
Legal Aid - A Proposal for an Independent National Legal Aid Society

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LEGISLATION NOTES

LEGAL AID—A PROPOSAL FOR AN INDEPENDENT NATIONAL LEGAL AID SOCIETY

If we are to keep our democracy there must be one commandment:
"Thou shalt not ration justice."¹

The above quotation is indicative of the fact that it is no longer realistic to debate the pros and cons of legal involvement in the War on Poverty. A sincere administration of legal services to the poor is being carried out through the Office of Economic Opportunity.² The result of OEO's efforts is both the distribution of legal aid to the poor and the increased involvement of the legal profession in the War on Poverty.³ It is precisely this involvement, its intensity and effect upon the profession, which is now to be carefully and realistically scrutinized.

The source behind the profession's current involvement in the War on Poverty is the Economic Opportunity Act of 1964.⁴ It is OEO which is directing the legal attack on impoverishment. Legal service to the poor is administered under the direct auspices of the Community Action Program.⁵ It is the sole objective of this program to "mobilize all available resources into one co-ordinated attack on poverty."⁶ Legal service to the poor is one spoke in many on a wheel built to roll over poverty.

This paper is not designed to question either the necessity or the vitality of legal aid to the poor; both are unblemishable. Rather, it is the contention of this paper that the American Bar Association should sponsor and propose legislation creating an independent National Civil Legal Aid Society. Such a project would be endowed partially by the bar and partially by private charitable contributions, with the majority of funds

¹ Judge Learned Hand, from an address given before the 75th Anniversary Dinner of the Legal Aid Society of New York. (February 16, 1951).

² The Office of Economic Opportunity will hereafter be referred to as OEO.

³ According to the statistics published in 1965 there are approximately 300 civil legal aid societies functioning in the United States. See generally, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, STATISTICS OF LEGAL AID AND DEFENDER WORK IN THE UNITED STATES AND CANADA (1965).

⁴ Economic Opportunity Act, 42 U.S.C.A. §§ 2781, 2981 (1964).

⁵ The OEO has three parts: Vista, which is essentially the domestic Peace Corps; the Job Corps, which sets up facilities on public lands and in urban centers to train young men and women; and the Community Action Program. The Community Action Program provides funds for research training and community programs to combat and eliminate the causes of poverty.

⁶ Berry, *The Role of the Federal Government*, 51 A.B.A.J. 746 (1966).

coming from the Federal Government. It is further proposed that the administration of such a National Civil Legal Aid Society be undertaken exclusively by the organized bar, the governing bodies consisting of members of local bars corresponding with the situs of the Legal Aid Center. Implicit in this proposal is the contention that neither OEO administration nor OEO funding are conducive to the high standard of conduct set and maintained by the American Bar.

The dictates of a Community Action Program demand that any legal services program must be co-ordinated and cleared by the community action office.⁷ The effect of this stipulation leaves ultimate control of legal affairs in lay hands. If a now existing legal aid center desires to expand its facilities by opening a series of offices, one to undertake juvenile court work, another to devote its talents exclusively to appellate work, and still another to engage in legal drafting, the necessary approval must come from the "broad community agencies wherever they exist."⁸ Perhaps the agency may approve the juvenile branch and veto the appellate and drafting proposals. The probability of such an occurrence is great. OEO is a social welfare bureau⁹ which has clearly stated its chief concern to be the poor.¹⁰ The reality of that factor, from a legalist's point of view, is that every ultimate decision concerning legal services to the poor will be decided not from a lawyer's vantage but from the social worker's. From a social welfare point of view juvenile representation may well transcend the need for appellate and drafting centers.

It is the chief aim of Community Action to raise the poor to a state where they may "deal effectively with their own problems so that they need no further assistance."¹¹ The poor are to be molded into a self sus-

⁷ *Supra* note 4, at § 2785. See also U.S. OFFICE OF ECONOMIC OPPORTUNITY, GUIDELINES FOR LEGAL SERVICES PROGRAMS (1966).

⁸ *Supra* note 6, at 747.

⁹ The Community Action Program is a social welfare program the chief aim of which is to "increase . . . the capacity of individuals . . . and communities afflicted by poverty to deal effectively with their own problems so that they need on further assistance." U.S. OFFICE OF ECONOMIC OPPORTUNITY, COMMUNITY ACTION PROGRAM GUIDE INSTRUCTIONS FOR APPLICANTS (1965). The dictates established by OEO, to be carried out by Community Action, are mandates designed for and around the social worker whose "task is to help individuals and families mobilize the resources within themselves and society to cope with many problems in everyday life." REPORT OF THE COMMITTEE ON LAWYER-FAMILY AGENCY CO-OPERATION, THE LAWYER AND THE SOCIAL WORKER 7 (1959).

¹⁰ *Supra* note 4, at § 2781. The purpose of federal assistance to community action programs is to help "communities to mobilize their resources to combat poverty." Bamberger, *Legal Services Director Gives OEO Views*, 40 FLA. B.J. 307, 309 (1966). "Bar approval is not a prerequisite to OEO assistance. This is not a program for lawyers, but a program for poor people. Disapproval by the bar will not preclude approval by OEO."

¹¹ GUIDELINES FOR LEGAL SERVICE PROGRAMS, *op. cit. supra* note 7, at 10.

taining segment of American society. The lawyer, from an OEO standpoint, has been engaged as "a means to an end."¹² The lawyer is to be the vehicle of justice to an economically defended segment of the American populace which is so deluged by statutory and administrative regulations that judicial travesty is the norm rather than the exception.¹³ Yet, the entire OEO program fails to take cognizance of the lawyer in his traditional role as advocate; a role which society has characterized as permanent in nature. OEO is a transient organization. The War on Poverty is slated to be won and the weapons eventually discarded. However, it is more probable rather than less probable that when the din of battle recedes poverty will still exist. Legal aid to the poor will still be a necessity, but government funding will have ceased.

The legislation governing the funding of Community Action Programs stipulates that programs must be "developed, conducted and administered with the maximum feasible participation of residents of the areas and members of groups served."¹⁴ The statute demands an administrative partnership of indigents, professionals and laymen to govern the functions of all Community Action Programs. The reality of this dictate for the lawyer is that approximately one third of the governing board of the legal service program must be residents of the area and/or members of groups served.¹⁵ This condition precedent revolves around the finding that the

[m]ost common characteristic of poor people [is to be] apathetic and suspicious toward law and lawyers. [T]he law [having] been frequently used against them to evict, garnish. . . . The *best* method for overcoming these attitudes is to give the poor direct participation in the legal program.¹⁶

Once again the rationale behind the statute expresses a sociological point of view.¹⁷ What better means of identification with the lawyer than active participation in his law firm? However, from the advocate's position, personal participation in the administration of his law firm by clientele is the worst and most intolerable of all possible circumstances. "The practice of

¹² *Id.* at 1.

¹³ FERMAN, *POVERTY IN AMERICA* 189 (1965). "From the attitude of the corner policeman to the institutional maze of legal technicalities . . . the poor face a network of legal problems [which is heightened] by their lack of knowledge of their legal prerogatives . . . and lack of legal aid. [This] increases their vulnerability to fines, garnishments, jailings and other sanctions of the law which further reduces their income through suspensions, firings. . ." HOGGSTROM, *THE POWERS OF THE POOR* 323 (1964). "A poor person is much more likely to be subject to police interrogation and search . . . than is a member of a middle class family."

¹⁴ *Supra* note 4, at § 2782.

¹⁶ *Ibid.*

¹⁵ *Supra* note 6, at 748.

¹⁷ *Op. cit. supra* note 9.

law is a profession¹⁸ [it therefore] should be limited to professionals educated and examined as such.”¹⁹

The educated layman must inevitably have difficulties in grasping the legal aspects of a problem, much less the poor whose most “common characteristic [is] apathy and suspicion toward law and lawyers.”²⁰ The end result of indigent participation in the administering of a neighborhood law office can only lead to confusion which might easily turn apathy to antipathy and suspicion to confirmed mistrust. From the professional point of view the entire situation of lay governing of legal services is distasteful. The prospect of having clientele on administrative boards can only cause the decay of the traditional lawyer-client relationship and breed resentment on the part of the lawyer, which in turn may be focused outward at the poor.

The ineffectiveness of OEO to govern a legal service program is best capsulized by the observation that a law firm cannot function within a social welfare context. “Lawyers are trained to deal with legal problems, social workers with social problems.”²¹ The professional services offered respectively by lawyer and social worker are, in spite of the overlapping of interests, of a different nature, highly specialized and highly individualized. The lawyer is an officer of the court; his guidelines to duty are governed by his oath of admission to the bar and the canons of legal ethics. It is a compromise for him to operate in any other milieu and under any other dictates save those he is bound to by his profession.

It is readily acknowledged that in the course of his counseling the lawyer may have opportunities to offer his client social advice, either personally or through referral to a social case worker.²² However, “when a person seeks the advice of a lawyer, he usually does so for the purpose of protecting his legal rights against invasion, or for improving his position vis-a-vis others. The lawyer is the client’s advocate as well as his advisor.”²³ The principal duty of the lawyer is to deal with the law as it is, not as it might or should be.

¹⁸ As quoted by Resh in an address to the Michigan State Bar, Jackson, Michigan July 17-18 (1964). Dean Pound defined a profession as an organized calling in which men pursue a learned art and are united in pursuit of it as a public service and which is no less a public service because they make a livelihood thereby.

¹⁹ Resh, *Bar’s Duty to Prevent Unauthorized Practice*, 30 UP NEWS 177 (1964).

²⁰ *Supra* note 6, at 748.

²¹ THE LAWYER AND THE SOCIAL WORKER, *op. cit. supra* note 9, at 1.

²² *Id.* at 9. In many instances the legal problem with which the lawyer is called upon to deal, such as a divorce action or debt adjustment, is entangled with his client’s social problems. For a full discussion see *id.*, at 5-12.

²³ *Id.* at 13.

Thus, when confronted with a social problem interprofessional co-operation is both commendable and acceptable²⁴ provided "the client's situation is improved without an impairment of his legal rights."²⁵ However, according to the thesis of OEO, interprofessional co-operation is mandatory, both services stemming from the same source. Consequently, this forced intertwined relationship of lawyer and social worker, legal aid society and community action program, may be in many instances be unacceptable from the standpoint of the legal profession.

The independent stature of the profession is further threatened by the unstable funding provisions of the Economic Opportunity Act. A first blush impression of the statute's funding provisions indicates that "90 per-centum of the costs"²⁶ will be provided by the OEO. Yet, when examined in detail, the act stipulates that after the fiscal year 1965-66 (depending upon when the grant is initially given) federal funds are to be cut to 50 per-centum of the costs.²⁷ If examined still further, it is found that the entire allocation of federal monies is subject to Congressional revocation as of the end of the fiscal year 1967.²⁸

Consequently, the unanswered question is what happens to an expanded legal aid center when: first, federal funds are cut 40 per-centum, and secondly when the two year authorization of appropriations expires?²⁹ In 1965 the Legal Aid Bureau of Chicago expended \$476,037 in handling 26,362 cases.³⁰ It is to be noted that the bureau lacked the necessary funds to undertake appellate, juvenile, or drafting work.³¹ In 1965 the Bureau negotiated an agreement with the Chicago Committee on Urban Opportunity for the establishment of offices in the Lawndale, South Parkway, and Woodlawn Urban Progress Centers. The offices were opened and put into operation in January of 1966. For the fiscal year 1967, the Bureau has

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Supra* note 4, at § 2788.

²⁷ *Supra* note 4, at § 2805. "For the fiscal year ending June 30, 1965, and the fiscal year ending June 30, 1966, the Federal share . . . shall be 50 per-centum."

²⁸ *Supra* note 4, at § 2831. "For the purpose of carrying out this subchapter, there is hereby authorized to be appropriated the sum of \$340,000,000 for the fiscal year ending June 30, 1965 . . . and for the fiscal year ending June 30, 1967, such sums may be appropriated as the Congress may here after authorize by law."

²⁹ *Supra* note 4, at § 2831: The Director shall carry out the programs provided for in this subchapter during the fiscal year ending June 30, 1965 and for the two succeeding fiscal years.

³⁰ ANNUAL REPORT 1965 LEGAL AID BUREAU UNITED CHARITIES OF CHICAGO, THE FACTS, FIGURES AND FACES FOR 1965.

³¹ From an interview with Mr. Young, Executive Director, Legal Aid United Charities, Chicago, Illinois, August 26, 1966. See also, Board of Governors, *The Unfilled Need for Legal Services* 391 STATE BAR OF CALIFORNIA 652. "In 1964, 267 legal aid societies handled 619,569 cases for the poor and authorities say that the total was far below the total needing aid."

applied for an OEO grant not only to expand its existing operations but to extend its services to include appellate, drafting and juvenile work.³² If OEO should accept the entire proposal of legal aid and authorize the grant to cover not only expansion of existing facilities but the creation of new offices, the annual expenditures of legal aid would literally jump six fold from the 1965 figure of \$476,037. The result would be the full time employment of some 35 to 45 attorneys, additional case loads opened and appellate work activated. However, even if the expanded legal aid service should survive an initial reduction of federal funds, expiration of authorized funds at the close of fiscal year 1967 is possible.³³ In all probability the funds will be reappropriated, but will they equal the necessary amount to satiate the demands of an expanded legal aid? It is possible that a reluctant Congress may cut down on funds allotted to Community Action Programs. If such a possibility were to materialize the legal profession would be forced to cope with the reality that at the discretion of a program which has as its chief concern the defeat of poverty, vital funds can be withdrawn or cut back from projects already in existence.³⁴ Such a discretion might be manifest by the discontinuance of appellate and drafting services. Not only would attorneys lose positions, but cases in progress would inevitably have to be abandoned and pending appeals dropped. The possibility of such an occurrence is not only illustrative of the inability of OEO to provide adequate legal services to the poor, but is degrading of a code of professional ethics which commits the lawyer to extending his utmost effort in favour of a client once engaged.

In evaluating the OEO guidance of legal affairs one must also consider the individual attorney and the fact that for him the law is a means of livelihood. Mr. T. M. Berry, the Director of the Community Action program of the office of Economic Opportunity, has stated that first class legal service requires aggressive and dedicated representation. The program depends on the caliber of the men and women who run the service and "salaries must be high enough to attract the many excellent attorneys interested in the new neighborhood service programs."³⁵ Mr. Berry speaks of attracting attorneys; yet, there is no mention of retaining their services past a minimum time lapse. The current salary offered by legal aid in Chicago is \$7,300 per annum.³⁶ To the young practitioner recently grad-

³² Interview with Mr. Young, *id.*

³³ *Supra* note 4, at § 2831.

³⁴ *Supra* note 4, at § 2806. "Whenever the Director . . . finds that . . . in the administration of the plan there is a failure to comply substantially with any such provision the Director shall notify such state agency that no further payments will be made to the state under this part (or in his discretion, that further payments . . . will be limited to programs under . . . portions of the plan not affected by such failure) until he is satisfied that there will no longer be any failure to comply."

³⁵ *Supra* note 6, at 747.

³⁶ *Supra* note 31.

uated from law school the salary is attractive. However, to an established lawyer with the responsibility of family support it is an impossible figure. Thus the pattern of a few years experience with legal aid and then on to a more lucrative practice is established.³⁷ The heavy turn-over of attorneys is not a war upon the dedicated convictions of the profession; rather, it is illustrative of the reality of the rising cost of living in modern America. There exists no provision in the 1964 Economic Opportunity Act to increase attorneys' salaries either on the basis of merit or seniority. Instead, the entire source of funds is hypothetically revocable at the end of the 1967 fiscal year.³⁸ OEO has, without any pretensions, labeled its sole concern to be the poor³⁹ not legal aid per se. There is no concern registered for the needs of a profession which once invested in this War on Poverty must continue the battle when the hot war fades into the cold and poverty is either hidden away behind a facade or emerges anew with a subsequent generation. It seems self evident that upon examination of the issues at stake the legal profession must heed the warning of the President of the National Legal Aid Association and prepare "to continue programs beyond the time when Federal grants from the office of Economic Opportunity are expended."⁴⁰ The only feasible means of preparation is by federal legislation.

As previously stated, it is the proposal of this paper that the American Bar Association should sponsor and propose legislation creating a National Civil Legal Aid Society controlled by the ABA and administered by local bar associations at the situs of the Legal Aid Center. It is presently a fact that the "legal services program of the War on Poverty has been developed with the strong support and guidance of the organized Bar of this nation."⁴¹ The essence of such a pledge, though a boon to the War on Poverty, is a mill stone dropped around the juristic neck of the legal profession. By pledging full support, OEO's control becomes more firmly entrenched and the lawyer is relegated to the status of just another weapon

³⁷ *Ibid.*

³⁸ *Supra* note 4, at § 2831. Though the illustration of total revocation is more dramatic, OEO has also stipulated that: "grant funds shall be expended only for the purposes of activities of the approved community action program and in accordance with the approved budget [and] that any change not provided for in the approved budget must be approved by OEO in advance." COMMUNITY ACTION PROGRAM GUIDE, *op. cit. supra* note 9, at 55.

³⁹ COMMUNITY ACTION PROGRAM GUIDE, *op. cit. supra* note 9, at 9.

⁴⁰ From a report by Theodore Voorhes, President of the National Legal Aid and Defender Association, as reported to the annual meeting of the group on Nov. 17, 1965.

⁴¹ Bamberger, *supra* note 10, at 309 (1966). See also, GUIDELINES FOR LEGAL SERVICE PROGRAMS, *op. cit. supra* note 7, at ii. "The American Bar Association, . . . has pledged the wholehearted support of the organized bar to the Legal Services Program of the Office of Economic Opportunity."

to be necessarily employed against American poverty. Inasmuch as the ABA has unconditionally declared its support of legal aid,⁴² there exists no feasible rationale prohibiting the American Bar from sponsoring legislation for an independent Civil Legal Aid.

PROPOSAL FOR AN INDEPENDENT NATIONAL LEGAL AID

The existence of the Economic Opportunity Act and the general social climate of the nation are primary indications that the War on Poverty is continuing in force. The value and need of legal services to the poor is conclusively established.⁴³ The enactment of the Criminal Justice Act of 1964 indicates the legislature's receptive mood toward nationally endowed legal service projects.⁴⁴ Civil Legal Service programs are being born daily.⁴⁵ Yet, the ultimate push for an independent legal aid must come from the organized Bar; no other group has the power or the vested interest necessary to see such a project through to fulfillment.

The basic premise of such a bill would be to provide not only more competent legal services to the poor but services of a more permanent nature. The scope of the bill would be broken down into eight general provisions. First, a National Civil Legal Aid organization should be an independent not-for-profit organization for the purpose of furnishing legal assistance.⁴⁶

⁴² *Ibid.*

⁴³ Bamberger, *supra* note 10, at 307. "No other economically defined segment of our population is so pervasively affected by statutes and administrative regulations as are the poor. Housing codes and regulations have little effect upon [middle class homes]. The poor who live in substandard housing have a vital interest in the enforcement of such statutes. Public assistance laws, public housing regulations, fair employment, and open occupancy statutes. Consumer credit legislation—the statutes which govern landlord and tenant relations—these laws affect the poor more than the non-poor. But unless the poor have lawyers, they will not have justice under these laws." See also, CAPLOVITZ, *THE POOR PAY MORE* (1963); Sparer, *The Role of the Welfare Client's Lawyer*, 12 U.C.L.A. L. REV. 381 (1965); Cheatham, *Availability of Legal Services*, 12 U.C.L.A. L. REV. 438 (1965); Kaufman, *In Defense of the Advocate*, 12 U.C.L.A. L. REV. 351 (1965); Carlen, *Legal Representation and Class Justice*, 12 U.C.L.A. L. REV. 381 (1965); McCalpin, *A Revolution In The Law Practice?* 15 CLEV-MAR L. REV. 203 (1966); Gill, *A Neighborhood Law Office*, 15 CLEV-MAR L. REV. 213 (1966); Chan, *The War on Poverty*, 73 YALE L.J. 1317 (1964); Grosser, *The Need for a Neighborhood Legal Service*, 15 BUFFALO L. REV. 146 (1965).

⁴⁴ Criminal Justice Act of 1964, 18 U.S.C. § 3006A (1964). The Criminal Justice Act of 1964 indicates a Congressional recognition and assumption of the public responsibility of providing counsel for indigents. The act is primarily concerned with compensating assigned attorneys for services rendered.

⁴⁵ *Op. cit. supra* note 3.

⁴⁶ Provision 1 is formulated from the standards set for Civil Legal Aid by the National Legal Aid and Defender Association. See NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, *HANDBOOK OF STANDARDS FOR LEGAL AID AND DEFENDER OFFICES*, 7-10 (1965).

Second, the funding of a National Civil Legal Aid organization should come partially from the ABA and partially from independent private sources with the majority of the funds coming from the Federal Government.⁴⁷ The share contributed by the ABA should be used exclusively for wage increases to individual attorneys to be awarded under the direction of the local co-ordinator according to merit. Federal allocation of funds is to be continued for as long as the bill shall remain law. Once the initial allocation has been made the figure arrived at will become a minimum standard to be examined at the close of every second fiscal year to determine if presently existing circumstances demand an increase in funding.

Third, National Civil Legal Aid should be composed of many branch centers under the administrative control of the local bar association at the situs of the legal service center. The ultimate control of National Civil Legal Aid must rest exclusively with the American Bar Association. The governing bodies of Civil Legal Aid, both locally and nationally, should consist of responsible and informed members of the bar. The addition of advisory members to the governing bodies from the fields of sociology and public welfare is advisable. The governing bodies should meet at regular intervals, but at least quarterly. To the extent feasible a representative body of laymen from the area served should be met with at regular intervals which are separate and apart from the administrative meetings of the governing bodies. The purpose of these additional meetings with the poor and their representatives would be to hear their problems and to take heed of their suggestions.

Fourth, assistance in all legal matters should be furnished by the legal aid center to all applicants within the area of service who cannot afford private legal counsel for the necessary services to the end that equal justice may be provided for all persons regardless of circumstances. Each legal aid center should establish, publish, and follow standards and procedures for determining the eligibility of applicants taking into consideration all relevant factors such as income, assets, obligations, size and health of family, recent or imminent unemployment and the nature of the problem to be handled.⁴⁸

Fifth, appeals should be undertaken when a thorough review of the case

⁴⁷ A suggested ration of expenditure is 80 percent, 20 percent—the 80 percent supplied by the Federal Government and the remaining 20 percent consisting of 10 percent ABA funds and 10 percent solicited from private independent sources.

⁴⁸ *Op. cit. supra* note 46. "The Legal Aid Bureau [of United Charities, Chicago, Illinois] handles all civil cases in which an individual may be involved. . . . More than one-third of these cases concern the family. . . . Defendants are represented in divorce and separate maintenance matters. Orders for alimony and child support are sought. . . . Questions of custody are litigated. Plaintiff divorce cases . . . and petitions for adoptions are filed. The most frustrating cases involve wage assignments and garnishments. . . . Adjustments or payment plans are arranged to avoid future bricks on checks and

indicates it is merited, and especially in cases where it may be desirable to establish principles in the interest of the general class of persons served by the legal service center. Sixth, if the Legal Service's case load is 400 or more matters per year, at least one full-time lawyer is to be employed, and an additional lawyer is to be employed on a full time basis for each additional 400 cases handled per year.⁴⁹ Where there is a law school in the community, the Legal Aid Center should maintain close relations with it and encourage student participation.⁵⁰

Seventh, co-operation with all community and social agencies should be an objective to the end that clients may receive the benefit of all community resources in solving their problems.⁵¹

Eighth, programs should be conducted by local legal aid centers to educate and inform potential clients on common legal problems and the desirability of early consultation with a lawyer. An effective program of publicity should be conducted by each local center to keep the community aware of its services.⁵²

ANALYSIS OF OBJECTIONS TO NATIONAL CIVIL LEGAL AID

The feasibility of the proposal suggested by this note becoming law is hampered by a list of unwarranted fears expounded both by the organized Bar as an entity and by the practitioner as an individual.

attendant loss of the job. . . . Estates of minors and incompetents are an important segment of the work of the Legal Aid Bureau.

"Legal Aid has two criteria in establishing eligibility for service, income and size of claim. Income eligibility is determined according to a basic budget with adjustments for the numbers of persons in the family and the rent paid. [A]llowances are made for inescapable obligations, such as, those which if not met could mean garnishments and loss of job. [N]o cases are accepted where the amount to be recovered is sufficiently large to interest a lawyer on a contingent fee basis. This rules out personal injury claims and other claims where the amount is over \$200 or \$300. . . . Eligibility in probate cases is determined by size of claim. A case is accepted where small amounts are paid over many years and are used for living expenses." YOUNG, *THE LEGAL AID BUREAU OF UNITED CHARITIES* (1965).

⁴⁹ *Op. cit. supra* note 46, at 8.

⁵⁰ "[The Cornell Legal Aid Clinic] is open five days a week from two to five in the afternoon. Students do all the work required for the operation of the office, such as receiving clients and maintaining office records." Fredlander, *Organizing a Clinic in a University Town*, 4 *THE LEGAL AID BRIEF CASE* 173, 175 (1963). Student participation such as described above is a reality throughout the Nation. For general information see 4 *THE LEGAL AID BRIEF CASE*, *The Law School Legal Aid Clinic* (1963). See also, Cleary, *Law Students in Criminal Law Practice*, 16 *DE PAUL L. REV.* 1 (1966).

⁵¹ *Op. cit. supra* note 46. "Problems do not present themselves singly to people. Poverty accentuates all other difficulties. Legal Aid Bureau lawyers . . . are aware that they do not have the skills or time to deal with [social problems]. Such cheats are sent to the Legal Aid Local Service Department. YOUNG, *op. cit.* *LEGAL AID BUREAU UNITED CHARITIES*, *supra* note 48.

⁵² *Op. cit. supra* note 46, at 7-10.

The most prominent objection revolves around Canon 27 of the Canons of Professional Ethics⁵³ which prohibits solicitation by attorneys. Those who profess that Legal Aid to the poor violates Canon 27, stand on the premise that "the need for the neighborhood lawyer to publicize his availability . . . to encourage the poor to take advantage of free legal services clearly constitutes advertising in violation of the Canon as [it] now stands."⁵⁴

The most fashionable rebuttal employed against the Canon 27 argument revolves around the premise that because of the Supreme Court holding in *BRT v. Virginia*,⁵⁵ solicitation of legal services by a group is permissible. The proponents of the *BRT* theory⁵⁶ advocates a comparison of legal aid to the poor with legal aid as distributed by the Brotherhood of Railroad Trainmen. However, such an analogy cannot be given credence. The labeling of the *BRT* program as a "legal aid service" is as far as the analogy may be stretched.

From an economic standpoint, *BRT* legal aid was designed to "[c]hannel legal employment to particular lawyers approved by the Brotherhood."⁵⁷ Thus, each client channeled to an approved attorney represented an individual source of income to that particular attorney. However, an attorney providing legal aid to the poor receives a fixed salary which neither increases nor decreases with the number of clientele served.⁵⁸

⁵³ ABA COMM. ON PROFESSIONAL ETHICS, CANONS OF PROFESSIONAL ETHICS CANON 27 (1956-7): "It is unprofessional to solicit professional employment by circulars, advertisements through touters, or by personal communications or interviews not warranted by personal relations. Indirect advertisement for professional employment such as furnishing or inspiring newspaper comments . . . lower[s] the tone of our profession and [is] reprehensible." Also there exists a line of argumentation professing that legal aid violates Canon 35 which demands that, "the professional services of a lawyer should not be controlled . . . by any lay agency . . . which intervenes between client and lawyers." However the exemption granted, by Canon 35, to "charitable societies rendering aid to the indigent," has generally been accepted as sufficient to render the argument ineffectual.

⁵⁴ Caplan, *Neighborhood Lawyer Programs*, 20 U. MIAMI L. REV. 184 (1965). See also Simpson, *Case for Caution*, 12 U.C.L.A. L. REV. 327 (1965); Birkby, *Interest Group Conflict in the Judicial Arena*, 42 TEXAS L. REV. 1018 (1964). *Report by Unauthorized Practice Committee*, 30 UP NEWS 265 (1965).

⁵⁵ *BRT v. Virginia*, 377 U.S. 1 (1964). In order to assist the prosecution of claims by injured railroad workers or by the families of workers killed on the job the *BRT* maintains throughout the country a department of legal counsel which recommends to Brotherhood members and their families the names of lawyers whom the *BRT* believes to be competent. This practice was upheld by the Supreme Court of the United States.

⁵⁶ Bodle, *The Case for BRT*, 12 U.C.L.A. L. REV. 306 (1965).

⁵⁷ *Supra* note 55, at 5.

⁵⁸ Interview with Mr. Young, *supra* note 31. The per annum salary of an attorney practicing for Legal Aid Bureau United Charities of Chicago is \$7,300.

Thus, each client represents solely a legal problem to be dealt with and not, supplementally, an individual source of income.

The distinction between the *BRT* brand of legal aid and legal aid to the poor is more dramatically emphasized by the fact that while *BRT* legal aid was designed to provide legal services for a specifically defined group,⁵⁹ the clientele served by legal aid to the poor is an entire sub-culture. Legal service to the poor is involved not with a defined group, but with 35 million people⁶⁰ whose only link with one another is the fact that their personal incomes are below the minimal subsistence level. Thus, while “[f]irst amendment guarantees of free speech, petition, and assembly give railroad workers the right to maintain a legal aid service,”⁶¹ there is no semblance of a group (such as that found by the court in *BRT v. Virginia*) to be found in 35 million Americans who are unrelated by any bond save the stigma of being poor.

In the final analysis, the essence of using the *BRT* line of argumentation is to rely on an analogy which fully examined fails to evidence parallel similarities. Yet, by no means does the failure of the *BRT* argument to vitiate the accusation of solicitation leveled against legal aid condemn legal aid as violative of the code of professional ethics. There is no violation of Canon 27 by any legal aid activity.

In its inception, Canon 27 forbade “solicitation of business.”⁶² The objective is not only the maintenance of the highest possible level of professionalism but the distinguishing of profession from a mere business.⁶³ The legal profession is designed to render a public service. Indeed, the very essence of the profession is its unique position as a branch of the administration of justice and not a mere money getting trade.⁶⁴ Though the verbiage has changed as of 1964, the precept is identical. Canon 27 prohibits the “solicitation of professional employment [so as not to] lower the tone of our profession.”⁶⁵ The objective today, as in 1908, is to preserve the practice of law as a profession created to render a public service. It is the tone of the profession which is being protected; a tone which rings sour when the principal aim of the practitioner is the acquisition of

⁵⁹ *Supra* note 55, at 2, 8. “[T]he Brotherhood was founded as a fraternal and mutual benefit society to promote the welfare of the trainmen. The Brotherhood’s activities fall clearly within the protection of the First Amendment. And the constitution protects the associational rights of the members of the union.”

⁶⁰ ORSHANSKY, COUNTING THE POOR 42 (1965).

⁶¹ *Supra* note 55, at 8.

⁶² DRINKER, LEGAL ETHICS 215 (1953).

⁶³ *Supra* note 18.

⁶⁴ *Barton v. State Bar of Calif.* 209 Cal. 677, 289 P. 818 (1930).

⁶⁵ *Supra* note 53.

monies. It is when the advocate begins to barter his services in the market place that Canon 27 is violated.

There is no lowering of tone through Legal Aid's program of education which many have misinterpreted as solicitation of business. To the poor "the outside world cannot be trusted."⁶⁶ "The poor man looks upon the law as an enemy."⁶⁷ As far as the poor are concerned, "We figured that legal aid wasn't interested."⁶⁸

The foregoing barrage of quotations indicates the ignorance which infests the socio-economic culture labeled the poor. For one out of seven American families⁶⁹ the word legal has "become a synonym for technicalities and obstruction, [and] not for that which is to be respected."⁷⁰ The very essence of poverty is "characterized by social isolation from the cries and rewards of the larger community."⁷¹ Consequently, it is a necessity that the larger society go to the poor. As a member of the macrocosm the lawyer wishing to render legal aid to the poor must first inform and educate the indigent as to both his rights and his place under the law. There exists no feasible solution save the neighborhood law office⁷² supplemented by a program of education animated through the mass media (radio, television, newspapers) and word of mouth. There can be no doubt that such a program, once activated, can only heighten the "tone" of the legal profession, and thus fall into full accord with Canon 27 of the Code of Professional Ethics.

Another objection to the proposed legislation rallies around the standard that "independence of the Bar from Government dominance must be preserved at all costs."⁷³ The argument consists of the thesis that: "There is the ever present danger that a grant of government money will be followed by government control."⁷⁴

To many, fear of Governmental control is expressed in the argument that the lawyer "who represents the poor paid with Government funds

⁶⁶ HOGGSTROM, *op. cit. supra* note 13, at 317 (1964).

⁶⁷ Attorney General Robert F. Kennedy, Address Law Day, U. of Chi. Law School, May 1, 1964.

⁶⁸ CAPLOVITZ, *op. cit. supra* note 43, at 159 (1963). Extract from report given by slum dwellers.

⁶⁹ From Data reported to the Bureau of Census—March 1964. *Op. cit. supra* note 60, at 44.

⁷⁰ FERMAN, *op. cit. supra* note 13, at 189 (1965).

⁷¹ *Id.* at 314.

⁷² For an analysis of the propensities of a neighborhood law firm see, Grosser, *The Need For A Neighborhood Legal Service and the New York Experience*, 15 *BUFFALO L. REV.* 146 (1965).

⁷³ UPTON, *President New Hampshire Bar*, 40 *FLA. B.J.* 311, 316 (1966).

⁷⁴ BROWNELL, *LEGAL AID IN U.S.* xvi (1951).

and dependent on government good will for continued financing may [find himself] engaged in a struggle to maintain his own survival and the survival of his agency. [He may therefore] accept a compromise here to even a professional gain there."⁷⁵ To others, it is the fear of political patronage, *i.e.*, that legal aid may become infested with staff who have neither the devotion nor the talent to deal with the poor.⁷⁶ There are those who fear that government funding, generally speaking, means government string pulling, government administrating, and lay control of legal affairs.⁷⁷

However meritorious, these contentions are the realization that legal aid to the poor is an existing institution must be reached. Legal aid is indeed here to stay; and thus the correlative reality that "active participation of the bar . . . will [not] provide the surest guarantee that representation of the poor [will be] in keeping with the . . . valued tradition of the lawyers independence and loyalty to his client."⁷⁸ "Active participation" by itself will *not* suffice. Participation must be on an independent basis, free of lay stipulations and controls. Thus, in full accord with the President of the American Bar Association this note acknowledges that "if the program were properly implemented along professional lines [if] it merely involved financial assistance [it would make] for a more and better legal aid."⁷⁹ It must be acknowledged that President Marden's statement was in favor of OEO funding of legal aid to the poor and that the necessity of OEO funds is presently recognized, though said recognition reaches only the point of admitting that there is no existing alternative.

The feasibility of a governmentally endowed legal service is not purely conjectural. The Criminal Justice Act of 1964⁸⁰ is a functioning example that the Federal Government can supply funds without administering dictates.⁸¹ Indeed, one may even use the OEO as a prime example of Government funding without government control. The criticism leveled against OEO legal services by this paper does not center on the fact that OEO is controlled by the Federal government. Rather, it is the fact that under an

⁷⁵ Sparer, *The Role of the Welfare Clients Lawyer*, 12 U.C.L.A. L. Rev. 361 (1965).

⁷⁶ *Id.* at 375, 378, 379. See also, UP Committee of American Bar Opposes Calif., *Report on Grp. Legal Services*, 30 UP NEWS 265 (1965).

⁷⁷ UP Committee of American Bar Opposes Calif., *supra* note 76, at xxiii.

⁷⁸ Sabatini, *Law and Poverty*, 40 FLA. B.J. 311, 319 (1966).

⁷⁹ Marden, *The Role of the Bar in the Development of the Legal Services Program* 71 COM. L.J. 133 (1966).

⁸⁰ *Supra* note 44.

⁸¹ *Supra* note 44, at § 3006A. The Federal Government has vested the control of payment in the hands of the judiciary: "The Court shall in each instance fix the compensation and reimbursement to be paid to the attorney."

OEO administration "the local community must decide what organization . . . can best handle legal services for the poor. The sole standard is what group or groups are most competent to provide legal services for the poor."⁸² Correlatively it is "the local community" which has full control of administering the program. The War on Poverty is not being fought by an arm chair general in a distant federal shelter. Decisions are made locally, while funds are derived nationally.

It must be noted that underlying the federal control argument is the voice of the lower-echelon lawyer, the lawyer whose practice must be developed at the marginal level. The lawyer who must contend with the reality that "the lower the status of the lawyer's clientele the more precarious and insecure his practice."⁸³ To the "lower-echelon" lawyer whose practice centers around family, criminal, real estate, personal injury, and consumer credit cases, the advent of a securely financed, legal aid center, offering free legal services in primarily the same fields of law,⁸⁴ means the relegating of his practice to practically a non-existent level.

In refuting the efforts of the lower-status lawyer to preserve his practice, one could dwell upon the statistic, that while 42 per-centum of lower-echelon lawyers habitually violate the Canons of professional ethics, only 15 per-centum of lawyers dealing with high status clientele are classed as ethical violators.⁸⁵ Yet examination of ethical conduct and moral chastisement are not the purpose of this paper! This paper is designed to advocate the creation of a federally endowed Civil Legal Aid. It is the obvious reality that such a creation would inevitably have to break the status quo, *i.e.*, the lower-echelon lawyer would find himself competing with legal aid to the poor. The weighing of values pits the welfare of the entire profession against one segment of its members' economic self interests.

CONCLUSION

In the final analysis, the merit of proposing a National Civil Legal Aid must be evaluated in light of the possibility of the hypothesis materializing

⁸² GUIDELINES FOR LEGAL SERVICES PROGRAM. *Op. cit. supra* note 7.

⁸³ CARLING, *THE LAWYER'S ETHIC* 66 (1966). "The precariousness of the lower echelon lawyer's position is heightened by both the fact that his practice consists of a shifting base of clientele with whom he has comparatively short and weak attachments, and from whom he gets comparatively little continuing business, and his constant competition with other lawyers who are willing and able to perform similar services at lower prices."

⁸⁴ LEGAL AID BUREAU, UNITED CHARITIES OF CHICAGO, *THE ANNUAL REPORT* (1965) wherein the number and type of cases handled by legal aid is explained: Total Cases 26,362; Family cases 11,264; Debt cases 5,396; Property cases 1,732; Landlord-tenant cases 1,353; Minor and Incompetent's estate cases 373; all other cases (involving relief eligibility, social security, unemployment compensation, tort actions) 6,244.

⁸⁵ *Op. cit. supra* note 83.

into a functioning reality. The need for independent legal control of legal services to the poor is acknowledged by both laymen and lawyer.⁸⁶ The fear evidenced by the organized bar and its members is not insurmountable—provided that a nationally endowed legal aid can survive as an independent entity controlled solely by legal mind and matter.

That the legislative climate is susceptible of federal funds without federal control is evidenced by both the Criminal Justice Act of 1964,⁸⁷ and the Economic Opportunity Act of 1964.⁸⁸ That the social climate is ripe for the advent of civil legal aid is indicated by the tremendous awareness of civil rights for the poor by contemporary society. That the legalist is ready to accept the responsibility of sole administrator of legal justice to the poor is clearly shown by the barrage of civil legal aid offices throughout the country.⁸⁹ The ingredients are present. It is the catalyst which is lacking. National Civil Legal Aid can become a functioning reality only with the active support of the American Bar Association. The ABA is the only entity with the interest and the talent to effectively foster the thesis of National Legal Aid to a state of animated reality.

Robert Sulnick

⁸⁶ "Independence of the Bar from Government dominance must be preserved at all costs." *Supra* note 73, at 316; "Every legal program must be as independent of outside influence as possible." *Supra* note 6, at 747; "Legal Aid offices . . . are much better when entrusted to bar associations rather than to government bureaus." BROWNELL, *LEGAL AID IN THE U.S.* xix (1951); "If the poor are to be effectively represented, there must be assurance of the independence of professional legal judgments." *GUIDELINES FOR LEGAL SERVICE PROGRAMS*, *op. cit.* note 7, at 8.

⁸⁷ *Supra* note 44.

⁸⁸ *Supra* note 4.

⁸⁹ *Op. cit. supra* note 3.