Volume 4
Number 2 *Spring 1970*

*pp.*308-325

Spring 1970

Unavailability of Lawyer's Services for Low Income Persons

Barbara A. Curran

COMMENT

UNAVAILABILITY OF LAWYER'S SERVICES FOR LOW INCOME PERSONS†

BARBARA A. CURRAN*

INTRODUCTION

Generally speaking legal services have always been, and still are, readily available to any person who is able to pay the attorney's fee. The problem of the poor in obtaining legal counsel, like many of their problems, lies in the lack of economic resources. Individual lawyers have traditionally acknowledged a responsibility to provide service to those who could not afford to pay a fee and have indeed handled cases for indigent persons. But the private practitioner, who does not have an income from other sources, cannot devote any substantial portion of his professional time to non-fee generating cases unless he wants to join the ranks of the poor himself. The legal profession is not a charitable institution and, optimally, the legal needs of the poor can only partially be met by private practitioners volunteering free service out of a sense of professional responsibility. Any expectation that the poor can be served by a system relying solely on the benefice and sense of duty of the individual lawyer to provide free service himself is unrealistic because it is inconsistent with the economic facts of life. Only a program designed to deal with the complexities and variety of the legal problems of the poor and supported by sufficient and reliable funding can insure a systematic and adequate provision of legal services to the poor.

What has the unavailability of lawyer's services meant for the poor? Our legal system is based on an adversary system for resolving conflict and establishing rights and responsibilities. The lawyer is the specialist in the law and the operation of the legal system. He not only interprets the law and explains its implications, but also represents the client's interests in the legal process either when his client is asserting a claim of right against another or when someone else is asserting a claim against the client. To deprive any person or group of legal services, whether in an individual case or systematically, is for all practical purposes to deprive him of the ability to assert and establish his own claim

† An earlier version of this paper was prepared for the Task Force on Law and Law Enforcement, National Commisssion on the Causes and Prevention of Violence.

*Project Director, Legal Services for the Poor, American Bar Foundation.

for justice—whether the forum is the court, an administrative agency, the police station or the office of the adversary or the adversary's lawyer. The poor, who are most often the least able to articulate their own expectations and to argue their own claims, have least often been afforded legal representation. The evidence of this can be seen in the way the laws and legal procedures have been shaped to the disadvantage of the poor. The catalogue is familiar.

Consumer credit problems typify these disadvantages. The poor pay more for shoddy merchandise in terms of the price of the article and the cost of credit. They are often subjected to high-pressure sales techniques intended to induce them into unfair commitments that take advantage of substantial unequalities in bargaining power, sophistication and knowledge. When dissatisfaction of the purchaser culminates in an unsatisfied complaint to the seller, he finds himself ensnared in a legal thicket. The logical course of action is to discontinue payments until the seller makes an appropriate adjustment. But to his bewilderment, the purchaser finds that his creditor is no longer the seller but a sales finance company which may in fact be owned by the seller. The purchaser discovers that he cannot legally assert his claim concerning the defective merchandise against the sales finance company because the latter is a holder-in-due-course. Moreover, the unconscionable solicitation practices that induced him to undertake the obligation or the harrassments in collection are also no defense to the claim of the creditor. If the purchaser fails to make regularly scheduled installment payments, whether out of a sense of injustice or for any other reason, he becomes subject to summary enforcement of the creditor's remedies of repossession and execution of wage assignment. If the buyer does not respond to the creditor's suit for the total balance on the contract, which became due when the buyer failed to make the regularly scheduled payment, a default judgment will be rendered against him and he becomes subject to garnishment of wages, entailing possible loss of job and liability for the deficiency resulting from the excess of the amount now due under the contract over the amount paid and the value of repossessed goods. In the hands of the unscrupulous and overreaching creditor, these legal remedies together with not so legal devices, can mean economic catastrophe for the purchaser. The creditor does have the right to protect his own interests and he has adequate legal counsel to see that he is protected. On the other hand, the poor person also needs counsel to help him assert his rights in the individual case and, in the long run, to exert a countervailing pressure in the development, interpretation and application of consumer credit laws. Absent this, the unscrupulous creditor, the type that prey on the disadvantaged, is never called to account.

Consumer credit is only one of several instances, affecting the lives and well-being of the poor, where the law may be used as an instrument of oppression. For example, consider the landlord-tenant relationship. Withholding rent until a landlord makes repairs or corrects other defective conditions has, like withholding installment credit payments, not been a practical self-help measure for enforcing remedial action by the landlord. If the rent is not paid, whatever the reason, the landlord may evict the tenant. How can the tenant force the landlord to act? There are procedures that a lawyer can follow, at least in some jurisdictions, that permit the tenant to remain on the premises, but withhold rent from the landlord until repairs are made. Retaliatory evictions by the landlord because a tenant complains to a city building and inspection department or to a city health department can be averted through the efforts of legal counsel. These countermeasures on behalf of the tenant, however, require knowledge, sophistication and imagination on the part of someone familiar with laws and legal procedures—namely a lawyer.

Jacobus tenBrock in his work on the "Dual System of Family Law" has shown how the superimposition of welfare statutes on family law have created a different system of family law for the poor.[1] It is little wonder that desertion has been called the poor man's divorce and that condonation and recrimination statutes affect the poor most frequently.

The poor have more contact with public administrative agencies in matters affecting their families, homes, food and other necessities than any other group. And yet, until recently, the development of the law concerning the powers, duties and responsibilities of administrative agencies has emerged primarily from encounters with persons other than the poor. For many years, agencies dealing with the poor have operated by

1. tenBrock, *California's Dual System of Family Law: Its Origin, Development, and Present Status* (pts. 1-2), 16 STAN. L. REV. 257, 900 (1964); (pt. 3), 17 STAN. L. REV. 614 (1965).

> [W]e have two systems of family law in California: different in origin, different in history, different in substantive provisions, different in administration different in orientation and outlook. One is public, the other private. One deals with expenditure and conservation of public funds and is heavily political and measurably penal. The other deals with the distribution of family funds, focuses on the rights and responsibilities of family members, and is civil, nonpolitical and less penal. One is for underprivileged and deprived families; the other for the more comfortable and fortunate. The first is embodied in the California poor law and the AFDC Law, administered through state and local agencies and subject to continuous legislative attention. The other is embodied in the codes of 1872 which were founded on the Field Draft Codes in New York, incorporating some New York common-law rules and some poor law provisions as they existed in New York, and on some early California community property, divorce, and other statutory provisions—all judicially administered and developed with only occasional legislative change.

16 STAN. L. REV. at 257-58.

and large, without the pressure and control of judicial scrutiny. This is not to say that public aid administrators or public housing administrators are venal. Instead, the assumption that they were engaged essentially in administering a public program intended to aid or confer a benefit on the poor has obscured the fact that the interests and objectives of the program administrators and intended beneficiaries were not always identical. The administrator's responsibility is to implement a program with efficiency, economy and in accordance with his interpretation of the particular statute. It is an anomaly to expect that the administrator can be a party to the process in which he decides to authorize or deny benefits and, at one and the same time, be the judge as to the propriety of that decision when the intended beneficiary disagrees with the administrator's decision. Midnight raids and the rigid application of residency requirements, often carried out at a low management and supervisory level, were intended, whether that was the result or not, to keep down the costs of the public aid program. By the same token, eviction of tenants who were "undesirables," in the eyes of persons responsible for managing public housing, enhanced the economical administration of public housing units. The problem has been that the intended beneficiaries of public programs have not been afforded the opportunity to effectively state their side of the case before an impartial tribunal. Persons who feel they comply with eligibility requirements for public programs, contrary to the view of the administrative agency, not only have the right to assert their claims to an impartial adjudicator but are entitled to procedural decency and fairness in the process. The assertion of these rights in the proper forum, and indeed even the recognition of their existence, often requires the counsel and assistance of an attorney.[2]

The failure of the poor to assert what they believe to be meritorious claims on a timely basis in civil disputes may ultimately result in restricting their life-styles. The application of criminal laws can result directly in the deprivation of personal liberty or even life. From the time a person is initially taken into custody he is engaged in the legal process. The advice and counsel of or representation by someone familiar with the intricacies of the system may often be essential for the protection of an accused. And yet, until recently, counsel was not even guaranteed for the indigent person accused of a crime for which the penalty was death or a substantial period of confinement. It is estimated that 300,000 persons are charged with felonies each year. It has also been estimated that half of

2. For general background, see *Symposium—Law of the Poor,* 54 CALIF. L. REV. 322-1016 (1966).

those persons can not afford a lawyer.[3] Moreover, for "many felony charges an adequate defense requires not only legal assistance but also the services of an investigator, in some instances, the expert opinion of a psychiatrist, chemist, ballistics expert, or handwriting examiner."[4] Of the 300,000 persons charged with felonies annually approximately 140,000 receive prison sentences.[5]

> It is [even more] difficult to estimate the number of persons charged with misdemeanors each year. . . . It appears, however, that 5,000,000 is a reasonable guess. How many are actually imprisoned is more uncertain, but the figure would seem to be about 700,000. The very limited information available does indicate that a considerably larger proportion of felony than of misdemeanor defendants are indigent.[6]

But, even so, it is estimated that 1,250,000 indigents are misdemeanor defendants per year.[7]

The legal system is the process by which claims of injustice or unfairness may be brought to light and remedied. The problem for the poor is that, without adequate legal representation, they cannot prevail with a meritorious claim and, in addition, are not accorded a fair hearing. They are precluded from having the sense of participating in the legal process and come to see themselves as only the objects of its machinations. Reginald Heber Smith, an early and compelling spokesman in behalf of legal aid, stated the serious implications of this in 1924:

> The effects of . . . denial of justice are far reaching. Nothing rankles more in the human heart than the feeling of injustice. It produces a sense of helplessness, then bitterness. It is brooded over. It leads directly to contempt for law, disloyalty to the government, and plants the seeds of anarchy. The conviction grows that law is not justice and challenges the belief that justice is best secured when administered according to law. The poor come to think of American justice as containing only laws that punish and never laws that help. They are against the law because they consider the law against them. A persuasion spreads that there is one law for the rich and another for the poor. Differences in the ability of classes to use the machinery

3. L. SILVERSTEIN, 1 DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS 7 (1965).
4. *Id.* at 9.
5. *Id.*
6. *Id.* at 123.
7. *Id.* at 125.

> of the law, if permitted to remain, lead inevitably to disparity between the rights of classes in the law itself. And when the law recognizes and enforces a distinction between classes, revolution ensues or democracy is at an end.
>
> . . . Freedom and equality of justice for the poor depend first on an impartial substantive law and second on an even-handed administration of the law.[8]

Revius O. Ortique, Jr., past President of the National Bar Association, only recently underlined Mr. Smith's statements:

> [The] males who have been permitted, nay encouraged, to seek legal means to assert their manhood will not resort to childish methods to assert a savage nature. An inbred respect for the law develops only from those who witness that law deserves respect.
>
> . . . Ghetto dwellers have little to cling to.
>
> . . . The one institution with power to raise [the poor person's] sights beyond the invisible wall and the invincible system is the all too new Legal Services field office. For the very first time, he has at his disposal the one tool that he could never afford—a well trained professional whose sole and only interest is to assist him in his sorry plight. More important than the [legal] assistance he is receiving is the fact that this is his. This in itself gives him a new status and, even more, it gives him hope.[9]

Recognition of the Problem

The general public has not been aware of the fact that legal services have not been readily available to the poor. Although many persons may be concerned about the plight of the poor and interested in reform, it is the physical plight and actual situation of the poor that captures attention. The impact of the lack of legal representation upon the poor is more subtle to comprehend. The intricacies of the law often may obscure the specific way in which, in a particular situation, the lack of counsel may disadvantage the poor person. Moreover, it takes some familiarity with the legal processes to see how a denial of legal service has contributed to developing laws and procedures that favor the poor person's adversary. The problem's lack of appeal for the general public is evidenced by the difficulties encountered by legal aid organizations in soliciting funds

8. R. H. Smith, Justice and the Poor 10, 12-13 (1924).
9. Ortique, *Too Little, Too Late,* 14 Cath. Law. 158 (1968).

independent of general, united or community fund drives.[10] Emory Brownell, past Executive Director of the National Legal Aid and Defender Association, has also suggested to the public that "making the law equally available to citizens seems so logically a part of the administration of justice that it is difficult to conceive of it as a responsibility for private philanthropy."[11]

As a practical matter, one would think that lawyers are in a far better position than the general public to comprehend the immediate and long range disadvantages of the unavailability of legal counsel for low income persons, but as a group they have exhibited an indifference and lack of awareness approaching that of the layman. A few lawyers have always been concerned. Early in the Twentieth Century individual lawyers took it upon themselves to bring the problem to the attention of the profession generally. They supported the establishment and expansion of legal service programs and urged bar associations to take a public stand acknowledging the need for legal representation of the poor as well as encouraging the fostering and promotion of programs. As early as 1917, delegates to a conference of state and local bar associations were persuaded through the efforts of these few lawyers to resolve "that bar associations, state and local, should be urged to foster the formation and efficient administration of Legal Aid societies for legal relief work for the worthy poor and the active and sympathetic cooperation of such associations."[12] In 1921, the American Bar Association established a Standing Committee of Legal Aid Work and in 1922 recommended that "every state and local bar association . . . be encouraged to appoint a [similar] Standing Committee. . . ."[13]

Thereafter, although the national, state and local professional organizations from time to time formally expressed concern over the problem of availability of legal services for the poor, concerted efforts to create effective solutions to the problem were undertaken primarily by individual lawyers rather than the professional organizations themselves. Individual efforts were directed at promoting organized legal service programs, such as legal aid, and urging the provision of volunteer services to indigent clients. For the most part, the organized bar could not be described as exhibiting aggressive leadership. This is attributable largely to the bar constituency's indifference to the problem and, in some cases, hostility on the part of some lawyers to affirmative action. Moreover, the basic organizational and political structure of bar associations make any program

10. E. BROWNELL, LEGAL AID IN THE UNITED STATES 234 (1951).
11. *Id.* at 235.
12. *Id.* at 29.
13. *Id.* at 29, 151-52.

requiring active participation and the commitment of a substantial portion of a heterogeneous membership extremely difficult to implement.

In the 1960's the hesitancy of the bar to recognize the problem and take affirmative action was significantly affected by five major but not related developments: 1) *Gideon v. Wainwright*;[14] 2) the Ford Foundation grant to support experimentation and demonstration public defender programs in 1963; 3) the Report of the U.S. Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice;[15] 4) the Criminal Justice Act of 1964;[16] and 5) the establishment of the Legal Service Program by the Office of Economic Opportunity under the Economic Opportunity Act of 1964.[17]

In *Gideon,* the Court held that legal counsel must be provided at the trial for an indigent person accused of a serious crime. In the same year, the Court, in *Douglas v. California,*[18] also stated that legal counsel must be provided for the first appeal allowed as a matter of right under state criminal appeal procedures. These and subsequent decisions[19] have made it clear that legal counsel for poor persons accused of serious crimes is a constitutionally guaranteed right and, consequently, lawyers' services must be provided to these persons.

In 1963 the Ford Foundation made the first of three grants totaling $6,000,000 to the National Legal Aid and Defender Association to support and promote the development and improvement of services for indigent persons charged with crimes. The Report of the U.S. Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice, the Criminal Justice Act of 1964 and the establishment of the Legal Services program by the Office of Economic Opportunity under the provisions of the Economic Opportunity Act of 1964 relating to Community Action Programs[20] focused the spotlight on the problem of providing legal services for the poor. The leaders of the American Bar Association and those associated with the ABA Committee on Legal Aid and Indigent Defendants took this opportunity to vitalize the role of the

14. 372 U.S. 335 (1963).

15. F. ALLEN, POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE (1963).

16. Act of Aug. 20, 1964, Pub. L. No. 88-455, § 2, 78 Stat. 552. The current act is codified at 18 U.S.C. § 3006A (Supp. IV, 1968), *amending* 18 U.S.C. § 3006A (1964).

17. Act of Aug. 20, 1964, Pub. L. No. 88-452, 78 Stat. 508. The current act is codified at 42 U.S.C. §§ 2701-2994d (Supp. III, 1968), *amending* 42 U.S.C. §§ 2701-2981 (1964).

18. 372 U.S. 353 (1963).

19. *In re* Gault, 387 U.S. 1 (1967); Miranda v. Arizona, 384 U.S. 436 (1966); Escobedo v. Illinois, 378 US. 478 (1964).

20. Thereafter, the Act specifically made reference to the Legal Service Program. Economic Opportunity Amendments of 1966, § 104, 42 U.S.C. § 2809(a) (3) (Supp. III, 1968).

profession in making legal services available to the poor. Through these events the visibility and, consequently, recognition of the problem among members of the profession were substantially increased.

The House of Delegates of the ABA passed the following resolution on February 8, 1965:

> That the [American Bar] Association, through its officers and appropriate committees, shall cooperate with the Office of Economic Opportunity and other appropriate groups in development and implementation of expanding availability of legal services to indigents and persons of low income.[21]

The resolution established the ground work for the active participation and support of the profession in fostering and promoting the new programs. Association leaders and representatives of OEO combined their efforts to create an interest and concern over problems of the poor among members of the profession, particularly in state and local bars. Their objective was to encourage supportive action of the new programs and to dispel opposition. Thus, they hoped to increase recognition of the problem and reduce hostility and indifference to new solutions on the part of the profession.

Strategies for Solution

Low income people are deprived of many services and goods that are readily obtainable by other income groups, including food, a decent education and adequate housing. The chronic unavailability of legal services is another manifestation of the same fundamental problem. The real solution lies in addressing the basic problem of increasing this group's share in the national resources. Absent such a national policy, it must be recognized that strategies devised to make legal services available to low income persons are an attempt to deal with symptoms and not directly with the problem. Over the years, a variety of plans have been devised. These various programs will be described below.

Traditionally, the individual lawyer has been expected to provide free legal services to those who are not able to pay a fee. To realize this ideal the individual lawyer must recognize his duty to provide service and assume his share of the aggregate responsibility of the profession. There is no doubt that many lawyers have provided professional service of this type.[22] Whether or not this approach ever was truly

21. *Proceedings of the House of Delegates: Midyear Meeting, February 8-9, 1965,* 51 A.B.A.J. 393, 399 (1965).

22. This was confirmed by an American Bar Foundation study involving surveys of lawyers and low income persons made in 1967-1968. The final report is presently being prepared for publication.

sufficient is questionable, but, in the complex society of the Twentieth Century an unsystematic method, having no controls, compulsion or rewards other than the sense of duty of the individual lawyer, simply does not work as the sole method, or indeed even a primary method, for insuring legal service for the poor.

Within the last twelve to eighteen months law firms have increasingly supported *pro bono* work of their members.[23] This has ranged from establishing or supporting a branch office in a depressed neighborhood to allowing members to allocate a certain number of billable hours to *pro bono* work.[24] These differ from legal service offices supported by public or private funding in which volunteer services are provided by attorneys under the auspices of the state or local bar association in that the volunteer associations, although approved by the professional associations, are not sponsored by them. They also differ from the traditional informal provision of services by practicing attorneys in that the *pro bono* commitment is at least formalized within the firm and may involve external formal commitments such as financial support of neighborhood programs.

Long before *Gideon,* the courts appointed counsel for defendants in criminal cases—usually where the crime charged carried a severe penalty and where the defendant requested counsel. It was revealed that, as late as 1962, counsel, when provided for criminal defendants at all, was usually provided after the formal charge had been filed—by no means an early stage of the process.[25] The system, if it could be called that, of assignment of counsel varied widely from jurisdiction to jurisdiction. Selection might be from a list kept by the judge or from attorneys present in the courtroom. In some cases, the local bar association supplied the court with a list of available attorneys. Competence and experience of attorneys selected also varied widely, depending on the nature of the selection process and the person making the selection. The "most fortunate lawyers received moderate compensation and full reimbursement [for costs] while those at the other extreme received nothing but intangibles such as gratitude and the satisfaction of rendering a needed service."[26] The Criminal Justice Act of 1964 opted for the assignment system and provided for compensation of counsel appointed in federal courts for indigent defendants accused of felonies and serious misdemeanors.[27]

23. On February 22, 1970, the National Legal Aid and Defenders Association sponsored a conference in Atlanta, Georgia concerning the topic of "What Private Firms Are Doing to Provide Legal Services for the Poor."

24. For example, Community Law Offices, East Harlem, New York.

25. SILVERSTEIN, *supra* note 3, at 75.

26. *Id.* at 16.

27. 18 U.S.C. § 3006A (Supp. IV, 1968), *amending* 18 U.S.C. § 3006A (1964).

Many of those dissatisfied with the inadequacies inherent in the assigned counsel approach supported what has become known as defender programs.[28] Legal service is provided to indigent criminal defendants by the attorneys in the defender office. The primary characteristic of the program is that the legal service is rendered by a *salaried* legal staff. Some attorneys are full time staff members, others are part time. Volunteer services are not utilized. The first defender office was opened in Los Angeles in 1914. In 1917 there were four public defender offices in the country[29] but by 1947 there were only twenty-five offices, and of those, eight were in two states.[30] Moreover, as of 1949, in

> . . . only six cities [was] the Defender service available for all criminal offenses, whether crimes usually designated as felonies or the lesser offenses, and preliminary hearings on felony cases in the magistrates courts. Assistance [was] provided solely in felony cases by 19 of the Public Defender offices and services [were] limited to misdemeanors and preliminary hearings on felony cases in four offices.[31]

By 1960 the number of offices had increased to ninety-eight[32] and "the trend was to extend the work of defenders to additional kinds of cases, particularly appeals, misdemeanors, insanity hearings, juvenile offenses, and habeas corpus cases."[33] As of April, 1968, the number of defender offices had increased to 261.[34] The number of cases reported for these offices increased from approximately 400 in 1914[35] to 465,023 in 1967.

With a few exceptions, programs providing legal service in criminal

---

28. In 1924 Reginal Heber Smith made the following comment:
> The system of assignment of counsel looms large in the books, but has amounted to very little in practice. Analytically, it would appear that this power of the courts to assign attorneys to assist poor persons in cases where representation was necessary was a complete answer to the difficulty of the expense of attorneys. Practically, it has been no solution at all.

SMITH, *supra* note 8, at 100.

In 1965, Lee Silverstein collected the stated advantages and disadvantages of the assigned counsel system. SILVERSTEIN, *supra* note 3, at 18-33. *See also* BROWNELL, *supra* note 10, at 134-46.

29. SMITH, *supra* note 8, at 117.

30. BROWNELL, *supra* note 10, at 35. In addition, in 1917 one legal aid office was carrying on substantial work in criminal cases; by 1947 the number of offices had risen to four.

31. *Id.* at 38.

32. Allison, *Trends in Legal Services for the Poor,* 14 CATH. LAW. 112 (1968).

33. SILVERSTEIN, *supra* note 3, at 42.

34. NLADA, STATISTICS OF LEGAL AID AND DEFENDER WORK IN THE UNITED STATES AND CANADA 2 (1967).

35. SMITH, *supra* note 8, at 117-18.

36. NLADA, *supra* note 34, at 3.

cases have not been combined with programs providing service for civil cases.[37] This dichotomy has continued under the Economic Opportunity Act of 1964, as amended in 1967.[38] The development of civil legal service offices followed an independent path. The first offices established to provide legal service in civil cases were established in New York and Chicago prior to the turn of the century. By 1917, forty-one offices had been established although some of these did not survive World War I.[39] By 1949, there were thirty-seven legal aid offices, thirty-two of these offices being staffed by paid employees and five by volunteers.[40] In addition to these independent offices, legal service was provided by thirteen legal departments of social agencies (seven with paid staff and six with volunteers); eleven bureaus supported by local governments (all with paid staff); and nine law school clinics (seven with paid staffs and two with volunteers).[41] By any standard, the growth of these services would have to be considered slow. In 1951, Emory Brownell estimated that 615,000 civil cases required free legal service annually.[42] And yet, "in 1947, organized Legal Aid in the United States handled a total of 265,224 civil cases and in 1948 a somewhat smaller number. Even granting an enormous amount of gratuitous service by individual lawyers in all parts of the country, the deficit is shocking."[43]

The type of service provided in legal service offices was limited partly by restrictions on the types of cases the offices handled and partly by the size of the staff. By the end of the 1940's, a number of Legal Aid offices placed no restrictions on cases other than that they be civil in nature and incapable of producing a reasonable fee. Cases of the latter type were personal injury cases, usually accepted by attorneys on a contingent fee basis. Cases not accepted by some Legal Aid offices included divorce and annulment proceedings, bankruptcy, workmen's compensation, wage and money claims and adoptions. "The restrictions indicated, while not numerous, [were] substantial. Where they [occurred], they represent[ed] an actual denial of equal justice and an incomplete Legal Aid service."[44] Similarly, the size of the staff affected the quality of the service. A small staff with a substantial caseload cannot allocate a sufficent amount of time to individual cases, let alone for test cases and law reform efforts. In 1949, there was a total of 194 full and part time

37. *See* SMITH, *supra* note 8, at 156.
38. *See* note 16 *supra* and accompanying text.
39. SMITH, *supra* note 8. *Id.* at 134-47 for general early development.
40. BROWNELL, *supra* note 10, at 88.
41. *Id.* For descriptions of these organizations, see *Id.* at 88-112.
42. *Id.* at 79.
43. *Id.*
44. *Id.* at 76.

attorneys in legal aid offices. In these offices, fifty-eight percent of the cases handled were taken care of in a single consultation, five percent required court work and 8.9 percent were referred to private attorneys. Some offices did not handle any court work.[45]

Major changes had occurred in legal service programs by April, 1968. The most dramatic and significant catalyst facilitating this development was the Legal Services Program of the Economic Opportunity Act of 1964.[46] The number of organizations with paid staffs had increased to 510, and only sixty units operated with volunteer staffs. New civil cases handled in 1967 had increased to 791,304.[47] These figures become even more dramatic when it is recognized that many of these programs have more than one office. The OEO Legal Service Program encouraged the establishment of neighborhood offices on the theory that legal services should not only be available but readily accessible to the intended beneficiaries. In the period from the Fall of 1965 to the Spring of 1968 "250 locally-operated [legal service] programs in forty-eight states . . . received funds to set up 850 Neighborhood Law Offices and hire more than 1800 full-time attoneys."[48] In addition, restrictions on the acceptable types of civil cases were eliminated to the extent possible.

> [In 1967] Legal Service attorneys won seventy percent of the more than 40,000 court trials in which they were involved and over sixty percent of the more than 400 appellate cases in which they provided representation; averted or stayed eighty-six percent of evictions sought against poor clients; and won seventy-nine percent of cases involving local, state and federal administrative agencies.[49]

Another experiment in providing legal services to the poor, written by the OEO, is Judicare. The Wisconsin program operates in rural counties. It is administered by a paid professional staff of attorneys, an administrator and an accountant. A needy client, who has been certified as eligible, is free to approach any practicing lawyer if he has a legal problem. The lawyer's fee is paid by the administering office subject to controls established by that office.[50] The advantage of Judicare is that it

45. *See Id.* at 71-76.
46. Allison, *supra* note 32, at 113.
47. NLADA, *supra* note 34, at 3.
48. Johnson, *The OEO Legal Services Program,* 14 CATH. LAW. 99 (1968).
49. *Id.* at 100.
50. The Judicare program in Wisconsin was the first; programs have since been established in Montana and Connecticut. For a discussion and analysis of these programs, *see* Robb, *Alternate Legal Assistance Plans,* 14 CATH. LAW. 127 (1968); Schlos-

not only utilizes the resource of the practicing bar but regularizes that use. Unfortunately, the experiments with this program have been limited and an in depth evaluation of its advantages and disadvantages has not been made.

The problem with any attempt to describe the existing programs is the variety and scope of their coverage. Because the programs are essentially locally initiated and operated, even those receiving OEO funds, they are shaped by differing local styles and pressures. Consequently, they represent a wide range of quality and effectiveness in terms of administrative organization and operation, character of personnel and service and range of service.

Problems in Implementation

Like the poor they serve, legal service programs have traditionally suffered from a severe case of financial anemia. Programs that were organized on a volunteer basis escaped this particular malady only to suffer, in most cases, an even more serious disability. Essentially, the lack of funds has meant a severe limitation of free service available to the poor in terms of quality and quantity. No matter how dedicated the personnel or moral supporters of the various programs, they could not overcome the underlying problem of insufficient resources. In view of the ever present paucity of funds, the accomplishments of these programs are remarkable—in no small measure the result of the extraordinary efforts of a few able, dedicated lawyers.

Many of the characteristics of legal service programs in the past have been directly shaped by the unavailability of resources. Some of these characteristics are: 1) restrictions on types of cases handled; 2) restrictions on type of service provided, e.g., limited trial court work and few or no appeals; 3) lack of aggressiveness in approach to the legal problems of the poor; 4) inability to attract and retain high quality personnel; 5) inadequate physical facilities; and 6) inaccessability of physical location. Additionally, programs staffed by volunteers suffered from the demands on their time, attention and energy resulting from their own private practices.

The history of inadequate funds and consequent limitation of service are attributable to a lack of knowledge by the public concerning the

---

sberg & Weinberg, *The Role of Judicare in the American Legal System,* 54 A.B.A.J. 1000 (1968).

Mr. Robb is Chairman of the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association; Mr. Schlossberg has served as General Counsel of the Legal Aid Society of Roanoke Valley, Virginia; Mr. Weinberg is Assistant to the Executive Director of the Roanoke Community Action Program—he was the first staff attorney hired by the Legal Aid Society of Roanoke Valley.

existing need for legal service, the failure to recognize the serious implications of the unmet need on the part of the legal profession generally and the indifference of both the public and most lawyers to the entire problem. In addition, some lawyers harbored a basic hostility toward organized programs for legal service for the poor out of fear that possible fee-generating business would be siphoned into these programs. Others feared that if substantial financial support was provided by persons or organizations, whether public or private, the donors would expect to dictate, or at least exert control over, the shape of the program and the characteristics of service and thus infringe upon the traditional lawyer-client relationship. To some lawyers the optimal solution would be for the legal profession to assume the burden of financial support of legal service programs, a practical impossibility. As a result, funds were limited and efforts to enlarge the scope and quality of existing programs and establish new programs were unenthusiastic and left primarily to the relatively small group of lawyers in individual communities and to the bar associations who ardently believed in the importance of the programs.

For legal service programs, other than the volunteer programs, funding was inadequate and unreliable. Unreliable funding meant essentially a hand-to-mouth existence for many programs and for others made the long-range planning of programs and allocation of resources a difficult, if not in some cases an impossible, task. Funds came from a variety of sources including bar associations, general community funds such as the United Fund and Community Chest, public funds from local governments, contributions by individual lawyers and others and the clients themselves. The amount and share of contributions made to legal service programs varied widely from one community to another. Some notion of the source and amount of funding can be gained from the following figures:[51]

Year	*Gross Amount Spent on Civil and Criminal Programs*
1917	$ 153,559
1948	1,519,075
1959	4,592,560

Source of Funds	*Percentage Contributed* 1951	1961
Community Chest	60%	55%
Tax funds (including rent and free quarters)	9.5%	7%
Clients	6%	5%
Bar Association and Lawyers	8.5%	12%
Capital Income	2%	—
Other	17%	21%

The advent of the 1960's brought with it the infusion of new ideas,

51. BROWNELL, *supra* note 10, at 237, 247.

new people and substantial amounts of funds that shifted legal service programs into an entirely different gear. The Supreme Court decisions on criminal cases laid to rest any question as to whether indigent persons accused of serious crimes had the right to counsel. The Criminal Justice Act of 1964 assured the appointment of counsel for indigent persons accused of felonies and serious misdemeanors in federal courts. In the first year of the Act, attorneys were appointed "at the rate of 1,500 per month or 18,000 per year. . . . Appropriations in the amount of $7,040,000 [were] requested for the 1966-1967 fiscal year."[52]

The Legal Services Program of the OEO commenced operations in November of 1965. "In 1965, the combined budgets of all legal aid organizations in the country total[ed] only slightly over five million dollars. During the fiscal year July 1, 1967 to June 30, 1968, the OEO Legal Services [made] forty-one million dollars in grants." Thirty-eight million was allocated for refunding "existing projects providing direct legal assistance to the poor" and three million for "training, research, publications, and experimental pilot projects."[53]

Under the OEO local communities establish and operate their own programs. Financial assistance and guidance are provided by the Legal Services Program. It was made known that there was to be no such thing as a "standard" legal services program. Innovation was encouraged and limited only by the ingenuity of the program developers.

Although there was reluctance, even hostility, on the part of some state and local bar associations to support and participate in the new program, the American Bar Association lent its support and cooperation to the OEO. The contribution of the national organization to allaying fears and concerns about the program on the part of members of the profession and in particular state and local bars has facilitated the task of the OEO. In 1968, Sargent Shriver stated that the "Legal Service Program is one of the most effective programs in the OEO."[54]

The magnitude and effect of the new infusion of financial support for legal service programs for the poor can be gained from the following figures.[55] In 1960 there were 209 Legal Aid offices and ninety-six

52. Kuhn, *The President's Annual Address: The Rule of Law in a Challenging World,* 52 A.B.A.J. 825 (1966).

53. Johnson, *supra* note 48, at 99.

54. Shriver, *Legal Services and the War on Poverty,* 14 CATH. LAW. 92 (1968). *See also* Allison, *supra* note 29, at 119-20; Kuhn, *supra* note 49, at 828; Powell, *The President's Annual Address: The State of the Legal Profession,* 51 A.B.A.J. 821, 822-23 (1965); *Report of the Standing Committee on Legal Aid and Indigent Defendants,* ANNUAL REPORT OF THE A.B.A. 523-26 (1968); Shriver, *supra* at 96, 97.

55. 1959 and 1960 figures: BROWNELL, *supra* note 10, (Supp. 1961) at 12, 46. 1968 figures: NLADA, *supra* note 34, at 2-3.

defender offices; the gross cost of operation was $4,592,560 in 1959—$2,783,000 for 135 reporting Legal Aid offices and $1,810,000 for forty-nine defender offices. In 1968, in addition to Judicare, there were 510 Legal Service offices with paid staffs, 261 defender offices and thirty-five assigned counsel programs. The gross cost of operation for Legal Aid offices reporting totalled $47,005,554.

Additionally, the quality and quantity of service has correspondingly improved.[56] Emphasis on law reform and law application has benefited not only the clients of legal service programs but other affected poor persons.[57] Bright, capable, energetic attorneys are being attracted to the program.[58] Neighborhood offices have been established.[59] Admittedly there have been instances of ineptness and waste, but it would seem that the achievements outweigh these difficulties.

CONCLUSION

Legal services for the poor have been abysmally inadequate for many years, despite the earnest efforts of a small number of dedicated persons. This has doubtless created a backlog of frustration, hopelessness, disillusion and cynicism about the law and the legal process. It would be premature to predict what the long range impact of the new programs will be on the laws affecting the poor or on attitudes of the poor concerning the law. It is also difficult to assess the effectiveness of the new programs in bringing legal services to the poor.[60]

Nevertheless, some assessments may be made. The importance of reform activities, particularly through litigation, should not be underrated. They may be, however, because too much is initially expected from them has developed without the countervailing pressure of the low-income consumer. All the changes that ought to be made through litigation coupled with new legislation will not take place at once, but only through sustained and effective pressure over a period of time. In addition, the effect on attitudes of low-income persons toward the law and lawyers can only begin to change if quality legal service is available on a long term

56. Johnson, *supra* note 48, at 99-111.

57. *Id. See also* CLEARINGHOUSE FOR LEGAL SERVICES (National Institute for Education in Law and Poverty); LAW IN ACTION, A MONTHLY ACCOUNT OF THE LEGAL SERVICES PROGRAM (Office of Economic Opportunity); WELFARE LAW BULLETIN (Project on Social Welfare Law at the New York University School of Law).

58. Johnson, *supra* note 48, at 106-10. *See also* Greenawalt, *Reformers Against the Clock*, 14 CATH. LAW. 161-74 (1968).

59. For background, see J. HANDLER, NEIGHBORHOOD LEGAL SERVICES—NEW DIMENSIONS IN THE LAW (1966).

60. For recent developments in poverty law, *see* note 57 *supra*.

basis. It is unfair to expect legal service programs to meliorate the basic conditions of poverty. At best, they help to make the condition visible and afford one avenue for the articulation of grievances arising out of poverty. And in some cases they can eliminate particular instances of injustice that arise out of discrimination practiced against low-income persons, whether black or white.

These programs raise two basic issues that have not adequately been addressed. First, whether legal services for those who are just above the level of legal service program income limits should be made available and whether a subsidy, whatever form it may take, should be provided for these groups. Second, because of the magnitude of the need for legal services at low income levels, the resources of the profession should be more fully employed. Further consideration should be given to programs, like Judicare, that systematically utilizes the bar as a whole without relying entirely on notions of the largesse of the individual lawyer.

Valparaiso University Law Review

VOLUME 4 SPRING 1970 NUMBER 2

Published by the Valparaiso University School of Law, Valparaiso, Indiana.

4 VAL. U.L. REV. 000