The Leadership Problem in the Legal Services Program

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Sargent Shriver, the first Director of the Office of Economic Opportunity, forecast at the outset that the lawyers in the legal services program would come to be recognized as the heavy artillery in the war on poverty (Shriver, 1966: 219). Shriver's success as a soothsayer was considerable. Poverty lawyers have proven to be among the most effective weapons in the war on poverty's arsenal.[1] In practice it seems that many of the lawyer's skills and much of his legal training are helpful and even powerful when directed at the legal problems of the poor. Nevertheless, one wonders how much credit for the poverty lawyer's success can properly be attributed to OEO's leadership. There never really was reason to doubt the lawyer's fire power. But the record reveals much reason to doubt whether his potential power has been used efficiently and with maximum efficacy. An examination of OEO's belated efforts to orient the local legal services offices toward more meaningful targets leads to the belief that the strength of the program lies in the professional training and prodigious labors of the lawyers in the field and its weakness lies in the manner in which OEO has constructed and conducted the legal services program.

THE NEED FOR LEGAL SERVICES

Legal services is in the midst of an escalating struggle for control of the local programs. On one level this struggle pits the local bars[2] against the OEO officials who control the federal funds. This particular contest can be described accurately as an internecine war. But it also endangers the poverty community. The poor need legal services, and this program needs the continued support of both adversaries.[3] Thus, the origins of this argument merit reiteration. This review also helps illuminate the fact that within the legal services itself another struggle for control seems to be emerging, and this one

involves the poverty lawyers themselves. Both these disputes seem to involve a disagreement over the primary purpose of the legal services program and, at bottom, both touch on the question of the role of the poverty lawyer. The pity is that, by using more foresight and acting in a more forthright manner, OEO could have avoided some of both of these controversies.

The Cahns' Proposal

In the beginning, OEO was faced with the necessity of making policy decisions concerning both the place and the purpose of the legal services program. Some months before the birth of legal services, Jean and Edgar Cahn had thrown down the gauntlet and publicly challenged OEO to break new ground in the area of legal aid for the indigent. In their now famous law review article, the Cahns (1964) offered a lengthy description of a suggested means of utilizing the lawyer's skills in the war on poverty. They advocated incorporating the lawyer into the war effort in a manner consistent with the poverty program's maximum participation of the poor requirement. Specifically they proposed establishing

> a neighborhood law firm which could serve as a vehicle for the "civilian perspective" by placing at the disposal of a community the services of professional advocates and by providing the opportunity, the orientation, and the training experience to stimulate leadership amongst the communities' present inhabitants. [Cahn and Cahn, 1964: 1334]

This notion of cultivating leadership in the poor community, coupled with the placing of professional advocates at the disposal of these leaders, seems to have been an original contribution to the thinking on legal services. The Cahns supported their unusual proposal by alleging that the failure to ascertain the felt needs and grievances of the poor had frustrated many prior social experiments undertaken in their behalf. In their opinion, cognizance of the poor's viewpoint, which they called the "civilian perspective," is an essential part of a successful legal services program. For the Cahns, the ultimate test of "whether the war on poverty has incorporated the civilian perspective is whether or not the citizenry have been given the effective power to criticize, to dissent, and where need be, to compel responsiveness" (Cahn and Cahn, 1964: 1329). In view of this test, it is not surprising the Cahns argued that an avowed goal of the war on poverty should be the promotion of neighborhood dissent and that they viewed the neighborhood law office as an organization functioning as an "institutionalized advocate of dissent and grievance" (Cahn and Cahn, 1964: 1331).

Clearly, the Cahns' conception of the task for the lawyer in the war on poverty was novel. They were espousing a fundamental change in the relation-

ship between the poor and the rest of society. Traditionally a donor-donee relationship has existed here, and whatever goods and services flowed to the donee were provided largely as charity. The Cahns hoped to change this relationship, and they relied heavily on the lawyer's skills of advocacy to do so. But this reliance upon the lawyer and the position of institutionalized dissent in which they placed him would require the lawyer to think on a grand scale and to see far beyond the immediate needs of the individual client. For this reason, the Cahns' proposal for a law firm located in a poverty neighborhood necessarily included some suggested criteria to guide the lawyer in which cases to accept.

> For analytic purposes, it is useful . . . to distinguish between a service function (providing legal services to all persons in need) and a representative function (providing representation to individuals and groups in cases which have broad institutional implications and widespread ramifications.) [Cahn and Cahn, 1964: 1346]

This distinction between kinds of cases lies at the heart of the current contests for control of the legal services offices, but the distinction itself was clear from the outset. Without hesitation, the Cahns had placed priority on the representative function, and their firm, but controversial, stand was much discussed at OEO during the early days of legal services.[4] From the time of publication, their proposal has had a great and continuing influence in academic circles, but it was not until some time after the programs were successfully launched that OEO itself forthrightly and firmly embraced many of the Cahns' more controversial ideas. With some accuracy, the Cahns' article has been described as the seminal work in this area (Harvard Law Rev. [Note] 1967), but the Cahns were far from the first to see and speak out in favor of some vehicle for providing indigent people with an attorney. The first organized programs where lawyers provided free legal assistance to the poor began before the turn of the century,[5] and the notions of the poverty lawyer's role found in the established legal aid organizations also substantially influenced the development of the federally funded programs.

Smith and Legal Aid

The acknowledged father of the legal aid movement in the United States, Reginald Heber Smith, recognized the fact that we were developing two systems of justice, one for the rich and another for the poor, and, in his classic *Justice and the Poor,* he noted the importance of the attorney in both systems.

> The machinery of justice can be operated only through attorneys . . . attorneys must be paid for their services . . . and the poor are unable to pay for such services. This is the great, the inherent and fundamental difficulty—inherent because our legal institu-

> tions were framed with the intention that trained advocates should be employed, and fundamental in the sense that no amount of reorganization or simplification short of a complete overturn of the whole structure can entirely remove the necessity for the attorney. [Smith, 1919: 241]

Smith was the leader of a crusade to eliminate this inequity in our system of justice, and his call for the establishment of legal aid offices which would provide the poor with access to the machinery was not ignored. But the growth of legal aid was not sufficient to meet the poor's rapidly expanding needs. A recent report by the American Bar Foundation indicates that each year the poor have at least 14 million legal problems and that, despite the efforts of various legal aid organizations, most of these problems never receive an attorney's attention.[6] Reports like these, which illustrate the fact that the growth of legal aid has never been able to keep up with the demand, led one observer to comment that "like the Red Queen of *Alice in Wonderland,* the Legal Aid forces have been obliged to run as fast as they could to stay where they were" (Brownell, 1951, quoted in Carlin and Howard, 1965: 408).

One of the chief reasons for the rather limited capacity of the legal aid mechanism is its limited access to financial resources. Traditionally, legal aid societies have relied primarily on contributions from charitable organizations and the Bar to meet their operating expenses, and they have received little support from government sources. Thus, the statistics from the years immediately preceding the establishment of the OEO program are particularly revealing. The National Legal Aid and Defender Association reports that in the year 1965 the cost of operating 787 offices amounted to something over $5 million, and 51% of the total expenditure for civil legal aid in the United States came from united funds or community chests.[7] The next largest source of funds were bar organizations and private attorneys who contributed approximately $725,000.[8] Perhaps even more significant is the simple fact that one year prior to the enactment of the war on poverty known expenditures for legal aid amounted to two-tenths of one percent of the total spent on attorneys in the United States (Carlin and Howard, 1965: 410).

These figures on the financial plight of legal aid organizations are startling, and they undoubtedly represent one of the major reasons why these programs have never been able to aid more than a small percentage of those in need of an attorney's services. Many believe, however, that the relatively moderate success of the legal aid movement is not just the result of its limited financial resources, and they further feel that legal aid's success should not be measured solely on a quantitative basis. These critics feel that other factors have contributed significantly to what might be called a band-aid approach, where lawyers administer first aid to those fortunate enough to be directed to the emergency room, but little, if anything, is done to prevent a recurrence of the same injury to them or to others. In other words, they charge that legal aid

has operated in a manner helpful to the individual client, but it has not as a rule practiced the kind of public health law which might have widespread consequences in the community.[9]

This emergency approach is understandable in light of the many problems, including the enormous number of cases, confronting the typical legal aid lawyer. Statistics published by the National Legal Aid and Defender Association for the year 1964 show that in 33 of their offices the average case load per full-time attorney was 1,678 new cases each year, and that only 25 of their offices located in large communities averaged case loads of less than 1,000 per year (Pye, 1966: 213). It is impossible for an attorney to handle this kind of a case load and practice preventive law at the same time, but the volume of work does not complete the list of the legal aid lawyer's troubles. Typically he has been paid much less than his brothers at the Bar (Pye, 1966: 213), although he is expected to deal competently with a never-ending stream of clients who invariably wait until they are in trouble before they walk through his door.

These statistics are revealing, and this combination of tangible factors in part accounts for the first aid approach. But there is more. When surveying legal aid's problems, it is also helpful to examine what many feel is its great flaw—legal aid societies have made very little law. Traditionally, they have worked within the confines of the existing legal system, and they have concentrated their attention on ministering to the individual indigent instead of on renovating the system which beleaguers him. A recent study noted that

> most Legal Aid Society lawyers rarely prosecute appeals, partly because the caseload and the settlement orientation of Legal Aid prevent many cases from getting to the trial stage and partly because the appeal, viewed solely as part of the service function, is rarely justified by the amount of money at stake. [See Harvard Law Rev. (Note) 1967: 813]

This preoccupation with what the Cahns referred to as the "service function" has become the bête noire of the critics of legal aid, who maintain that, given limited time and funds, the attorney should concentrate on test cases designed to aid the poor as a whole instead of on servicing the individual client. They suggest that the decision to take a case, and if need be to appeal it, should not be determined by the amount involved in the particular action or even solely on the situation of the individual client.[10] This approach obviously would require the attorney to look beyond his overcrowded waiting room, to turn away clients, and to downgrade the service function. But, more importantly, it would require a change in the philosophy of the movement which has previously affected the way the legal aid attorney has visualized his client and his role.

The Problem of "Social Need"

An excellent example of this philosophical distinction between the two approaches can be found in the manner in which legal aid has historically restricted the acceptance of certain kinds of cases, usually divorces. This restrictive policy is a consequence of the fact that legal aid in the past has been operated largely as a charitable endeavor. It has subsisted largely on donations from the more affluent members of society, and the client usually has been regarded as the recipient of welfare. This welfare attitude has influenced the attorney-client relationship. The attorney has been expected to accept cases with one eye on the interests of the client and the other eye on the needs of society as a whole. For example, legal aid offices have traditionally discouraged their attorneys from accepting divorce clients, and it is recognized that this restrictive policy is based on the proposition that there is no general social need which justifies spending charitable funds in most divorce cases (Wald, 1965: 49). Thus, social need, rather than just the needs of the individual client, comes into consideration, and poverty makes divorce not a right, but a privilege dispensed by a charitable organization.

One of the leading modern authorities in the field, Jerome Carlin, suggests that this social need test, as set by some agencies, is part of a policy designed to keep down the costs of public assistance. Carlin cites as an example of this welfare-oriented thinking the following statement by a legal aid attorney:

> Our experience is that indigents already have a large family supported by the community, and to permit them a free divorce allows the man particularly to remarry, frequently a much younger woman, and procreate a fresh batch of public charges. [Carlin and Howard, 1965: 414]

While interesting, this comment is flagrant and it may not be fair or accurate to regard the quote as representative. But the policy restricting divorces does exist, and the fact that a divorce is regarded as something to which the client is not entitled as a matter of right has provoked much criticism (Carlin and Howard, 1965). The gist of the critics' complaint is that the charitable orientation of legal aid corrupts the attorney-client relation, and that the client should be entitled to the services of an attorney as a matter of right.

Since it is this discretionary power of the attorney to refuse the case which provokes much of the criticism, it is interesting to note that, as the Cahns conceived it, the OEO-sponsored attorney would also be encouraged not to take the divorce case. The Cahns (1964: 1346) acknowledged the importance of performing the service function "in order to earn the confidence of the community," but they too require the attorney to look past the individual client as they urge him to place priority on cases with "broad institutional implications and widespread ramifications." This emphasis on reforming the

legal system means that the legal services attorney, like his counterpart in legal aid, would be reluctant to take the routine divorce, and in both offices, subject to the attorney's discretion, the would-be client might never become a plaintiff unless, of course, some sort of social need standard was satisfied.

The foregoing discussion of the divorce client's dilemma illustrates the fact that some of the criticism of legal aid and some of the verbal emphasis which the critics placed on the "right" of a poor man to an attorney's services has been misleading, but this illustration also underscores some very basic theoretical differences. Some of the mechanical aspects of case selection are similar, but the philosophical orientation and the goals differ. It is not surprising, therefore, that the first proposals for federally funded Cahn-style programs were greeted with a mixed reaction by the legal profession, which for years had been the leading advocate of legal aid. The Bar's response was deemed crucial by those active at the national level and in November of 1964 the Department of Health, Education and Welfare sponsored a Conference on the Extension of Legal Services to the Poor which served as a sounding board to test the reaction of the legal profession.

HEW Conference

One knowledgeable observer reports that at this Conference the difference between the two approaches became even more apparent. One approach would "place principal emphasis upon existing legal aid organizations which had close relationships with the organized bar," and "policies would be negotiated between OEO and the bar with the major objective being providing more and better representation for individuals" (Pye, 1966: 22). Those espousing the other approach advocated "federal funding of new organizations . . . which sought to affect social change for the poor through a more sophisticated use of the legal process than the representation of masses of individuals." The latter kind of program would be "prepared to decline assistance to eligible applicants if providing representation to such persons would overburden their staffs" and prevent them from "achieving their major objective of social, economic and legal reform through the litigation of test cases" (Pye, 1966: 22).

Although a clear divergence of viewpoints was visible at the November conference, at that time no official position had been taken by the American Bar Association in regard to a federally financed legal services program. This was the era of the American Medical Association's fight against Medicare, and it is to the ABA's credit that, when it did act, its position contrasted sharply with the medical organization's last stand. In February of 1965 the House of Delegates of the ABA drowned out grumblings about socialization of the Bar and passed a resolution that the ABA "shall cooperate with the Office of

Economic Opportunity . . . in the development and implementation of programs for expanding availability of legal services to indigents and persons of low incomes" (American Bar Association, 1965).[11] However, at the same time the ABA threw its support behind the traditional legal aid forces, it urged the authorities to "utilize to the maximum extent deemed feasible the experience and facilities of the organized bar such as legal aid. It probably would not be fair to say that in the early days OEO capitulated on the question of which organizations to fund, but it is known that about half of the early grants went to existing legal aid societies and most of the first legal services budget was allotted to local bar associations or Bar-sponsored groups of lawyers" (Bamberger, 1966: 847, 849). These appropriations made some sense, as the legal profession seemed the logical place for legal aid funds, but there are indications that OEO officials now regret their decision. In legal services circles an oft-heard explanation for the heavy emphasis which most programs place on the service function is the allegation that the local bars have thwarted attempts to implement the Cahns' suggestions.

THE OEO AND LAW REFORM

It is clear that in some areas of the country some local bars, through their control of the board of directors,[12] have actively interfered with efforts to organize the ghetto and to aggressively prosecute appeals.[13] Obviously OEO does not, and can not, offer this as a full explanation for the local programs' failings. A review of OEO policy proclamations and a series of interviews with poverty lawyers[14] suggests that the absence of community action activities and the paucity of appeals might be explained better by other influences, including the attorneys themselves. As one aggressive but frustrated poverty lawyer puts it: "I don't know what to do. Most of our attorneys, particularly the older ones, just don't get the picture. They think the war on poverty pays them to practice law just like they used to."

The confusion at the local level within the programs reflects the fact that in the beginning there was great disorder at the national level about the program's purpose. In recent months OEO has come out in favor of a law reform policy, and the Agency has exerted great pressure, primarily by threatening to cut back funds, on the local programs to force them to adopt a more militant stance. Given limited funds, it makes considerable sense for some, but not necessarily all, of the programs to concentrate on test cases designed to benefit the poor as a whole instead of on servicing individuals in the mass production style usually associated with legal aid. But it should be recognized that in many areas of the public, the bar, and even within the local programs themselves great confusion about OEO's position on law reform

work continues. This uncertainty is understandable, because OEO in large part originally sold the programs on a different basis.

Nowhere does OEO's shift in emphasis emerge more clearly than in the pages of the Agency's own publications pertaining to legal services. The Guidelines for Legal Services Programs, which were published in 1966, do not even mention this goal among the program's overall objectives. It is true that near the end of the Guidelines one discovers the statement that "advocacy of appropriate reforms in statutes, regulations, and administrative practices is a part of the traditional role of the lawyer and should be among the services afforded by the programs" (Office of Economic Opportunity, 1966: 23). But when an earlier draft of the Guidelines was reviewed by Professor Kenneth Pye he was moved to remark that

> it would be unfair to conclude that OEO consciously has determined to ignore law reform and lawyer participation in group organization solely on the basis of the failure to mention these functions in the later internal policy memoranda.
>
> However, there certainly has been no emphasis placed upon achieving institutional change through group organization and representation and efforts aimed at law reform. It seems to have been assumed that these objectives can be achieved by a program in which the principal emphasis is placed upon providing lawyers to those in need. The result may be an unintended de-emphasis upon action aimed at the elimination of the causes and effects of poverty. [Pye, 1966: 230]

The statement referred to above was inserted after Professor Pye made these remarks, but his reaction to and his interpretation of the Guidelines of this era remains appropriate and understandable. Even after the controversy and conversation about the Cahns' article, the Guidelines almost completely ignored this militant approach, and the authors listed instead the following rather bland objectives for legal services programs:

> *First:* To make funds available to implement efforts initiated and designed by local communities to provide the advice and advocacy of lawyers for people in poverty.
>
> *Second:* To accumulate empirical knowledge to find the most effective method to bring the aid of the law and the assistance of lawyers to the economically disadvantaged people of this nation. OEO will encourage and support experiment and innovation in legal services proposals to find the best method.
>
> *Third:* To sponsor education and research in the areas of procedural and substantive law which affect the causes and problems of poverty.
>
> *Fourth:* To acquaint the whole practicing bar with its essential role in combating poverty and provide the resources to meet the response of lawyers to be involved in the War on Poverty.
>
> *Fifth:* To finance programs to teach the poor and those who work with the poor to recognize problems which can be resolved best by the law and lawyers. The poor do not always know when their problems are legal problems and they may be unable,

> reluctant, or unwilling to seek the aid of a lawyer. [Office of Economic Opportunity, 1966: 2-3]

These objectives are all laudable and, taken on individual merit, it is impossible to fault them. But the Guidelines were prepared at a fairly early stage in the development of legal services and, when they are compared with the criteria by which the individual programs are now evaluated by OEO, a substantial shift in policy is evident. According to the recently published Evaluation Manual, each of the legal services programs should seek the following goals:

> (1) To provide quality legal services to the greatest possible number consistent with the size of the staff and the other goals of this program.
>
> (2) To educate target area residents about their legal rights and responsibilities in substantive areas of concern to them.
>
> (3) To ascertain what rules of law affecting the poor should be changed to benefit the poor and to achieve such changes either through the test case and appeal, statutory reform, or changes in the administrative process.
>
> (4) To serve as advocate for the poor in the social decision-making process. . . .
>
> (5) To assist poor people in the formulation of self help groups such as cooperative purchasing organizations, merchandising ventures, and other business ventures.
>
> (6) To involve the poor people in the decision-making process of the legal services program, and to the extent feasible, to include target area residents on the staff of the program. [Office of Economic Opportunity, 1967a: 1-2]

Again we find laudable goals, but in the Evaluation Manual we also find a new militancy. An emphasis on economic development of the ghetto community and reform of the system by aggressively litigating test cases can be found in the criteria for evaluation which was not present in the Guidelines. This new and more aggressive posture is very significant in terms of both the Agency's relationship with the local attorneys and the programs' relationship with the local bars. But in order to fully comprehend the depth of problems created by this shift, it is necessary to underline the fact that in the beginning legal services was presented to the local attorneys and the local bar associations in a different light.

Legal Services Program

In the spring of 1966, OEO was concerned about what the first Director of the Legal Services Program called the "relatively languid pace" at which applications were being received from local bar associations and established legal aid societies (Bamberger, 1967: 225). The Director used the forum of the *California State Bar Journal* to encourage applications and to allay the fears that, once funded, these programs would turn out to be federally

controlled. In his article, the Director emphasized the point that these programs would be "locally planned, locally generated, locally staffed and locally administered" (Bamberger, 1967: 225). He further recommended both the Guidelines and a publication called *The ABC's of Legal Services Under OEO* to those readers who sought further facts about legal services. The latter publication contains material consistent with the Guidelines and the Director's article, as it answers the question, "What is the purpose of a legal services program?" in the following manner: "The purpose of a legal service program is to insure legal services to the poor, equivalent to that received by persons who can afford an attorney's fee" (State Bar of California, 1966: 2).

It is arguable that one might interpret this stated purpose to include economic development of the ghetto and test cases designed to reform the legal system, but a more reasonable interpretation would seem to bring to mind the more traditional legal aid function of service to the individual client. In any case it is now evident that in the beginning it was not made clear to the rank and file members of the Bar what the ultimate purpose of these programs was to be. And it is also clear that these men had company in high places in the profession. In the spring of 1966, the President-elect of the American Bar Association told an audience of lawyers that after "careful study" of the program he had determined that legal services "would merely involve financial assistance to local communities for more and better legal aid" (Marden, 1966: 845). In view of OEO's promise of local control and in light of the initial confusion about policy matters, the present tussle for control of the program is understandable. In fact, it was predictable.

From the very beginning, it was clear that the leaders of legal services must establish priorities to guide the poverty lawyers. The differences between the traditional approach and the Cahn proposal were dramatic, but OEO failed to choose between the two. Instead, OEO procrastinated and finally sought a commitment from the applicants that each program, no matter what the size of the grant or the number of lawyers hired, would "undertake all kinds of legal services to all of the poor at all stages, and simultaneously undertake group representation, research, law reform, bar involvement, community education and allied activities" (Pye, 1966: 244). It was unreasonable to expect that the lawyers could attain all these goals at once, and it was predictable that the lawyers would end up concentrating on service to individuals. OEO even encouraged this bias. In an effort to attract clients, OEO stipulated that the "offices should be located to make the lawyers both visible and accessible to the poor," and the Guidelines further urged that the "offices should be open at convenient times for the clients, particularly weekends and evenings" (Office of Economic Opportunity, 1966: 27).

Fulfillment of these conditions left the attorneys little time for anything but the service function, and the conditions themselves made it seem that this

> Whenever an intake limitation step is to be taken, the client community, to the extent feasible, should participate in the decision to take it. . . . Even if a brilliantly developed research project conclusively established the uselessness of services in certain types of welfare or domestic relations cases, the prospective client whose problem was of the proscribed type will neither understand nor likely accept a decision with which neither he nor persons he trusts had anything to do. Thus can be defeated or compromised a prime objective of the legal services program, the inspiration of trust in the law and lawyers in the low income community. [Office of Economic Opportunity, 1967b: 4]

Cutting back on the service function involves the very real danger of alienating the client community, and this in turn diminishes the prospects for the success of the program. It is strange that the diligence and dedication of the attorneys in serving their clients has contributed to the growth of a problem which endangers the prospects of the program, but such seems to be the situation. Legal services' successes and failures are indeed curiously intertwined. The lack of test case and appellate work which now troubles OEO is in large part a consequence of the conscientious labor provided by lawyers understandably concerned about their individual clients. This dedication to the individual client comes naturally to most lawyers. Their law school training emphasized the importance of the attorney-client relation, and they ordinarily have not been taught to think in terms of using the client's problem as an opportunity to change the legal system. Such opportunism is by no means necessarily bad. But it is just not part of the average lawyer's nature, and allowance for this truism should have been an integral part of the preliminary planning.

If OEO wished to make a radical departure from the legal aid pattern of service to the individual, its chances of achieving this change would have been enhanced greatly by indoctrinating its own lawyers at the outset. This was not done, however, and most of the lawyers in the field quite naturally continued to practice law in the traditional manner. Most of the program did, in fact, produce what the President-elect of the American Bar Association expected—more and better legal aid. But this work product did not satisfy the powers in legal services. They have increasingly sought to change the direction of the programs and the work habits of their lawyers in order to secure reform in the system. OEO's drive to instill the law reform goal in the local programs was launched in March of 1967 when the second Director of the Legal Services Program spoke at a Conference on Law and Poverty at the Harvard Law School. In his speech, Earl Johnson said that "the primary goal of the war on poverty's legal services program should be law reform achieved by significant test cases that can revise the structure of the world in which the poor live" (Office of Economic Opportunity, 1967b: 4). Johnson went on to acknowledge that, with limited funds, legal services could not achieve all its announced goals and he declared that in the future the programs should set aside more staff and funds for law reform work.

In this speech, Johnson officially proclaimed OEO's new policy, but the policy proved to be much easier to promulgate than it was to implement. OEO constructed the legal services program so that each of the local programs has its own board of directors, and the men on these boards, not to mention the lawyers in the programs, did not respond with alacrity to OEO's wishes. One year after Johnson's speech, the newly formed Project Advisory Group held its first meeting. This group of program directors and staff attorneys was selected by OEO to provide information and insight from the local level. This is, in a sense, an elite group, so their views may very well not be typical, but their recommendations on the law reform issue are revealing. On the basis of their recommendations, it would appear that Johnson was not very successful in reaching his own attorneys, much less the local boards or the Bar at large. The Advisory Group said that

> a strong national statement from the Director on the primacy of law reform is indicated. It must be clearly and emphatically communicated to lawyers, Legal Services Boards, Community Action Programs, and other concerned parties. Law reform must be used as the chief criterion in evaluation and funding. [Office of Economic Opportunity, 1968: 4]

This statement indicates some of the difficulty OEO has experienced in its attempts to lead the local programs, and it casts considerable doubt on the ability of OEO to effectuate its policies. It should be understood that the Agency is not always able to call the shots for the local lawyers, but this by no means implies that they can take the wishes of Washington lightly. OEO has increasingly been enforcing its demands by cutting the budgets of those programs it does not regard as properly oriented. This action may strike the local bar as a violation of the promise of local control,[15] but it also means that, more than ever before, OEO's conception of the proper role for the lawyer in the war on poverty is important. Thus, even a necessarily condensed discussion of this problem must include another recent development at OEO headquarters which will affect the field lawyer's role.

TODAY'S OEO AND FUTURE PROSPECTS

A new man is now in command of legal services, and this change has brought another new emphasis. The handwriting is on the wall and, instead of law reform, one now usually hears the phrase "economic development." Some indication of the new Director's thinking can be found in a speech he gave where he urged members of the private bar to get out into the community.

> We must leave our offices and go out among the least fortunate of our citizens. . . . We must help them form unions, co-operatives, condominiums, neighborhood associations, and community development corporations for their own betterment. [Griffin, 1968]

This plea for economic development seems to be flowing through channels at a very rapid rate. Questions concerning it recently elicited the following three responses from lawyers in local programs:

> Test cases are not the answer. They take too much time. We must develop the community by organizing it politically and strengthening it economically.
>
> You must understand. Legal services, like anything else, goes through phases or cycles. Like first it was the neighborhood law office. Now the big push is law reform, and coming next is economic development.
>
> Economic development? Yes, I've heard about it. I'm a little cool towards it. Maybe it is because I don't know enough about it. But you can bet as a matter of grantsmanship I'm going to talk about it next time we're up for funding.

From these responses, it seems safe to assume that the channels of communication between the local programs and OEO are improving. It also might be fair to guess that the fact that some programs suffered severe cutbacks in funds on the basis of their annual evaluation by OEO had something to do with this increasing sense of awareness of OEO's wishes. But whatever the status of the bond between the Agency and the local program, one must recognize that this relationship does not necessarily determine the success or the viability of legal services. By rationing its funds and rewarding cooperative programs with bigger budgets, OEO can encourage whatever policy it chooses. The powers of the chancellor of the exchequer are legendary, but in this instance the exercise of those powers raises the problem of what to do about the members of the local bar and the local boards of directors who have relied on the promise President Johnson made at the birth of the war on poverty that "these are not plans proposed in Washington and imposed upon hundreds of different situations. They are based on the fact that local citizens best understand their own problems" (Congressional Quarterly, 1964: 864).

If we were to construct a new legal services program, we might not choose to build it on a promise of local control, but it is not clear that all the reluctance of local boards to follow OEO's lead can be attributed to obstructionism. OEO's track record does not really inspire confidence in its leadership. And the following, rather lengthy but very significant, quote from the minutes of a conference for legal services program directors makes it clear that some of the poverty lawyers themselves are wary of following OEO's sometimes erratic lead:

> A further major problem of concern was that of evaluation inspections. Although various items such as community education, law reform, etc., were written into projects, once law offices opened up in the neighborhoods and the swarm of clients ensued, it was found that little time was left for these other areas. It was felt that if evaluators looked for everything that was listed in the project proposal and compared it to the present operation of a particular project, and didn't find a substantial

> community education program in operation, or a good law reform program in operation that local projects would be penalized or given a bad rating, when it was literally impossible with the influx of clients, court appearances, etc., to effectively initiate all these various fields, especially without additional funds and more staff.
>
> Again, it was emphasized by the directors that every project that has been funded and operating immediately realized that due to the tremendous client flow, and lack of staff, one or the other would have to be ignored. It was felt that the servicing of clients was most important from an attorney standpoint, however, from an OEO standpoint the over all operation in other fields would be important and a local project could be penalized for not living up to all of its proposed obligations when in fact it was impossible to do so. [Conference for Regional Legal Services Directors, 1967: 19]

Obviously OEO faces a formidable task. It now seeks to instill a much-needed, and overdue, law reform policy in the face of an overwhelming need and demand for the service function. Some of the local attorneys are somewhat reluctant to downgrade the servicing of individual clients, and the Bar at large can be expected to react with something less than enthusiasm to the more militant philosophy. The goals of a law reform policy appear to be consistent with the initial idea that the war on poverty should attack the root causes of poverty, but the enforcement of this policy by federal fiat is inconsistent with the promise of local control. In the legal services area, this problem of control has been aggravated by the fact that there are so many different voices issuing commands. The administrative agency, the local bar, the program board, the poverty lawyers, and the poverty community are all striving to be heard.

Sargent Shriver may have been correct. The lawyers may well be the heavy artillery in the war on poverty, but there remain some very real questions about who is and who should be setting the sights and calling the shots.

NOTES

1. The Senate subcommittee which held hearings on the war on poverty in 1967 did not give the poverty program in general rave reviews, but it did praise the legal services program. For a laudatory and not atypical review of legal services' record, see the Senate Reports, No. 563, 90th Cong., First Sess. (1967).

2. Obviously not all bars are engaged in this contest. Nor do all lawyers know or care about events in the legal services field. But this writer recently completed a year-long study of the relationship between the local bars and local legal services programs, and interviews held in the course of this study reveal both a growing awareness of and disenchantment with OEO's policy.

3. Besides wielding political power, local lawyers ostensibly are relied on to contribute enough money or volunteer time to make up the so-called nonfederal share of each program's budget. At present OEO provides 80% of the funds.

4. For the best article on the early growth of legal services, see Pye (1966).

5. See generally Brownell (1951) for a chronicle of the legal aid movement.

6. Recent testimony by the second Director of the Legal Services Program contains further statistics and other pertinent information gleaned from the Foundation's report. (See Subcommittee on Employment, Manpower, and Poverty, 1967.)

7. This figure should be compared with the $38 million appropriated for legal services in fiscal 1967.

8. Representatives of the leading national bar associations customarily have appeared before appropriate congressional committees on behalf of legal services. Their statements along with pertinent statistics on legal aid and legal services are available at the American Bar Association's offices. Specifically, see Exhibit 2 in the 1966 Joint Statement for more information on legal aid funding.

9. See Harvard Law Rev. [Note](1967) for a helpful discussion of this opinion.

10. It is superfluous to cite specific authorities here, as most of the current literature on legal services discusses this proposition, and most of the commentators espouse it.

11. This resolution has been widely distributed and quoted, but specifically see Exhibit 1, note 8, above.

12. The local bar associations usually dominate the boards of directors. This reflects the policy adopted by OEO which requires that members of the local bar constitute a majority of the boards of directors. See the memorandum from Director of the Legal Services Program to all regional directors, March 8, 1966.

13. Interview with Terry Hatter, Regional Legal Services Director in San Francisco, Cal., 15 July 1968. Hatter reports that some boards in his area have overstepped by asserting a right to review the acceptance and handling of individual cases. Such actions are intolerable, and OEO has quite rightfully attempted to prevent this kind of interference.

14. Nearly all of the poverty lawyers interviewed during the course of this study requested that the information gleaned not be attributed to them. Their wishes have been respected, and none of the local lawyers are cited directly herein.

15. This trend is by no means confined to legal services. The Democratic members of one Senate committee noted the initial regard for localism in the war on poverty and, in their section of the committee report, they lamented the shift to national control in the following sardonic manner:

> However, Congress, OEO, and the Administration have all been impatient with the slow pace, the unevenness of local capability and the occasional controversy which are inevitably part of locally initiated programs. . . . In addition, OEO in November of 1966 issued a memorandum defining high and low priorities and ordering regional office staff: "Cull out low-priority projects." And this they did, with little regard as to whether a specific project was necessary for a particular community.

For more on this see Senate Reports No. 563, 90th Cong., First Sess. 47 (1967).

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