarding actual knowledge, commercial practices, parity of bargaining power, and sophistication.

On the second count, the system's willingness to welcome change is compromised by the fact that the system itself is the product on the one hand of a resolution of conflicting interests and policy considerations (each of which has behind it the momentum of inertia) and on the other hand, by the fact that the system is manned by men who have the greatest interest in preserving it unchanged, who prefer the familiar to the unfamiliar, defeat to uncertainty, and their own primacy and indispensability to any decline in status that might accompany change.

With respect to the third and final issue—complexity of the mechanism for effecting change—it is safe to say that the politics of the legal profession are at least as complex and sophisticated as those of the overall political process, that lawyers are less fooled by rhetoric, more keenly alert to implications and ambiguities, more tenacious and pugnacious than probably any other group—and that the "retooling" processes of social change within the legal system require the manipulation and creation of consensus among the most disputatious breed of dissenters on the face of the earth.

In consequence, events outstrip reform, need outstrips increments in resources, practices do not keep abreast of rules, the structure of institutions does not accurately reflect actual decision-making processes and the patterns of official conduct are most resistant to change or reform by the "production system."

In short, both because of the nature of the adversary system in response to particular needs and the resistance of the legal system to change, Justice 1967 style is not likely to be substantially different from the 1867 model described in the following passage in Dickens' Bleak House:

This is the Court of Chancery . . . which gives to monied might the means abundantly of wearing out the right, which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart, that there is not an honorable man among its practitioners who would not give—the warning, "Suffer any wrong that can be done you, rather than come here."

C. The Manpower Supply

Finally, with respect to manpower, we have created an artificial shortage by refusing to learn from the medical and other professions and to develop technicians, nonprofessionals and lawyer-aides—manpower roles to carry out such functions as: informal advocate, technician, counsellor, sympathetic listener, investigator, researcher, form writer, etc.

At present, lawyers are expected to perform all these functions. To so equip them, lawyers are put through an extensive period of formal training and then apprenticeship that limits the number that can be produced. Yet, lawyers
spend only a small portion of their time performing functions which cannot be performed equally well by less thoroughly trained persons. Nonetheless, the profession has refused tenaciously to delegate any of these functions to anyone else.

This manpower shortage has been reinforced and intensified by policies which purport to have the sole end of protecting the client from unskilled or unethical practitioners.

Thus, for instance, we have adopted a licensing system to certify who may hold themselves out to render legal services in a given jurisdiction. Licensing persons to perform certain acts is certainly one plausible way to protect the client or consumer. But our licensing procedures take no account of the varieties and gradations of skill which would be adequate from the consumer's view.  

Rather than attempting to relax the shortages caused by licensing, the profession has developed in such a way as to increase those tendencies.

First, the old practice of "reading the law" has fallen by the wayside. On the other hand, a licensing approach looses a novice on the public (and especially on the poor) with virtually no concern as to whether three additional years of academia have equipped the starting lawyer to protect the innocent consumer of his services. Second, we have made no distinction as they have in England between tasks performed by a solicitor and a barrister. Third, two of our canons of ethics — the prohibition on the use of lay intermediaries and the prohibi-

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15 "Woe unto you, lawyers! For ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered" (Luke XI, 52).

16 During at least one era in our country's history — that of Jacksonian democracy — there was a revolt against the profession's restrictive entry requirements which made the law the exclusive preserve of the privileged. This period is generally lamented as causing a deterioration in the profession's standards. From the point of view of human dignity and democracy, the profession's loss may well have been the nation's gain — but some commentators have perceptively pointed out that democratizing the profession did not entail a disregard, or lack of appreciation for the values of excellence:

"The doors of the legal profession were certainly thrown open to representatives of every economic group. As certainly, inadequately trained members of any class were not prevented from entering it. Yet it should not be hastily assumed that acquiescence in this state of affairs denoted a general and rather incomprehensible failure to appreciate that a democracy, equally with other forms of government needs well-trained lawyers to attend to its affairs. It denoted rather a lack of faith in the efficacy of governmental action, or even of formal preparatory training, to produce this result. Reliance was placed upon experience as a teacher, and upon the free play of competition as a means of winnowing the good lawyers from the bad. At best, before a young man has actually begun to practise, little can be done toward making a real lawyer out of him, and scanty data are available for determining whether or not he will eventually succeed. It could be argued plausibly, therefore, that natural aptitude, after all, is the main factor in the making of an accomplished practitioner, and that better results will be secured by bringing a beginner face to face with genuine responsibilities soon, than by insisting upon a long probationary period under artificial conditions."

Reed, Present-Day Law Schools in the United States and Canada 7 (1928).

See Also: Elbridge Gale of Michigan writing in 1850:

"Any man may give either medicine or gospel and collect his dues... I want the lawyers to stand upon the same platform with the priests and the doctors. A man's property is no better than his life or his soul. We allow a man to tamper with both soul and body, but not with property."

Quoted in Reed, Training for the Public Professions of the Law 89 (1928). A resolution adopted by the Washington Conference on Legal Education in 1922 advances a supplemental argument:

"Since the legal profession has to do with the administration of the law, and since public officials are chosen from its ranks more frequently than from the ranks of any other professions or business, it is essential that the legal profession should not become the monopoly of any economic class." 47 Rep. Am. Bar Assn. (1922), 483 quoted in Reed, Present-Day Law Schools in the United States and Canada 6 (1928).
tion on unauthorized practice of law by laymen—have operated to extend the licensing system beyond any functional justification at all.

The *Brotherhood* case may well have gutted, at least in theory, the restrictivist “lay intermediaries” canon. As the Court noted:

> We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers.\(^\text{17}\)

But in practice that canon still holds sway. Similarly, the “unauthorized practice of law” canon is invoked to hamper efforts to disseminate legal knowledge and assistance more widely. This canon tends to be construed loosely as a prohibition against anyone but a lawyer giving legal advice.

That may be a convenient way to protect a monopoly on legal advice. It is not the way to see that the rule of law is implanted firmly and broadly throughout a society.

A less restrictive, analytic approach would suggest that the canon is only an attempt to define who may perform what functions in what forums. This canon is simply a statement that with respect to the judicial forum only lawyers are competent to play certain specified roles. Thus, a lawyer is, first and foremost, an officer of the court. In effect, the judicial system defines who may practice in courts and who may not. In the context of formal litigation, and steps leading directly to formal litigation, this kind of licensing by the courts makes sense. It operates to protect the clients by indicating who knows the ground rules of the judicial forum. Similarly, other forums set their own specifications regarding who may appear in what capacity. There is no reason to take a canon of ethic developed for use in one forum and to insist that it applies to all forums or to any place where any legal subject is discussed.\(^\text{18}\)

D. Summary of Consequences

We have, then, an inefficient system for dispensing an unsatisfactory product which is kept in unnecessarily short supply by a monopoly-created scarcity of manpower.

The result is a kind of inflation—still operating to keep justice out of the reach of the consumer. And we, the producer, in pushing for an expansion of traditional legal services, are thus engaged in a sales pitch for a product that we can’t offer within the price of the market it must reach to do any good.

Because of this inflation caused by artificially induced shortage, only the most grievous injuries or dangers—such as the stigma of a criminal prosecution or, in civil matters, a claim with high monetary value or subjectively valued psychological stakes as perceived by the parties—will make it worthwhile trying to get justice through legal services at the going market price. Llewelyn illustrates the inflation caused by the nature of the product, the process and the manpower in his description of the worth of a right to obtain damages for

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\(^{17}\) 377 U.S. 1, 8.

\(^{18}\) Thus, under some circumstances in juvenile court, in hearings on revocation of parole, in arbitration proceedings, nonlawyers are permitted and expected to act as advocates. The rule wisely varies as to “who may do what in what forum” because each forum has its own procedural rules, its own clientele and its own set of “practitioners.”

That right could rather more accurately be phrased somewhat as follows: if the other party does not perform as agreed, you can sue, and if you have a fair lawyer, and nothing goes wrong with your witnesses or the jury, and you give up four or five days of time and some ten to thirty percent of the proceeds, and wait two to twenty months, you will probably get a judgment for a sum considerably less than what the performance would have been worth—which, if the other party is solvent, and has not secreted his assets, you can, in further due course, collect with six percent interest for delay.

This is an exorbitant price for the wealthy. For the poor, where petty sums are involved, it is a travesty. It takes considerable resources to invoke the litigation process. It takes a severe wrong to make it worth expending those resources to obtain vindication—even if one has the resources. And the cost to a poor person goes far beyond what it does to the wealthy. He can afford the law's delay less. And he stands to gain far less.

For the poor, it would be better to sell shares in their cause of action, to discount justice, so to speak. But our canons of ethics prohibit that. Only the rich can afford to invest in justice's dividends. With today's overcrowded court calendars, it is, even for them, definitely a long-term investment—and not necessarily a profitable one.

New legal service programs for the poor cannot then rest with providing the poor with greater opportunity to use a legal system which the middle class has found to be obsolete, cumbersome—and too expensive in monetary, psychological and temporal terms.

Both for the poor and the nonpoor Justice is in short supply. The result is inflation and inflation for the poor does not mean doing without justice. It means Injustice.

The middle class has found a way of dealing with this inflation. They do not buy legal services—except as a last resort.

Instead, they have used the legal profession to develop a set of substitutes—a legal system which operates without benefit of LL.B. wherever possible. This system is not the same as legal services—any more than Saranwrap is wax paper. But it works as well—maybe better.

In essence, the lawyer acts as the architect of institutions (such as corporations) and as the draftsman of instruments that can be utilized effectively by laymen without continual surveillance and intervention by lawyers.

Thus, in the tort field, insurance companies and claims adjusters do much of the work of lawyers.

In the real property field, title insurance companies and realtors using form leases, conveyances, etc., provide a substitute for the profession's traditional staple.

19 In effect, this is precisely what the poor do in settling claims and signing waivers in plea-bargaining and in reaching "an accord and satisfaction." But the terms are less than advantageous.

20 Nor can such programs function simply to endow the poor with the ultimate recourse of the middle class—litigation—because the middle class has found recourse to courts to be unsatisfactory either as a final or an intermediary remedy.
In domestic relations, informal agreements worked out between the parties or through intermediaries often take the place of court-approved arrangements. And particularly in the divorce field, we find a kind of foreign competition—the Mexican or Reno equivalent of the Japanese camera—thriving on the obsolescence of "domestic" law.

In the estates field, banks, making heavy use of the intervivos trust, stationery stores selling will forms and now laymen using Dacen's (a nonlawyer) bestselling book *How to Avoid Probate*, have taken over much of the probate business.

In the field of commercial law, arbitration has supplanted much judicial resolution of conflict.

In contract law, contracting offices, run by laymen using boiler plate lawyer-drawn agreements probably negotiate the bulk of contractual agreements. And those are enforced without resort to lawyers or courts so far as possible.

In the criminal law, low visibility decisions of an essentially consensual sort have largely replaced formal prosecution. The whole range of plea-bargaining practices provide an alternative to submitting to the stigma of criminal prosecution and the retributive mentality it still exemplifies. Thus, for instance, the policeman does not make a formal arrest of a middle-class youth. The quid pro quo is that the father agrees that this behavior is a matter for parental concern and attention.

All of these are, technically speaking, part of the legal system. In essence, they constitute a network of privately negotiated consensual agreements. They enable the middle class to minimize its contact with the legal profession largely because the parties involved have a rough parity of bargaining power—and because, as a last resort, either party usually can threaten to hire a lawyer and utilize all the law's subtlety, delay, refinement, insensitivity and winner-take-all principle to vitiate the worth of victory for either side. Ironically, the poor have been dragged into this system and forced to participate without any parity of bargaining power—and without even the ultimate threat of the middle class: to hire a lawyer and thus compel the supplanting of both parties with professional combatants.

Just as the day of the hired gunman passed when the homesteaders learned to hire their own mercenaries, so too the rule of law may be about to pass into a new phase once the poor are provided with access to neighborhood law offices. With gunmen on both sides, the irrationality of this mode of conflict resolution may begin to dawn on our society. But if legal services programs for the poor are to make a contribution beyond their own extinction to the emergence of a new system of law for the poor, they must begin to respond to the underlying deficiencies in the legal system with which the middle class has begun to cope, and which private enterprise has long been able to circumvent with considerable success.

Thus the poor will need their own realtors, their own insurance companies, their own corporate structures, their own arbitration associations, their own administrative tribunals, their own means for entering into private consensual arrangements that reflect their needs and desires with fidelity.
We have little faith that simply providing the poor with lawyers and more lawyers will achieve this end—largely because the legal system is characterized by a variety of shortage producing devices. Greater use will lead to greater refinement and the development of more shortage producing mechanisms to cope with inevitable scarcity. Saturation litigation and skillful advocacy may bring relief to a few, but the legal profession does not have the resources to enable it to bring justice to all under the present production system.

Two illustrations may suffice.

Recent Supreme Court decisions regarding the right of the accused to counsel from the earliest stages of a criminal proceeding threaten to engross a tenth or more of the energies of the entire legal profession for the foreseeable future. Manpower projections based upon the number of crimes committed and the amount of lawyer's time required conscientiously to handle each case under the prevailing system indicate that the present number of full-time paid public defenders will have to be increased over 40 times to provide the representation constitutionally mandatory for all those accused of a crime. Money alone is hardly a remedy for this deficiency—though the cost involved is estimated to run over $200 million a year for the federal government.

Second, the welfare regulations operative in Los Angeles at the time of the Watts riots weighed over 115 pounds and stacked vertically made a pile over five feet high.\(^2\)

Similarly, the New York City welfare allowance is budgeted on a minutely prescribed basis: 90 razor blades per year for an employed male; 50 for an unemployed male.\(^2\)

There are no manpower projections on what it would take to insure that each regulation in the 115-pound, five-foot stack is observed with nicety and exactness. But a system which haggles over razor blades is likely to lose sight of justice. The legal profession seems to be mesmerized by the number of causes of action lurking in each regulation—and the whole program of legal

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\(^2\) Other rations include: 12 bars of soap, one deodorant, one box of tissues, 2 cans of dentifrice a year, 1 lipstick a year. A nail file for a welfare client is budgeted to last four years, a comb for two years. Annual dry-cleaning allowance covers one winter coat, one spring coat, one dress and one skirt for the entire year. Yet we insist that the poor be clean, well scrubbed, neatly dressed and appropriately groomed. Weingarten, Violet: *Life at the Bottom*—Citizens' Committee for Children of New York—p. ii (1966).

This unilateral approach of budgeting might well be compared to the learning experience derived under one experiment where teachers were given freedom to make their own decisions with regard to the funds for equipment budgeted to them:

"One eastern school superintendent recently obtained a grant of about $10,000 to enable an experiment in one of his elementary schools. Teachers were to develop specific educational goals, be given the sum of money, and have complete freedom to buy whatever they wanted to achieve their goals.

The teachers decided to emphasize "real-life" learning tasks in place of conventional class tasks that children often regard as the artificial work of school.

Then preparation of the shopping list began. The teachers quickly learned that, sizeable as their grant was, they could not go out on an indiscriminate shopping spree. Thus, it was necessary for them to examine closely the learning value of each item of equipment. By the time they scaled down the list and were ready to buy, their picture of a new learning program was sharply focused in their minds. Also, because they had to reject so many useful items, the teachers were more determined than ever to extract the most value out of those they could acquire. *Education: An Answer to Poverty*, jointly published by the US Office of Education and the Office of Economic Opportunity 43 (1965).
services for the poor is threatened by a form of professional narcissistic entrapment. We appear to define what is relevant in terms of how we can show off our skills with the greatest virtuosity.\textsuperscript{23}

If Justice under law is to become a product for mass consumption, rather than a luxury item for the privileged and for private enterprise, we will not bring the price down within general reach by a straight exponential increase in the present supply of legal services as currently rendered the poor — or even the middle class. More neighborhood law firms, “judicare” programs, sliding scales of indigency, expansion of law school enrollment, increase of legal technicians, a massive increase in federal expenditures — none of these will produce more than the appearance of due process where the endless proliferation of rules and safeguards masks our underlying misgivings above the humanity and fairness of the system itself.\textsuperscript{24}

The remainder of this article sketches out two approaches to the problem of inflation — approaches which assume that a straight linear expansion of existing neighborhood law offices is both desirable and necessarily inadequate.

One approach involves simply an expansion of supply — an expansion which will, of necessity, involve an alteration in the nature of the product, the nature of the production system, and the nature of the manpower supply. This approach is discussed in the last part of the article in terms of specific proposals. But these proposals, we insist, must be judged not only on their ability to alleviate shortages, but equally, and more importantly, on their capacity to enable a society to live with shortages equitably and democratically, to allocate available resources in a manner that at once reflects the society’s present priorities and values, but which does not stand in the way of further evolution, further change and further redefinition of the product: justice under law by each succeeding generation.

The other approach we term the demand-stimulating approach.

\textbf{II. The Demand Approach}

On its face, an approach which calls for the stimulation of demand ap-

\textsuperscript{23} Then a lawyer said: But, what of our Laws, Master?
And he answered:
You delight in laying down laws,
Yet you delight more in breaking them.
Like children playing by the ocean who build sand-towers with constancy and then destroy them with laughter. * * *

But what of those to whom life is not an ocean, and man-made laws are not sand-towers
But to whom life is a rock, and the law is a chisel with which they would carve it in their own likeness? * * *

What man’s law shall bind you if you break your yoke but upon no man’s prison door?
What laws shall you fear if you dance but stumble against no man’s iron chains?
And who is he that shall bring you to judgment if you tear off your garment yet leave it in no man’s path?

\textit{KAHLIL GIBRAN, THE PROPHET, 51-53 (1937).}

\textsuperscript{24} Thus in the criminal law, our procedural niceties only blunt a growing conviction that something is wrong with the implications of assigning criminal responsibility for an out. In welfare, interminable regulations on eligibility are attempts to obfuscate our doubts about distinctions between the deserving and the undeserving poor and our growing insecurity about the viability of the work \textit{ethic} in its present form.
pears inflationary. Increasing the effective demand for justice under law would seem to intensify the shortage and act as a further inflationary pressure.

We believe an increase in demand to be anti-inflationary, both in the long and short run. The demand, we insist, is not for legal services, but for redress through the legal system. Legal services are simply a "brand-name created monopoly" which tends to eclipse other forms of redress—until the demand reaches a threshold which makes a quest for other forms of redress mandatory. Thus, in the civil rights movement, impatience with litigation led to sit-ins as a form of redress—leading to new legal doctrines, new kinds of plaintiffs, new notions of test cases and new legislative reforms. In effect, the function of advocacy, the task of enumerating demands and framing a prayer for relief had been taken out of the hands of the legal profession and out of the courts.

Yet at present the demand for justice under law is treated as coextensive with the demand for legal services. Other demands—for full citizenship, for opportunity, for participation—are treated by the legal profession as "political demands." In consequence, the demand for legal services reflects only imperfectly the needs, priorities and grievances felt by the poor. Judicially cognizable causes of action bear little resemblance to the most deep-seated concerns of the poor for genuine equality, for excellence, for dignity, for genuine choice, and even for sustenance itself.25

The distance between the two—legal complaints and deeply felt grievances—provides a rough measure of the "demand gap," of the irrelevancy of legal services, and of the unactivated and indeed, repressed demand which this approach desires to energize.

It is our belief that the intensification of demand can cause a rejection of the old product, inducing people to turn to substitutes, and revealing a hitherto

25 Why, it may be asked, should the legal system be made to bear the freight of the entire political and economic structure?

In part, because it sets the terms and conditions for use of that system. In part because it mirrors the defects of that system. In part because it is a prime agent for the perpetuation and entrenchment of that system. In part because it blocks the need for social awareness and social reassessment by converting each need into a highly individual, personal, circumstantial case—rather than facilitating the process by which a society recognizes a need, acknowledges its moral validity—and copes with it accordingly. In effect, the legal system exercises a monopoly on what constitutes a grievance (and by implication, what constitutes a grievance which may be ignored with impunity). And even when the demands are legitimate, the legal system tends to impose a clean hands doctrine which in effect denies to all but the "deserving poor" the right to complain, to need, to feel or to demand.

So long as this monopoly continues, so long as it is free to define for itself to what demands it must listen, and on what terms, and what remedies are appropriate, then the bulk of grievances and needs will never receive a full or fair hearing—or rational and full exposition.

There are other reasons why the legal system should begin to reflect need and priority more accurately.

First, the process of seeking a redress for grievances, of assessing priorities, of converting general discontent into a specific agenda of demands is itself a form of coping and of personal fulfillment. Bitching is good therapy—but it is more where the grievance reflects a greater pathology in the society than in the aggrieved.

Second, the amplification of demands is a powerful ally of rationality. The known and the stated are better than the unknown and the unspeakable. Demands, even when they have not been framed rationally—are sources of empirical knowledge which our society can ill afford to ignore.

Fear cannot help but feed on a sense of inadequacy of inability to cope. The refusal to confront the facts and to seek out the issues, to know the dimensions of the problems leaves the mind prey to the fantasies of guilt, ignorance and insecurity. Stern repression is the way in which the superego copes with the id. It proved rather ineffectual in Watts.
unsuspected cross-elasticity in demand for the particular form of redress in which
the legal profession currently specializes. As Madison Avenue tells us, an increase
of demand can create incentive both for expansion and innovation. It can
manifest the presence of a mass market and thus can act to usher in an entirely
new product, a new production system and a new manpower supply.

The essence of the first approach then is an intensification of the demand
for redress, for entitlement, for social justice, for opportunity and dignity.

The following discussion deals with both procedure and substance—with
the mechanism by which demands can be increased—and the substance of
those demands which are likely to have the greatest “multiplier effect.”

If we look to the new demands levied on the legal process by such varied
developments as the Escobedo case and its progeny, the neighborhood law firm,
the use of nonprofessionals, the poverty program, the sit-ins, Brown v. Board
of Education, we can discern several mechanisms at work for stimulating de-
mands for effective redress through the legal system.

1. The assertion of nominally conferred rights and entitlements can provide
a massive source of new demand upon a system based on nonassertion and
desuetude. Unasserted rights are consumer power removed from circulation.
Those “forced savings” can be spent—or at least invested to bring a return.
2. The legitimation of heretofore unacknowledged grievances can give rise
to new entitlements. In effect, this amounts to an increase in the consumer
power possessed by the aggrieved. (Prompted either by largesse or duress) the
sovereign, in effect, distributes a newly minted injustice as coin of the realm.
3. The raising of expectations—however vague and unfulfillable—generates
an awareness of grievances as grievances, needs as needs, injuries as injuries.
This in turn gives rise to entire new classes of entitlements possessed by persons
previously deemed outside the marketplace for justice altogether. In effect,
extpectation makes consumers out of supplicants and defines new potential
markets where before there had been only gleaners existing on sufferance.
4. The introduction of a new product—such as decentralized legal services,
nonprofessionals—in effect stimulates demand by offering something now per-
ceived as highly desirable.
5. Lowering the price also stimulates demand, if we recognize that the price
paid to exercise a right includes: sophistication, perseverance, courage, articu-
lateness, staying power and middle-class style. Entitlement alone purchases very
little.
6. Advertising, publicity, public statements, operate to decrease the perceived
price of the product. They constitute a declaration to the market that the
product is or should be available. This in turn begins to generate a demand,
or an awareness, which can be projected and converted into a new form of
demand. More important, advertising can make people shift their buying

26 In Pittsburgh, a large poster has been tacked up on billboards. One part of that poster
starts in big boldface letters with the words:

“COOL THAT CONSTABLE”

It goes on:

“Know your rights. If the constable comes to seal your goods for non-payment of rent,
you're entitled to first choice of $300 worth of your furnishings — $600 for husband and wife.
And, in addition, you get to keep clothes, books, records and certain other personal items.”
priorities—so that given a certain amount of emotional and physical effort required, it may be expended on securing justice and redress through law (rather than, for instance, in gang fights, crime, or hatred).

The net result of all these mechanisms is vastly to increase the number of consumers with currency that the system is committed to honor as legal tender. The process of turning grievances into legally redressable wrongs constitutes, in its own way, the provision of a guaranteed minimum income for the consumers of justice.

Yet, such gains can readily be offset, as the beneficiaries of Social Security have found. The currency can be devalued overtly—or, more likely, the product can be cheapened so that it is found to be relatively worthless. A slow inflationary process may set in to prevent any further increase in real purchasing power and to vitiate, at least partially, the initial gains made.

Continued increases in demand can offset such pressures. But, on the other hand, they can produce an inflationary spiral which leaves the poor either relatively or absolutely worse off than before. The question then becomes not simply how to initiate demands—but also, how to prevent inflationary consequences from vitiating gains—and even from being distributed so regressively as to result in still greater inequities.

Much will depend upon the mode of response to the demand for justice under law. But the mode of response can be governed, at least in part, by the nature of the demand.

Certain kinds of demands, we believe, are likely to be more inflationary in impact than others. Thus, for instance, certain demands can be more readily evaded with token response or offset by compensating reprisals and privations. Other demands will be inflationary, not because they produce so inconsequential a response but because they do not significantly prompt an expansion of available supply or generate the kind of pressures likely to yield a major breakthrough in the technology of justice.

The naked demand for a share (of lawyer’s time, of the resources of our legal system, of the rights and remedies nominally available) is, we believe, the most vulnerable to depreciation. Such demands appear to threaten a direct redistribution of wealth, putting a premium on tokenism of response. And they create little inducement to expand supply significantly.

To prevent all gains from being rendered nugatory, the demand for a share must include a qualitative as well as a quantitative component. Thus, the demand for representation by counsel quickly shifts to a demand for effective representation—just as the demand for integration (viewed as a quantitative demand for entry into a fundamentally mediocre educational system) has shifted to a demand for excellence in schooling. Similarly, the demand for jobs has begun to include a refusal to accept dead-end, menial positions.

In the legal services field, the demand for quality has tended falsely to become a debate over volunteer versus full-time staff—and between the relative desirability of neighborhood law firms as against so-called judicare programs

"Don't sign a lease before seeing a lawyer. Most leases strip the tenant of the $300 exemption. Get written receipts for every pay-off to constable or landlord.”

That poster was paid for and put up by the Mayor’s commission.
which in effect provide the poor with credit cards to go to the lawyers of their choice. The equation of excellence with full-time staff and with neighborhood law firms has not been empirically established — and it tends to be a self-serving assertion — both on the part of staff lawyers who want more money and private practitioners who do not want the burden of charity cases. Yet, if legal service programs are to do more than siphon money into the pockets of the profession, the demand for legal services will have to take cognizance of the special needs of the poor for high technical proficiency, inventiveness in creating new legal doctrines, and special zealousness of advocacy. Otherwise, the poor will find legal services as inadequate — and unavailable — as they have found medical services where both the private practitioner and the clinic have been unwilling to give charity patients extensive diagnostic work, expensive drugs, referral to top-notch specialists or prolonged rehabilitative treatment and follow up. We reject the assumption that quality cannot be attained by either arrangement or by creative mixtures of different approaches.

But we do contend that a demand — even for a share of goods and services — must be coupled with a demand for quality, for excellence, if it is to have the maximum resistance to depreciation and the maximum anti-inflationary impact on the price of justice — both immediately and over time. This appears probable for three reasons.

First, a demand for excellence creates incentive to upgrade existing services. Second, a demand for excellence creates incentive to quest for new forms of excellence other than those based upon the scarcity-producing mechanisms of the present legal system.

Third, it inhibits our ability simply to go through the motions of doing justice. The present system encourages us to believe that shortage is inevitable and that our own welfare is dependent upon the privation of others. Justice can tolerate no two-class system. Our own humanity cannot resist the corrosion that results from dehumanizing others. The demand for excellence enlists not our selfish instinct for survival but rather, our greater impulse for salvation.

However, the demand for a share — both quantitative and qualitative — must be coupled with a demand for a voice in determining the nature and the adequacy of the response. Quantity and quality are a matter of judgment — and that judgment should rest in significant part and perhaps ultimately, with the consumer. This would be so even if there were no cause for concern that a legal aid agency's representations about its own performance were biased. The quality of justice itself is altered by whether its content is unilaterally or mutually determined.

And the demand for a voice has direct anti-inflationary potential. It prevents unilateral devaluation of a right or a grievance by the landlord, merchant, welfare official or policeman. But it also operates to check irresponsible, unilateral escalation of demand by the consumer. Divestiture of responsibility for shaping or approving the response operates to exonerate one from responsibility for tempering yearning with judgment and need with a sense of priority. Newly established civilian review boards for complaints against police will afford opportunity to assess the potential effect of the demand for a voice both in preventing
unchecked flouting of the law by officials and in promoting responsibility of criticism by the citizenry.

If the demand approach is to have a deflationary impact, then a “cost of justice” index must begin to show an increase in the consumer’s “real purchasing power.” The consumer needs not only an increase in the paper currency of entitlements. He needs direct protection to prevent devaluation. The demand for a share coupled with a voice at least provides the protection of surveillance. But the anti-inflationary potential of demand can be augmented further by a third component — a demand to contribute directly to the production of justice, fair play and remedy for the injured.

Thus, we add to the demand for a share, and a voice, a third element — the demand for a role, an opportunity to contribute, to participate in the expansion of supply. The high price of justice is due to scarcity. The demand to participate, to contribute, to labor, is a demand to help directly in expanding the supply. It also entails a radical alteration in a highly overprofessionalized, unnecessarily complex and cumbersome system. The insistent request to assist in the retooling of our legal system, to contribute time and labor and knowledge, is likely to serve as an inducement to innovation. So long as innovation must be devised on the assumption of a fixed and limited supply of manpower, knowledge, expertise and endeavor, it is likely to result chiefly in minor refinements and continuous upgrading of the same basic product and piecemeal reform. The demand to incorporate new sources of manpower, and new kinds of insight and expertise as an integral part of the legal system is likely to stimulate innovation and hasten the demise of our present, handcrafted guild system.

Furthermore, the demand for justice, coupled with a demand to assist in its full realization is difficult to denigrate in a society so committed to the work ethic. The corollary of this is that redress through the legal system is likely to be the more valued if it comes not as a new dole, grudgingly bestowed, but rather as the product of an enterprise in which the consumer is also engaged as a producer.

In this connection, it is noteworthy that the first project proposed by the poor in one community was a “sanitary corps” which would give the poor partial responsibility not just for cleaning up, but also for code inspection and code enforcement. Similarly, in city after city, the reclamation of “vest pocket parks” from trash heaps and abandoned lots bespeaks the significance of contribution, of a personal role in the creation of a habitable neighborhood as well as a voice on the local planning board or a larger share of recreational facilities.

One further factor requires special mention — the degree of specificity. The mechanisms to stimulate demand can be set in motion and the demand can include provision for a share, a voice and a role. Yet, the entire effort can be rendered nugatory by either too great or too little specificity.

27 Cause and effect here are inextricably linked. It is, for instance, difficult to tell whether the large numbers of dispossessed able-bodied men and women made available by the enclosure movement in England accelerated the Industrial revolution and produced technological changes, or whether new industrial innovations hastened the displacement of cottage industry and helped to bring about the enclosure movement. But the evidence of interaction and mutual reinforcement is clear.
A demand which contains no specificity, no priorities, no agenda, no tentative enumeration provides no guidance and suggests no acceptable minimum. In one sense, this is what a riot is — a cry without a bill of particulars. And such a cry can result in sufficient confusion, sufficient action at cross purposes that even with more resources and the most intense concern, the benefits derived prove largely illusory. Lack of content, amorphousness of expression invites power struggles to capitalize on the notoriety and the resources that disorder yields. But this unchecked cupidity invites disillusionment, cynicism and ultimately indifference. The demand approach imposes a duty to attempt tentative articulation.

But this duty should not be converted into a requirement of total specificity — for that can be equally destructive.

Excessive specificity operates to limit the responsibility of professionals and officials for exploring and responding to the needs which underlie and prompted the original demand. The reply, “You got what you asked for” is the danger inherent in enumeration. Moreover, a requirement of specificity is likely to be used by the society at large, not only to limit its own moral responsibility but to impose upon the poor, the uneducated, the needy and the aggrieved, the total burden of diagnosing their own situation and framing their own demands (in such a way, of course, that the diagnosis reflects no blame on the society at large).

Thus, overspecificity appears to impose on the responder a purely ministerial function — absolving him from the necessity of initiating a more far-reaching, and creative quest for a solution.

If the demand approach is to be successful, it must challenge a society to do its utmost, to devise new solutions, to assign its best talents to the improvement of the human condition.

This is the form of competition over time that Schumpeter called the process of creative destruction. It is not the same as that competition initiated by the launching of Sputnik. But it will require at least as substantial a reallocation of resources. For in the quest for justice, man is racing against himself toward an age-old aspiration that lies beyond the stars.

III.

The Supply Approach

The foregoing analysis suggests that we must seek radical expansion in the supply of justice under law — and that such expansion, to be more than merely palliative, must meet at least two tests. First, the increase in supply must be responsive to an increased demand for a share (both quantitative and qualitative), a voice (in the shaping of justice-dispensing institutions) and for a role as a supplier (as well as a consumer) of justice. Second, the increase must operate to modify or eliminate the shortage-creating features which presently inhere in the product, the production system, and the manpower supply.

This section sets forth proposals which we believe, in varying ways, meet these tests. We advance them, not because we reject the neighborhood law firm but because we believe that there are fundamental problems with which the neighborhood law firm is not equipped to cope and because these new institutions
can offer valuable auxiliary assistance in coping with those underlying deficiencies. But we repeat — the caveat stated in our original proposal for a neighborhood law firm — that none of these proposals purport to be panaceas; nor do they purport to be exhaustive, or incorruptible. Every institution can be perverted into a vehicle which serves ends different, and even inimicable to those it was designed to serve. 28

No proposal is exempt including the following three for:
the creation of a neighborhood court system;
the development of crisis-oriented teams composed of professionals and nonprofessionals; and
the absorption of both the neighborhood law firm and the neighborhood court into a nonprofit membership neighborhood corporation.

All these proposals have in common one characteristic. They each provide a means for the consumer to participate in shaping the product and the production system. On the one hand, this will tend to nullify the shortage-producing characteristics of monopoly — and on the other hand, will instill responsibility to help limit the limitless demand found among those who have been systematically denied responsibility for making decisions about the allocation of limited resources.

Each of these proposals contains subproposals; each generates serious problems susceptible to numerous solutions; and each solution in turn proliferates new problems and new solutions. It seems therefore imperative to preface these proposals with an overview which offers a framework within which to view each of these discreet proposals and through which problems might be approached.

What is really involved — in each of these proposals, as in our earlier proposal for a neighborhood law firm — is the redesigning of what might be called "The Justice Industry" —

— an industry which must offer a far more variegated line of products in far greater quantity than heretofore
— an industry which must cater to a far greater variety of markets with a far greater consumption potential than previously appreciated.

New technologies do not spring forth fully developed. Inventions beget inventions; demand begets demand. But if we approach each of the proposals within the context of trying to redesign the Justice Industry, several important points emerge.

First, the possibility that any given problem might be handled in more than one way does not constitute a liability. Rather, it is a form of competition among, for instance, means of settling a dispute. Thus, a dispute between husband and wife, or between two gangs, can be settled by adjudication that results

28 "Between the idea and the reality
Between the motion
And the act
* * *
Between the conception
And the creation...
Falls the Shadow;"
in passing sentence on the offender, and prescribing certain norms of behavior to be followed by the parties. But equally, such disputes might be resolved by a form of arbitration or conciliation which resulted in the negotiation of a treaty or compact between husband and wife, or between rival gangs—a compact which both laid out certain promises with regard to future conduct together with a procedure for settling future disputes and for sanctioning action in violation of the compact. Finally, such a dispute might give rise to a referral to various social agencies for counselling, for education and employment, and for the influx of services aimed at eliminating the causes which gave rise to the dispute in the first place. Each method of dispute settlement constitutes a different product—of differing utility to different consumers—some clearly more suitable than others for certain situations. The Justice Industry has an obligation, not simply continuously to refine one product—but to develop new and competing products to serve the varied needs of the consumer.

Second, the concept of neighborhood (which is central to each of these proposals) is best approached as an attempt to delineate a market—a group of potential consumers with a certain community of needs. In the urban slum, this market has reasonably definable geographic configurations. For instance, poor garbage collection, inadequate police protection, exorbitant credit charges, poor schooling, patronizing and contemptuous treatment by officials, inferior merchandise in local branches of department stores, stale produce with less variety in local branches of supermarkets, unwillingness of taxicabs to stop in certain neighborhoods, are all grievances which tend to be shared by all inhabitants of a geographic area—even where specific members of the community happen to have higher incomes than others.29

Thus, because of the definable geographic locus of these needs neighborhood, viewed as a market concept for the Justice Industry makes sense—at least in the urban context. But clearly the neighborhood as a market for the Justice Industry is not necessarily coextensive with the neighborhood as market for the housing industry, the automotive industry, or other social service industries. We are talking really about the configuration of injustice, as setting the bounds of a neighborhood for present purposes.

Third, the concept of a neighborhood is not an attempt to obscure the fact that some conflicts and grievances are primarily internal—and can be handled quite well as intraneighborhood disputes, while other grievances are external and require that the consumer be equipped with the means necessary to do battle with interests and groups outside the neighborhood. The Justice Industry should meet the consumer’s needs with respect to both internal and external disputes.

But the neighborhood definition of market does imply that many types of conflict which appear to be conflicts between the neighborhood and the outside world: e.g., the police, the school system, city hall, a taxicab company, a supermarket chain, etc., might well be converted into disputes most appropriately

29 This concept of neighborhood has much in common with the public-health concept of “population at risk,” during an epidemic which imperils all within a certain area, regardless of race, color, creed, or income.
handled within the neighborhood as internal disputes. Thus, when an out-of-
state corporation does business within a state, it is obliged to subject itself to
that state's laws. It is not permitted to use its status as a "foreign corporation"
as a source of refuge, escape and immunity for wrongs committed. Out-of-state
motorist statutes have the same effect. The neighborhood concept does there-
fore imply a preference for local accountability, local resolution of disputes—
and a commitment to provide the aggrieved with a source of remedy that does
not subject him unnecessarily to the perils of a foreign jurisdiction—whether
that foreign jurisdiction be "downtown" or the "commercial world" or the
"white world" or any world where institutions and rules of law hold sway which
are designed to deny him effective remedy and to protect the wrongdoer from
bearing responsibility for the consequences of his actions.

Fourth, the concept of neighborhood must, in practice be modified by
physical factors, ethnic factors, and above all, by subjective factors. A group's
perception of who is an insider and who an outsider, who shares their problems
and who does not, operates to fractionate the seeming homogeneity of need.

Fifth, the definition of neighborhood as a market for the Justice Industry
does not operate to define the size of the most efficient unit of production or
distribution. Thus, within a given "neighborhood" one might envision several
neighborhood law offices, and several neighborhood courts, simply because effi-
ciency of production and distribution does not necessarily increase with size.
But the converse must be stated too: that the neighborhood must be large enough
to exercise the necessary effective bargaining power vis-à-vis the outside world.
It has, for instance, taken years before the special needs of the teen-age market
—or the special appeals necessary to minority group markets—were appreciated
by manufacturers. The neighborhood definition of market includes a concept
of threshold significance necessary to compel recognition and distinctive con-
sideration.

Sixth, the term neighborhood is of dubious use (except as metaphor for
"community of interest") in delineating the market for the Justice Industry
outside the urban context, for migrant laborers, for Indians or for sharecroppers.
And in consequence, we return to the underlying purpose of the term: To
define a distinguishable market and insist that that be the operative principle
in utilizing and adapting any of the following proposals.

Finally, we wish to emphasize that the market for the Justice Industry
is not the same as the market for the direct services of the legal profession. We
may, with the best of intentions, be guilty of equating the two and our own
proposals may reveal traces of that professional parochialism expressed by the
Learned Judge in Trial by Jury:

The Law is the true embodiment of everything that's excellent,
And I, of course, embody the law.

But the following proposals are offered as attempts to break out of that
deeply engrained mode of thinking—and to make a start at reshaping not
merely the legal profession — but more importantly, the product, the production system, and the manpower supply of the Justice Industry.\footnote{30}

A. The Neighborhood Court System

There is a clear need for the creation, on a neighborhood level, of mechanisms for settling disputes, dispensing remedies and enunciating norms of conduct. Those needs cannot be dealt with by any single means. Some conflicts can best be resolved by adjudication; others can be amicably settled by mutual consent; still others are pseudo-conflicts based on false assumptions or lack of knowledge above alternatives, resources and sources of assistance.

We believe that a neighborhood court system so constructed as to utilize a variety of approaches to conflict resolution would make a substantial contribution to the rule of law, and would constitute a tangible and significant response to the demand for a share, a voice, and a role in the new dispensation of justice.\footnote{31}

We propose a neighborhood tribunal with at least four auxiliary arms: a neighborhood arbitration commission, a panel of hearing referees with independent investigative resources, a youth division run and administered by youth, a referral bureau (modelled after the English Citizens' Advice Bureau) and possessing power to summon and initiate Grand Jury investigations. Each of these institutions would be manned primarily by neighborhood inhabitants — trained and appropriately selected to fulfill their respective duties as officers of the “court.”

Such a neighborhood court system might well come into being as decentralized arbitration, fact finding and conciliation branches of the small claims court, magistrates court, domestic relations court, juvenile court and landlord-tenant court. We are not proposing the replication in miniature of every specialized municipal court — but rather we are suggesting the delegation of certain arbitration, conciliation, fact finding, and hearing functions to locally based and locally responsive tribunals. This decentralization alone would at least relieve the poor person, faced with a complaint, of the awesome trip downtown and would also contribute to ending the bewildering fragmentation of judicial institutions which have emerged under the rubric of reform because of the need for specialization and apparently simplified procedures.\footnote{32}

\footnote{30} Other proposals, not dealt with in this piece, such as those for a neighborhood police force manned and controlled by the inhabitants of a neighborhood, may go still further in this direction.

\footnote{31} In a speech on August 14, 1966, to the National Bar Association, Sargent Shriver, Director of the Office of Economic Opportunity, stated:

We need to begin to devise ways in which disputes can be settled locally, within the community — through neighborhood reconciliation boards.

We need to involve the poor themselves in law enforcement, in code inspection, in policing the practices of merchants and landlords and welfare authorities.

Above all, we need to begin to build a sense of community, of full membership and full citizenship in a society that does not pit “we” against “they,” the powerful against the poor, or white against black.


... Before the law stands a doorkeeper. To this doorkeeper there comes a man from the country who begs for admittance to the law. But the doorkeeper says that he cannot admit the man at the moment. The man, on reflection, asks if he will be allowed, then, to enter...
Any attempt to create local dispute-resolving institutions cannot and should not proceed unmindful of the fundamental values embedded in procedural safeguards—values not lightly sacrificed in the name of speed, efficiency or even harmony which can all too readily be converted into rationales for favoritism, irrationality, paternalism and majority tyranny. The history of the Juvenile Court should serve notice that the creation of informal approaches to the handling of antisocial conduct and the resolution of conflict must be coupled at the very least, with severe ceilings on the sanctions which can be imposed in the name of social experimentation.

But the possibility of advancing the cause of justice through increasing lay involvement in fact finding, adjudication and arbitration should not be sacrificed a priori out of fear of abuse. The potential for abuse can be checked by limiting the severity of the sanctions which can be imposed, and by providing adequate appellate procedures.

Our proposal, however, envisions more than mechanical decentralization of existing tribunals.

Accessibility, unification, comprehensibility are important—but they are not ultimate values. By themselves, they hold no guarantee that the rule of law will not be imposed from without—that new means of dispute resolution will be evolved—or that the neighborhood will have a voice and a role in the shaping and staffing of these new institutions.

What then would be some of the basic additional ingredients of a neighborhood court system?

First, a simplified, uniform, intake procedure so that the persons aggrieved—or persons bewildered upon being receipt of some form of legal process—would not bear the initial onus of diagnosis with respect to the precise jurisdictional nature of their problem before being permitted to venture forth and secure assistance.

Second, a variety of mechanisms, formalized perhaps into procedural and organizational subdivisions of the local court, would have to be provided—including, but not limited to arbitration, conciliation, fact finding, public inquests, referral bureaus. The case for a multiplicity of techniques becomes more compelling if one considers the following potpourri of grievances:

that truancy laws are being enforced in an arbitrary and punitive fashion;
that police are failing to provide adequate protection;
that license revocation combined with punitive fines is being meted out unfairly by policemen;
that local hospitals are treating indigent patients in a discriminatory or humiliating way;

later. 'It is possible,' answers the doorkeeper, 'but not at this moment.'

"There he sits waiting for days and years. . . ."

"Now his life is drawing to a close. Before he dies, all that he has experienced during the whole time of his sojourn condenses in his mind into one question, which he has never yet put to the doorkeeper. . . ."

"'Everyone strives to attain the Law,' . . . 'how does it come about, then, that in all these years no one has come seeking admittance but me?' The doorkeeper perceives that the man is nearing his end and his hearing is failing, so he bellows in his ear: 'No one but you could gain admittance through this door, since this door was intended for you. I am now going to shut it.'"
that landlords are refusing to abide by pledges to make prompt repairs;
that assignment to track systems in the local school is being done without
adequate safeguard, tests, or possibility for later reassignment;
that the local school is failing to offer academic courses or essential voca-
tional courses;
that principals are not submitting budget requests for necessary hot lunches,
recreation equipment or educational materials;
that the sanitation department is derelict in its trash collection or discrim-
inatorily picayune in its insistence on the separation of trash and food garbage;
that arrests and prosecution for numbers or prostitution is erratic or
punitive;
that potential disorder in taverns or at teen-age dances is being dealt with
particularly oppressively with inadequate advance consultation;
that welfare clients are kept in the dark with respect to the items included
in their welfare allowance or with respect to reduction or termination of their
allowance.

Some of these call for individual fact finding proceedings; others for grand
jury investigations; others for arbitration and conciliation; others for self-policing
mechanisms; others for private hearings; others for public meetings and con-
frontations; others for formal complaints against public officials and agencies;
others for referral to social agencies.

Many of these grievances do not give rise to any formal right; some result
in injuries too slight to activate the present cumbersome system of redress and
remedy; others are currently handled by persons who lack knowledge and
empathy for peculiar conditions, cultural patterns and life styles which tend to
be either disregarded or disdained; others involve neighborhood rather than
individual complaints where the gravamen of the complaint is most closely akin
to a theory of public nuisance.

The multiplicity of problems mandates the proliferation of procedural re-
ponses. But the product of the legal system itself must be altered from an
emphasis on rule making and refinement of precedent to situational justice which
contributes directly to the well-being of the parties involved.33

In effect, the product of the legal system would undergo a shift from the
proliferation of rules to the creation of forums where modes of conduct can be
examined, scrutinized and approved or disapproved by organisms that reflect
community values. Currently, it is fashionable to attempt to inculcate knowl-

33 Professor Mentschikoff has indicated that arbitration has special attractiveness to com-
mercial interests where any of a number of factors are of prime importance: speed of adjudica-
tion can be increased, normal legal procedures pose great uncertainty and unpredictability;
specialized expertise related to prevailing custom is particularly essential, the goods involved are
fungible rather than unique. Her findings appear to have direct applicability to the neighbor-
hood context.

Professor Mentschikoff also notes a correlation between the presence of institutionalized
arbitration and the presence of other mechanisms of control such as self-regulatory committees
on ethics and disciplinary proceedings, rules, and form contracts. As will appear later, we con-
sider that the neighborhood court system would be strengthened, if it were an integral part of a
nonprofit membership neighborhood corporation that had correlative local self-regulatory and
decision-making functions.
edge about rights by educational drives to disseminate information about specific rules.

Such attempts at lay education in the law underestimate the general populace's understanding of the principles of reasonableness, notice, and negligence. They equally underestimate the widespread appreciation of the absence of forums to make such rules—or their underlying principles—either enforceable or relevant. The same effort might be much better placed in creating institutions that in effect say to the people that certain kinds of behavior will be met with certain kinds of community scrutiny. The creation of forums where behavior is scrutinized locally, where parties will be called upon to arrive at new terms, reach new understandings and enter into new commitments is likely to be a far more effective mode of social control than the learning of legal rules by rote.

The practicability of a neighborhood court system will depend in part on its ability to secure jurisdiction over both parties and subject matter. But amongst the possible sources of jurisdiction are the following:

a. decentralization of the prosecutor's office might yield arrangements for advisory lay opinions on commitment, and pressing of charges;

b. decentralization of the welfare department, employment service, medical clinics and other social agencies might produce a contract to negotiate agency-client differences modelled after the arbitral services presently available by contract with the American Arbitration Association;

c. the absence of any other forum for the presentation of grievances would cast the neighborhood court into a general Ombudsmen role with investigatory, fact finding and recommendatory responsibilities;

d. a doctrine of abstention (or alternatively, exhaustion of administrative remedies) might lead courts to decline to handle a case until it had gone through the neighborhood court system on grounds that that was the most suitable forum, that its findings would be upheld as a general principle, and

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34 The inadequacy of present mechanisms of social control (whether they be governmental institutions, or private institutions delegated these functions by law and common consent) is masked by an implicit and often explicit understanding on the areas of enforcement and non-enforcement, on an unauthorized departure from publicly enunciated norms. The appearance of law abidingness rests on acceptance of the lawless imposition of order by private power. Yet, even this illicit mode of maintaining order no longer seems to suffice in part due to the deterioration of many of our prime mechanisms of social control: discrimination, the ward system, the draft, police brutality.

Most centrally, the family has lost its capacity to instill norms of behavior, to offer incentives for certain kinds of creative and useful activity, to provide significant refuge for the individual, to offer a forum for the resolution of private disputes, to provide education, or secure jobs.

Erosion of the work ethic has weakened another major instrument of social control. In a society that relies on a high level of consumption, the credit system has effectively undermined the nexus between conduct and reward. It grants immediate enjoyment in return for a lien on the future. But such a lien is hardly an effective mode of social control for people who, amidst today’s crisis, can contemplate no future—except possibly that of an afterlife (presumably free of creditors).

This is not intended as a lament for the family, religion, the nobility of labor, the glories of the immigrant ghetto, the true democracy of the ward heeler, the vertical mobility once available through manual labor and organized (but ethnocentric) crime.

But there is, we believe, a need to create a successor to these and other institutions which for varying reasons have ceased to perform the functions of social control, conflict resolution, mutual accommodation, rule making and dispensing of remedies.
that in any event, it would be the best forum where all relevant factors, equities and considerations could be made part of the formal record;

e. decentralization or delegation of jurisdictional grants of existing courts;

f. neighborhood pressures on merchants, landlords, politically vulnerable officials and agencies to utilize the local court system — all of which might be intensified by the creation of a neighborhood corporation;

g. availability of unique remedies and forums for novel causes of action would offer incentives not dissimilar from those which won gradual ascendancy for the King’s Courts over the feudal and ecclesiastical courts, and which, in turn, resulted in the subsequent carving out of certain special jurisdictional areas by the Court of Chancery; and

h. finally, it is not too much to hope that the democratization of justice would be, in itself, incentive for the generation of jurisdiction — in broadening the commitment of all to the role of law, in increasing voluntary law abidingness, in savings of time and acrimony through the expeditious handling of local disputes — and in generating a sense of community where the presence of conflict did not obscure the transcendent values of democracy.

Finally, explicit mention should be made of the manpower problems which this proposal entails. We would urge strongly the creation of a class of lay advocates — trained and appropriately chosen — to be drawn from the ranks of the community to serve informally as counsel. Equally, we would think it appropriate, in certain cases, to have both arbitration boards and panels of judges composed of laymen as well as lawyers — and that the neighborhood court would become a source not merely of employment, but of apprenticeship in the calling of Justice.

Different classes of cases would involve a degree of privacy and confidentiality not compatible with general community knowledge. On the other hand, emotion-charged and controversial cases will endanger individuals who bear the

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36 The ascendency of the curia regis was due to the fact that for several centuries it offered a better and fairer procedure because more flexible courses of action and new remedies were open to that court which were not open to the common law courts. For example: in the 14th century there developed in the King’s court an authority for the court sitting coram rega ipso to hear and determine pleas which affected the Crown. However, a Writ of Trespass contained allegations to the effect that the wrong committed was one of force of arms against the King’s peace. It was not long before civil jurisdiction grew to encompass not just trespass but trespass on the case.

POTTER: HISTORICAL INTRODUCTION TO ENGLISH LAW, 119-128 (1948).

Later, the King’s Council reached out to provide remedies which were otherwise not judicially cognizable in other courts. The jurisdiction of that court was based on the theory that a residue of justice was left in the King and hence his Council. The system was confined neither by the limits of the writ system nor by specific rules of procedure and process. The system was followed for centuries by the Council which heard many causes simply on the grounds “that there did not exist an efficacious or practical remedy in any other court.” Id. at 140. From the Council as well as the King’s court one can trace the development of the court of Chancery and the further attempt of Anglo-Saxon law to meet the need for more flexible causes of action and new remedies. We are simply proposing that the historical dialectic which later produced a merger of law and equity should continue apace.

37 In Tompkins County, New York, a youth court has been in operation for some time. Jurisdiction is by waiver of the juvenile court approved by county referendum. A youth bar composed of youngsters, who have been through a ten-week training session, “bar exam” and interview provide counsel. Youth judges are selected from among members of the youth bar. Sentences range up to 50 hours of constructive work — manual or academic. Cases have involved shoplifting, malicious mischief, drunkenness, driving without a license.
brunt of decision-making as federal district court judges in the South know all too well. Nonetheless, the utter detachment of the judicial function from contact with the consumer perspective is not as George Bernard Shaw pointed out, the best guarantee of Justice:

Judges spend their lives in consigning their fellow creatures to prison; and when some whisper reaches them that prisons are horribly cruel and destructive places, and that no creature fit to live should be sent there, they only remark calmly that prisons are not meant to be comfortable; which is no doubt the consideration that reconciled Pontius Pilate to the practice of crucifixion.38

We would hope, therefore, that the neighborhood court system would, at all costs, not become a new form of judicial patronage — but instead would be grasped as an opportunity for reconstituting and democratizing the manpower force of the Justice Industry.

The wisdom of utilizing such Tribunals simply to establish new outposts for professional imperialism is dubious. The natives are restless.

B. Expanding the Manpower Supply through Creation of Crisis-oriented Teams

Expansion of the manpower supply will require both quantitative and qualitative changes in the nature of the manpower involved and the measures of productivity. The expansion of the manpower supply must not be perceived as a form of empire building by the legal profession. Rather, it must be viewed as a part of the retooling of the Justice Industry (even if that larger growth be at the expense of the legal profession's present monopoly). Productivity must be measured not simply on a case-by-case basis but, from the point of the individual client, viewed as a total human being, and also from the viewpoint of the entire community viewed as a single corporate body (as well as the aggregate of individual clients). Within the profession and legal institutions as they now exist must emerge a set of roles and mechanisms designed specifically to represent the consumer or client against the narrow jurisdictional and disciplinary outlook of the profession.

The fact that a lawyer can solve a problem brought by a client does not ipso facto make that the most important problem of the client or even the most relevant method of solution. The legal problems of the poor as they reach the lawyer's office can be most profitably viewed as a class of crisis — for the individual and possibly for the entire community — a crisis susceptible of many forms of response, not all of them involving the unique skills of the legal profession.39

1. The problems of the poverty sector require that the provision of assist-

38 SHAW, THE CRIME OF IMPRISONMENT 14 (1946), published as a preface to WEBB, ENGLISH PRISONS UNDER LOCAL GOVERNMENT (1922). We are indebted to Mr. Ephraim London for bringing this passage to our attention.

39 The legal profession has no monopoly on crisis:
"The Physicians are the natural attorneys of the poor, and social problems fall to a large extent within their jurisdiction." (RUDOLF VIRCHOW, DIE MEDIZINISCHE REFORM, 1848, quoted by H. E. SIGERIST in MEDICINE & HUMAN WELFARE, THE TERRY LECTURES 93 (1941).
ance, both to an individual and to a community must be treated as a form of crisis intervention calling for the minimal, total, diversified effort needed to insure maximum and lasting impact.\(^4\)

2. The technical jobs now performed by lawyers can to a considerable extent be adequately performed by less extensively trained persons. (The legal secretary is the paradigm of the nonprofessional as technician.)

3. The advocacy role now performed by lawyers can to a considerable extent be adequately performed by laymen.\(^4\)

4. Alternatives to the profession’s current methods — both as advocates and as technicians — must be systematically explored and tested. (Protest, community organization, information bureaus, arbitration, individual counselling, therapy, debt consolidation, all offer at times viable and even superior substitutes for legal craftsmanship and legal advocacy.)

5. Requests for legal assistance should not be treated as self-defining or self-validating nor should the individual quality of the request be deemed conclusive with regard to the nature of the underlying cause.

6. The solo practitioner, one-to-one relationship should be supplemented, and (where appropriate) supplanted by team approaches.

7. The isolated anecdotal approach to characterization should be accompanied by the development of modes of classification which treat individual instances as possible symptoms of a social pathology. That pathology can be diagnosed and in many cases cured, if treatment is not obscured by professionalism geared to respond to only one aspect of the total pathology.

8. Mechanisms and roles for advancing the consumer’s perspective over and against that of a profession, discipline or institution must be developed and institutionalized within the Justice Industry.

Implementation of these steps will call for creation of a new methodology of diagnosis and training, the development of new sets of skills for the manpower supply of the Justice Industry, the creation of new relationships among

\(^4\) And crises, at least in the lives of individuals, have three characteristics. Their outcome is not determined by antecedent factors.

"These factors load the dice in favor of a good or bad . . . outcome. But what actually occurs depends on the interplay of endogenous and exogenous forces in the course of the crisis. External intervention during the disequilibrium of crisis may counteract the loading of the dice and lead to an unexpected result — good or bad."

"During the crisis, an individual experiences a heightened desire for help, and the signs of his distress evoke a helping response from those around. . . ."

"During the disequilibrium of the crisis, a person is more susceptible to influence by others than during periods of stable functioning. When the forces are, as it were, teetering in the balance, a relatively minor intervention may weigh them down to one side or the other. The resulting steady state will then be relatively stable. Crisis therefore presents care-giving persons with a remarkable opportunity to deploy their efforts to maximum advantage in influencing the . . . health of others."

\textbf{CAPLAN, PRINCIPLES OF PREVENTIVE PSYCHIATRY} 53-54 (1964).

We would posit that the same crisis intervention principles apply to groups and neighborhoods as to individuals.

\(^4\) As Attorney General Katzenbach pointed out:

"Not every injury requires a surgeon; not every injustice requires an attorney."

"We need what is, in effect, a new profession—a profession of advocates for the poor made up of human beings from all professions, committed to helping others who are in trouble."

"That job is too big—and I would add, too important—to be left only to lawyers."

"Until we can achieve that kind of broad involvement, that willingness to stand up for the poor and to help the poor stand up for themselves, old wrongs will go unredressed and new wrongs will occur."
members of that manpower supply, the creation of a Research and Development division within the Justice Industry — and finally the evolution of mechanisms of control, disclosure and accountability of the Industry to the consumer.

Social workers, lawyers, educators and psychiatrists are too scarce to do the mass of screening and referrals made necessary by the pathology of the poverty stricken ghetto community. The ghetto requires treatment on a massive basis. This being so, it is now necessary to develop teams of persons who have the requisite range and quality of skills.

There will need to be considerable experimentation in determining the composition and orientation of teams composed of different mixes of professionals and nonprofessionals and in defining the relationship between professional and nonprofessional (e.g., supervisor, teacher, resource person or consultant). 42

The function, composition and internal dynamics of the team will vary directly in accordance with its base. In other words, significant variation will occur where the base is the neighborhood law firm, the neighborhood court, the juvenile court, or the precinct station. In order to build in immunization against professionalism, each member of the team will need to develop an overview of the team's entire operation and be given optimal opportunity to develop leadership, administrative, and analytic experience through utilization of quasi-clinical training methods.

Specifically, the beliefs enumerated above would require the development of a reservoir of individuals with special skills: crisis recognition, awareness and delineation of the total problems of the individual presenting a crisis, referral knowledge necessary to ascertain the relevant sources of assistance and advocacy skills (including a sophisticated appreciation of levels of bureaucratic and professional decision-making) necessary to secure the needed assistance in time to function on behalf of the individual. Such people might be trained to utilize a method such as an interviewing form with a built-in checklist cross-referenced to a compendium of available sources of assistance (including lists of action-oriented community groups) regardless of present jurisdictional classifications.

The purpose is to create producer roles whose central function is to advance the cause of the client or the consumer against and despite professional, disciplinary, or institutional lines of jurisdiction. Yet, realistically, such roles will only be filled conscientiously by persons who possess marketable skills sufficient that they need not fear loss of economic security in doing battle for the client against even their own employer. Realistically this requires that besides the special skills mentioned above, the job categories will have to overlap with job descriptions for which there is at present a general market such as investigators, legal secretaries, interviewers, messengers and referral and intake personnel.

C. Incorporating the Justice Industry

The Justice Industry labors under a special fiduciary obligation to protect the interest of, and to retain the perspective of the consumer. But a public trust is not self-executing, even in the case of public utilities or common carriers.

42 Caplan, Principles of Preventive Psychiatry Ch. 8 and 9 (1964) for an analysis of the different approaches to the consultative role.
Historically, consumers of both goods and services have not been able to muster the sustained effort necessary to look out for their own interest. Policing by a public body is one way this has been attempted. But this method is just a particular instance of a more general principle: that the consumer interest is protected only to the extent that people are paid to do so. In short, producer roles must be created to protect the consumer interest (regardless of whether those roles are denominated as lobbyists, fighters, professional organizations, advocates, attorneys, or public officials).

The above proposals have attempted to achieve protection of the consumer's interest by emphasizing the creation of producer roles for consumers. But noting the tendency toward infiltration and domination of regulatory bodies by those interests they were created to regulate, we propose to couple these producer roles with provision for vesting ownership of the Justice Industry in the consumer. Eligibility for membership, goods and services would thus be based on the market concept of neighborhood.43

We would begin then, by proposing that the central production units of justice for the poor—the neighborhood law firm and neighborhood courts—become operating subdivisions of a nonprofit membership corporation.44

The act of incorporation is not in itself a solution. Legal forms only provide frameworks within which solutions can be devised through agreed upon procedures. But the conversion of the neighborhood law firm (and the neighborhood court) into branches of a nonprofit corporation would offer specific advantages.

It would provide a mechanism for consumer decision with regard to the production priorities of the corporation as a consequence flowing from technical ownership of the corporation and its various enterprises. Thus, for instance, the choice with regard to the use of attorneys to seek out test cases, the provision of a mechanism to review decisions refusing to take a particular case or client, the decision to enter into a liaison with a university to conduct legal research or to employ law students, volunteers, or nonprofessionals, the priority assigned to the performance of a pure service function, the decision to provide extensive counsel to neighborhood courts or to assist in designing and spinning off subsidiary corporate enterprises would be matters for membership approval or disapproval — though, management would have the obligation (though not the sole right) to present the case, make the recommendations, initiate new proposals, and present plans for expansion and diversification.

Without subscribing, as an article of faith, to the automatic efficacy of corporate democracy, we do wish to point out that the factors that account for a divorce between ownership and control, shareholding and management appear not to be present here (and do not seem to be an inextricable aspect of the

43 This is not incompatible with representation on the board of directors of affected interests — or even the creation of distinct classes of shareholders or investors who would, at least, have a say with respect to specifically denominated issues — including possibly liquidation, sale of assets, merger, etc.
44 But since neither justice nor law are limited to the narrow machinery which society labels the machinery of justice, we would not anticipate that these would be the only two divisions, or even, necessarily the major divisions of the neighborhood corporation.
earliest corporations such as the university, the ecclesiastical parish, the municipal corporation, the guild and the borough corporation.\textsuperscript{45}

There is reason to believe that corporate democracy can be made to function where ownership is relatively constant, where ownership rests in the consumer, where ownership contains a significant proportion of producers in the Justice Industry — and where all owners have an abiding interest in the caliber of the product, the availability of the product, the vitality and innovativeness of the total enterprise. All would have a direct, personal and daily stake in the corporation’s capacity to reduce internal community conflict, to serve as a bulwark against external threats to privacy, dignity and self-determination while simultaneously serving as champion, Ombudzman, and lobbyist in arenas where before the poor have been outmanned, outmaneuvered and “outclassed.”

Beyond the question of control to ensure responsiveness, technical ownership and membership in the corporation offer a variety of possibilities for creative organization of decision-making processes and for devising innovative means of securing, maintaining or increasing ownership involvement and community commitment.\textsuperscript{46}

The formulation of or ratification of new enterprises, the creation of ownership-manned complaint or information bureaus attached to each neighborhood law firm or neighborhood court, the procedures for merger or partnership with other neighborhood groups for limited joint ventures, can make consumer ownership a significant vehicle of consumer protection — particularly where the ownership itself becomes an instrument of education, involvement, community organization and increased neighborhood cohesiveness.

Furthermore, new ventures (such as credit unions, insurance plans, planning commissions, cooperatives, youth courts, home maintenance corporations) will emerge from a base of documented need and community support which will greatly enhance their likelihood of success — particularly if locally owned and operated with widespread community accountability. Without implying any \textit{ultra vires} limitation on corporate activity, there would seem to be particular virtue in beginning first with those new enterprises that had as the initiating force the detection of a series of injustices, grievances and legal crises which could best be obviated by new forms of preventive institutional services, resources and opportunities.

In effect, we propose the democratization of justice — the conversion of a guild production system into a democratically owned enterprise which offers special incentives to professionals to be responsive to consumer needs rather than to build a hierarchy of prestige, salary, and power based on successive stages of withdrawal from reality, need and the consumer perspective.

Ultimately, the Neighborhood Corporation is a new form of polity —

\textsuperscript{45} Manning, Book Review of \textit{LIVINGSTON, THE AMERICAN STOCKHOLDER}, 67 \textit{YALE L. J.} 1477 (1958) for a most cogent and succinct summarization of the anticorporate democracy position.

\textsuperscript{46} This might be done by pledges of services, by participation in a neighborhood police or code inspection force, by serving on neighborhood arbitration boards, or by the assumption of other forms of leadership responsibility.

Polling of the ownership can be a particularly effective and compelling form of market research with respect to unmet needs and new areas for concentration and activity. In addition, ownership can operate to confer status and enhance ability to cope with the outside community.
providing a means of resolving disputes, of reenfranchising individuals with respect to the internal management of community affairs while simultaneously expanding the supply of services and strengthening the advocacy posture of the neighborhood vis-à-vis the rest of society.

The corporate form is not an attempt to idealize the neighborhood or to romanticize the past. It begins with a recognition that there are, among the most deprived, geographic areas which correspond to common needs and common indignities. And that, given shape and form, that communality of interest can take the form of a pact with the present that neither seals off the future nor surrenders control to others over the right to participate in man's unending quest for justice.