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Panelists

F. William McCalpin

FOREWORD

SARGENT SHRIVER*

"Revolution!" may not seem to be a rallying cry to inspire enthusiasm in the legal profession. Certainly, neither lawyers nor laymen envision the bar as a hotbed of radicalism, and perhaps this popular conception of lawyers has a certain validity, for no doubt many attorneys would be among the first to be guillotined should such an unlikely event as a violent revolution ever occur in this country. Revolutionaries today as in 1789 still might be expected to respond passionately to Robespierre's command: "The first thing we do, we kill all the lawyers!"

But under the common-law legal system which we have inherited from England, American lawyers in a very real sense *are* keenly responsive to the cry for revolution. Indeed, from the Magna Carta to the present time, with rare exceptions, lawyers have been responsible for nearly every revolutionary change our society has experienced. It was the lawyers in England who devised ways to achieve private ownership of land when all property technically belonged to the king; it was the lawyers in America who developed the corporate forms of business enterprise which have allowed American business to flourish so astonishingly; and it was the lawyers who under the New Deal forged new tools to aid people out of the chaos and rubble of the depression. Most recently, it is once again the lawyers who take credit for the fact that the civil rights revolution has taken place almost entirely in the courtroom and not on the streets.

Development, modification, and change are built into our legal system, and the legal profession, which perhaps sees itself more conservatively as the guardian and custodian of tradition, is in fact our most revolutionary body, because its entire raison d'etre is the accomplishment of change. Every time a case turns on the law rather than the facts, one of the attorneys must be arguing for a new interpretation of the law, and when his argument prevails, a slight modification occurs in the entire legal system. It is this role—the role of gatekeeper to the future, admitting changes and modification in the system, but insisting that they be carefully examined, and, when admitted, accompanied by legality and order—that has earned for American lawyers their justifiable prominence in our national life. It is our constitutional commitment to the achievement of revolutionary

* Director, Office of Economic Opportunity.

change by non-revolutionary means which makes the Anglo-American legal system one of the most enduringly just and stable legal systems the world has ever known.

And yet it is a shocking fact that a legal system which prides itself on the motto "Equal Justice for All" still tolerates, in 1966, a restriction of that justice to people who happen to have no money. Because the poor cannot afford legal fees, they have no lawyers, and because they have no lawyers, they are the natural prey of almost everyone with whom they come into contact: merchants, landlords, employers, and even the welfare workers whose purpose should be to help and comfort them. As William McCalpin reveals in his address to this Seminar, the need for legal services for the poor is great and the bar has significantly failed to make its services available to them.

Acting under the authority of the Economic Opportunity Act of 1964, OEO has attempted to meet this problem by the establishment of the Legal Services Program. The functioning of this program is carefully and thoroughly described in this Seminar by its Director, Clinton Bamberger, a distinguished lawyer in his own right. The Virginia Bar Association, like many other bar associations in this country, is responding with interest and enthusiasm to the challenge of the Legal Services Program, and the sponsorship of this Seminar is merely one indication of the concern which it has manifested in the legal problems of poor people, and in OEO's attempts to deal with them. This Seminar and the other activities of the Virginia Bar Association in this field are proof of the fact that the bar has no intention of abandoning its traditional role of leadership in achieving change.

The transcript of the Seminar makes exciting reading. It consists of addresses by three attorneys with expertise in the field of legal services for the poor: F. William McCalpin, Chairman of the Special Committee on the Availability of Legal Services of the American Bar Association, who discusses the present and actual need for a federally supported program of legal services for the poor; Clinton Bamberger, the Director of the Legal Services Program of the Office of Economic Opportunity, who discusses what the government's program is trying to accomplish, how it works, and the role of local attorneys; and Wayne Theophilus, Director of the Legal Aid Society of Pittsburgh, who discusses in detail the actual workings of a Legal Aid Society, the philosophy underlying it, the attorney-client relationship, and the kinds of problems dealt with.

It may be that the excited interest in legal services shown by the participants in this Seminar is not shared by every member of the

Virginia Bar. Indeed, there are certainly lawyers who are adamantly opposed to the program, just as there are lawyers who are adamantly opposed to women's suffrage, civil rights for Negroes, and the other social achievements of the Twentieth Century. But the leading role being played by such great lawyers as Lewis Powell, a Richmond lawyer and immediate past President of the ABA, and Edward W. Kuhn, the present President of the ABA, indicate that the responsible leaders of the bar are just where they have always been: at the doorway to the future, guiding and channelling the changes to be made.

The Junior Bar Section of the Virginia Bar Association has performed an important public service by sponsoring this Seminar. As other lawyers throughout the country begin to take similar responsibility for making "Equal Justice under Law" a reality for all, we may reach a time when a Twentieth Century Robespierre would cry, "The *last* thing we do would be to kill the lawyers." Hopefully, that time is not far away.

REMARKS OF MR. McCALPIN[1]

When I got Mr. Collins Denny's request to appear here some weeks ago I wasn't sure initially whether I was being invited because of the American Bar Association hat that I wear or because of the fact that I am also a Board Member of the Legal Aid Society of the City and County of St. Louis which got the first grant from OEO in the pre-Bamberger days when it was a whole lot easier.

Assuming, however, that Mr. Theophilus will fill that void of what it is like to work one of these things at the operational level, let me don my Special Committee on Availability hat and cast the net just a bit wider and come back into legal aid in the course of my remarks.

Our profession has not, I submit, adequately met our responsibility to make our services fully available to the public who need and want them. The message of current developments beginning with the *Button* case,[2] which amount almost to a revolution in legal services,

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[2] *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963). Held unconstitutional as applied to the NAACP a Virginia statute forbidding solicitation on behalf of "any particular attorneys" which had been interpreted to proscribe as criminal a person's advising another that his legal rights had been infringed and referring him to a particular attorney or group of attorneys. The Supreme Court said that

is that we are being handed a challenge and perhaps a last opportunity to live up to our professional responsibility. The threat of these developments is that unless we do so, someone else will do the job for us.

I make this rather bald accusatory statement in spite of the fact that probably every lawyer in this room has in the past and may even now be offering his professional services in behalf of some poor, unfortunate individual free of charge.

Let us not delude ourselves, however, that this meets the problem. In the first place, it is only a pretty select group of the poor, your cook, or the cleaning woman's daughter or someone of that sort who get into our offices, and when they do they come with a rather narrow category of problem: perhaps a police court appearance or a domestic relations case.

While the problem of an individual indigent may be the responsibility of an individual lawyer, the needs of the poor as a class are and have been the responsibility of the whole profession. We, as a profession, can take some, but really all too little credit for the organized services of legal aid societies in behalf of indigent clients.

It is true that we have sponsored 252 legal aid offices, an additional 136 voluntary legal aid societies and 194 defender offices to render civil and criminal legal aid to indigent persons. It is comforting to know that in the most recent year for which figures were available these agencies handled more than 650,000 new cases[3] in addition to an undetermined number of open and continuing files.

If there has been a general tendency on the part of the bar to be satisfied with this performance, that complacency has not been shared by those closest to the problem. For years Legal Aid Committees of the American Bar Association and of state, county, and local bars have indicated a need larger than they have been able to serve and have besought greater means and facilities for the rendition of these serv-

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there "inheres in the statute the gravest danger of smothering all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority." *Id.* at 434.

See also, *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964). Held that an injunction issued under the same Virginia statute, prohibiting a labor union from advising injured members or their dependents to obtain legal assistance before settling claims, infringed rights guaranteed by the 1st and 14th Amendments.

[3]The period covered was essentially 1964, although certain reporting organizations included figures for fiscal 1964. From an unpublished A.B.A. compilation "Statistics of Legal Aid and Defender Work in the United States and Canada."

ices. I am sorry to say that these pleas have not usually been met with an enthusiastic response from either the public or the bar.

In recent years the desperate dimension of this unmet need has become steadily more visible. The problems of the urban poor have received the attention of a number of experimental projects. Many of these have included elements designed to alleviate the legal problems of the poor or to attack nonlegal problems through the employment of legal process.

Among these experiments were Community Progress, Incorporated, in New Haven, Action for Boston Community Developments, and Mobilization for Youth in New York, all of which pre-dated the Economic Opportunity Act of 1964 and which became in some measure the springboard for the current programs of the Office of Economic Opportunity.

As a result of these experiments the involved members of the legal profession began to be aware not only of the fact that established legal aid societies were inadequately meeting the needs of the poor for legal services in what might be termed conventional legal problems but that there was precious little being done about a whole host of unconventional problems which might be attacked through the employment of the legal process.

These community programs demonstrated quite adequately that the urban poor are essentially immobile. If it were not so tragic it would be quixotic that in this motorized and mechanized age many of the urban poor rarely travel more than 5 or 6 blocks from their place of habitation. Consider this in light of the fact that the vast majority of established legal aid offices exist at the courthouse or at the bar association office in the downtown commercial area, usually well removed from the substandard housing areas where the poor live.

We began to learn through these experimental projects that if our services were to be really available to those who need them, then we had to get out of the courthouse and the bar association office and into the neighborhoods where the poor live. When we have done so the results have been startling. The volume continues to rise at the downtown office and in the neighborhood office the case load soon equals or exceeds that of the old, existing and continuing office. Thus, a real need has been unfulfilled simply because of the geographic distance between the client and the legal aid lawyer.

In addition, many of our legal aid societies, for budgetary reasons, because of pressure from support groups within the community, or perhaps even because of the philosophy of the sponsoring bar associa-

tion, have imposed limits on the types of legal services they will render or, to state it perhaps more accurately, they have refused to render legal services in certain types of legal problems.

On top of this there has been the slow appreciation of new legal problems or of the possibility for the employment of the legal process to solve old problems. Very few legal aid societies have represented displaced slum dwellers against the local land clearance authority. Equally few have represented public housing tenants against the local public housing authority.

It is true that many legal aid societies have represented welfare recipients or applicants where aid has been denied or cut off. A day in a welfare office will, however, convince any lawyer that this potential for the employment of legal services is virtually untapped. And I may say that this also is the view of the Department of Health, Education, and Welfare.

What lawyer or legal aid society has represented the son of an impoverished family who becomes a forced drop-out at the insistence of a local board of education? Yet I can cite you examples where this has happened in clear violation of existing state statute.

The sad truth of the fact is that the poor badly need legal representation as against the very welfare authorities which were created to assist and protect them. And we, as a profession, have been slow to grasp that fact. Thus even in this area of the poor where we have occasionally prided ourselves on discharging our professional responsibility there is a yawning gap between the need for legal services and the fulfillment of that need.

It is an uncomfortable fact that the advent of Community Progress, Incorporated, ABCD, and Mobilization for Youth has opened our eyes to that gap. Yet these needs to which our eyes have but recently been opened are only the visible 20% of the iceberg. What of the other 80% of our population? Here there has never been any grounds for professional complacency.

It is true that beginning 25 or 30 years ago we, as a profession, took note of the necessity for making our services more available to citizens of moderate means, able to pay something, though perhaps not what we would regard as a full legal fee. In 1950 the American Bar Association named its Committee on Lawyer Referral Services and both before and after that State and local bar associations adopted and instituted the same device.

Today there are nearly 400 legal aid agencies in the United States, but barely more than 200 lawyer referral services. Great credit is

due the more than 17,000 lawyers enrolled in lawyer referral panels serving the needs of perhaps 150,000 middle-income citizens annually. The fact, though, is that this figure represents less than 10% of the lawyers in this country who serve only a tiny fraction of 1% of the middle-income citizens.

Scholars and leaders of the bar have noted the profession's failure to discharge its service responsibility to these citizens for more than a quarter century. Perhaps the earliest was Dean, later Judge Clark of the Second Circuit, writing with Miss Emma Corstvet in a 1938 issue of the Yale Law Journal.[4] In the same year the late Professor Karl Llewellyn addressed himself to the same problem in an article entitled, "The Bar's Troubles, and Poultices—and Cures?" [5]

Down through the years the bars of half a dozen States have conducted surveys and studies designed to measure either the need for legal services or the performance of the bar in meeting the need, and these studies have uniformly demonstrated substantial failure on the part of the profession to discharge its total responsibility.

Just over 2 years ago in October 1963, an eminent scholar and teacher addressed himself to these problems in the Carpentier Lectures delivered by him at Columbia University. In those lectures, published under the title, "A Lawyer when Needed," [6] Professor Elliott Evans Cheatham said: "Yet these growing classes—the middle classes—with an increasing need for legal services, do not obtain in proportionate measure the legal services they need, at least from lawyers. The wide gap between the need and satisfaction by the bar had been indicated by numerous studies beginning in the 1930's. Lawyers have been kept aware of this by the extent of unauthorized practice of law by laymen and by the ingenuity and the insistence of laymen in developing new group methods of obtaining legal services."

He concluded that lecture by saying: "Some conclusions are submitted on the conditions that have been described: Legal service needed by the middle classes is not rendered at all, or else it is performed by laymen inexpert in the law and free from professional control, or it is performed by lawyers who are retained by intermediaries under no supervision by the courts, the profession, or any public body."

The proof of Professor Cheatham's remarks was published 9 months

[4]Clark & Corstvet, *The Lawyer and the Public*, 47 Yale L.J. 1272 (1938).

[5]5 Law & Contemp. Prob. 104 (1938).

[6]Cheatham, A LAWYER WHEN NEEDED, Columbia Univ. Press (1963). An abridged and footnoted version appears in 63 Colum. L. Rev. 973 (1963).

later in the Progress Report of the Group Legal Services Committee of the State Bar of California.[7] On the basis of evidence which it detailed in its voluminous report, a large majority of that committee concluded that there was so great an unfilled need for legal services as to be a cause for public concern.

I am chagrined to report that a part of that evidence was an analysis made at the Center for the Study of Law and Society of the University of California of a survey conducted in my own home state in 1963.[8] This analysis revealed that in Missouri only 25% of persons who bought or sold a home consulted a lawyer; that nearly 2/3 of persons involved in an automobile accident producing either a personal injury or property damage in excess of $100 did not see a lawyer. And while 2/3 of those who had a will had had it drafted by a lawyer, only 17% of the public in fact had a will.

Coincident with these revelations we have become aware of the phenomenon now known as group legal service programs. I need not describe in detail to a bar which has been so deeply involved in the *Button* and *Brotherhood* cases[9] what group legal service programs are. You know about them firsthand. Let me only say to you that since the adverse decisions in those cases, many additional examples of such programs have come to light in Maryland, New York, Illinois, and elsewhere.

Without in any way seeming to approve of such programs, I do suggest that one reason for their existence may lie in the fact that we as a profession have been remiss in making our services available to the public on a basis which the public understands and accepts; and let us not forget that in the final analysis it is that same public which grants us our licenses who will determine when and how they shall be used.

Here, then, are the challenges which are hurled at us, not just by the poor, but by the whole American public. "We need legal services," they say to us in fashioning group legal service programs, in enacting the Economic Opportunity Act of 1964. "You devise the methods," they in effect say, "but do so in a method which is acceptable to us." I scarcely need add that the same public which has created group legal service plans now validated by the Supreme Court of the United States, the same public which has, through its representa-

[7]39 J. State Bar of Calif. 639 (1964).

[8]Originally compiled as a joint undertaking of The Missouri Bar and the Pren-Hall Foundation, later published in LAWYER'S PRACTICE MANUAL, Pren-Hall, Inc. (1964).

[9]*Supra* note 2.

tives, enacted the Economic Opportunity Act of 1964, can take further steps if we continue to ignore their pleas.

The reason that I am here today is that the American Bar Association, under the wise and able guidance of a great Virginia lawyer, Lewis F. Powell of Richmond, has heard this plea and heeded it. It was he who perceived the problem, even before the California report was published and the Economic Opportunity Act enacted. He sent me here to Washington in November and again in December of 1964 to learn the facts, to report to him and to help shape the response of our profession.

Part of the current posture of that response is the Special Committee on Availability of Legal Services created under his guiding counsel. We, as a committee, are directed to ascertain the nature and extent of the unfilled needs for legal services; to evaluate existing methods of providing those services; and to consider new, supplemental or alternative means, specifically including an examination of group legal service programs.

Our work has only just begun. I can say, however, that we have already begun to identify ways to make it possible for the entire bar to make its services available to more and more of the public. We have already decided that we must consider very seriously the identification, training, and utilization of sub-professionals in the legal profession to do for us what nurses, dieticians, x-ray technicians, laboratory assistants, physical therapists, and others do for the medical profession.

Most of us feel that cost is a part of the problem. To overcome this obstacle to making our services more fully available, we intend to consider very seriously whether or not an application of the insurance principle, along the lines of Blue Cross, is not a possibility, whether tax deductions for necessary, basic legal services are not as justified as deductions for medical services and, indeed, whether the subsidy system adopted by our English brethren may possibly have any application in this country.[10]

Finally, we know that legal aid and lawyer referral as we have known them in the past can and must be improved.

I think it is entirely appropriate that I should appear here on this platform today with Clint Bamberger, because I think there is a necessary connection and relationship between what he is doing in the Office of Economic Opportunity and what the Special Committee

[10]Mr. McCalpin explains the operation of the English subsidy system in the Q & A portion, *infra* at 261-62.

on Availability of Legal Services sees as necessary and useful in the development of the practice of law in the future.

I know, for instance, that there is in the works a submission from the Missouri Bar to the Office of Economic Opportunity, part of which is designed to train secretaries, investigators, and court attaches, and broader subprofessional training programs are in prospect.

Durham, North Carolina, and the State Bar of Wisconsin have already submitted proposals to OEO for experimentation with the English subsidy idea on local and regional bases.[11] The District of Columbia and the Legal Aid Society of the City and County of St. Louis have already been funded by the Office of Economic Opportunity to reach out from the courthouse and the bar association office into the neighborhood of the poor with revitalized legal aid services.

There is an unfilled public need for legal services. There exist more ways to fill that need than we have heretofore tried. The existence of the OEO and its programs offer us the opportunity for research and experimentation with new methods for providing services. While it is true that OEO programs must, by legislative mandate, be directed specifically at the very poor, let me suggest that these programs should generate devices to serve all the people. Beyond that, they promise to broaden the acquaintance of a whole generation of the poor with the possibilities afforded by lawyers and the law.

If we will but look upon the current Federal programs not as the solution to our problems or as a threat to our institutions, but rather as a laboratory for experimenting with new and improved ways to make our services available to all the people, we can surely meet the challenge which has been hurled at us.

REMARKS OF MR. BAMBERGER[12]

Those of us who are concerned with the development of legal services programs for the poor are sometimes inclined to stimulate bar associations by telling shocking stories of injustices and indignities suffered by poor people who are not represented by lawyers. And the most significant conclusion from these stories is the irony of the fact that

[11]These proposals are elaborated upon in the Q&A portion, *infra* at 262-63. On April 26 the *Washington Post* reported the announcement by OEO Director Sargent Shriver of a grant of $240,000 to the Wisconsin Bar Association for implementation of its rural area "judicare" program. A similar program was announced for the establishment of 5 legal services offices on the Navajo reservation in northeastern Arizona.

[12]Director, Legal Services Agency, Office of Economic Opportunity, 1200 19th Street NW, Washington, D.C. 20506. Loyola College, B.S. 1949; Georgetown

they frequently arise out of contacts between the poor and institutions which we have created to serve the poor and to better their lot.

Let me tell you a few capsules to give you the flavor of this:

> Investigators pay a midnight visit to the welfare recipient and find a male friend there. Under a prevailing interpretation of very vague regulations, he is presumed to live with her and to be able to support her. Her welfare is terminated.
>
> A migrant farm worker seeks help from a state agency during a crisis. He doesn't get it because he is a nonresident. As a matter of fact, he is probably a nonresident of every state in which he ever works or lives.
>
> Unemployment compensation recipients required to serve on public works projects refuse to cut brush in knee-deep snow during sub-freezing weather. They are convicted of interfering with administration of the compensation laws.
>
> A poor child is suspended from school for unspecified misconduct which he did not commit. He is too frightened to challenge his suspension and his parents are too ignorant.

These are true examples of actual cases. They describe a consistent and pervasive pattern that shapes the life of poverty. They are evidence of society's failure to provide the poor with adequate legal services.

For more than a half century the organized bar has labored without noticeable public support to furnish adequate legal aid for the poor. Expanded legal aid is still necessary. But even if the bar's traditional concept of legal aid, a concept which is often much at variance with the much loftier ideal and ambitions of the leaders of the legal aid movement, is multiplied a hundredfold, it will not achieve the ideal of equal justice under law.

Before the poor take the initiative to seek legal services they must be taught to recognize the legal aspects of their experiences so that they know when a lawyer's aid is needed. The poor must be encouraged to seek legal assistance when they perceive that it is needed.

An office in a store front may seem demeaning to some lawyers, but formidable office buildings are alien to slum dwellers. Riding

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Univ., LL.B. 1951; Instructor, Univ. of Maryland School of Law, 1964-present. Member, Standing Committee on Rules of Practice and Procedure, Court of Appeals of Maryland, 1958-present; Assistant Attorney General of Maryland, 1957-58. Member of American Bar Ass'n, Maryland Bar Ass'n, Baltimore Bar Ass'n, International Ass'n of Insurance Counsel. Member (on leave) of firm of Piper & Marbury, Baltimore, Md. Mr. Bamberger resigned his OEO post as of 29 June 1966.

circuit may seem old-fashioned, but it may be the only way that lawyers and the law can reach migrant workers and farm families.

The poor must be served by competent advocates in the formulation, the enactment, and the elaboration of the laws which affect them. And our traditional attitudes toward breaking this cycle of poverty has been that the social worker, the public health experts, the urban planners, the lawyers, in short, the comfortable, know what is best for the poor, and the poor need not raise their voices because they will not be heard, and if heard, they will not be heeded, because they don't know what is good for them.

I don't mean to deprecate the motives from which spring these charitable approaches. What I mean to suggest is that this approach is not only bad for the poor in many respects, but it is bad for ourselves and it is bad for the legal system that we are sworn to uphold.

Let me give you some examples. Building codes are enacted to insure minimum standards of decency in today's homes, but the tenant who complains about rat infestation finds himself evicted by a court order as a trouble-maker without redress.

Low-cost public housing was created because of the inability or unwillingness of the private sector to furnish adequate housing for the poor. But inflexible standards of indigency or of eligibility have served to dampen ambition and to remove from public housing communities the very families whose example and influence would be most beneficial to their neighbors.

Public assistance laws have saved inestimable numbers of our fellow citizens from starvation, but the present scheme of public assistance has also assaulted their privacy, reinforced their dependency, and disintegrated their family.

I could go on. I hope the point is clear. Do you think that a corporation code or a fiduciary law or banking regulation which had such disturbing paradoxical effects would long survive the onslaught of lawyers? Of course not. But an urban renewal program or a consumer credit law or a public health scheme can, because the poor who are affected by them have no spokesman.

Stand by the bench in a court of lesser jurisdiction and listen while evictions issue unchallenged, while judgments by default are rattled off in a dreary monotone and while writs of repossession are signed in bundles. The judge is bored while he listens to a lawyer for the landlord or the merchant recite a tedious litany. The poor are not represented. A search for truth and for justice built upon an adversary system walks half blind when one side is not represented. And all of

us, not just the poor, lose when the poor are not advised and represented by lawyers.

A large body of our law is considered only by the legislative and the executive branches of government and never tested and scrutinized by the judiciary. Legislators and administrators are not omniscient. What they do is improved when lawyers debate what they did and a judge with a mind sharpened and enlightened by the debate construes and applies the legislative rule.

Lawyers make our laws better and they make our public officials more responsible. But so many of our laws which affect poor people are no better because there are no lawyers for the poor or, at best, only insignificant representation of the poor. No other economically defined segment of our population is so pervasively affected by statutes, regulations, and administrators as are the poor. Public assistance laws, public housing laws, fair employment and open occupancy statutes, consumer credit legislation, statutes which govern landlord and tenant relations, these laws affect the poor more than they affect you and me.

Attorney General Katzenbach expressed this more than a year ago when he said, "To us, laws and regulations are protections and guides, established for our benefit and for us to use. But to the poor, they are a a hostile maze, established as harassment, at all costs to be avoided." [13]

It ought to be obvious that there is an essential role for the law and for lawyers in this nation's War on Poverty—in this nation's effort to better the lot of the impoverished and, in so doing, to improve the quality of our own lives.

Under the Economic Opportunity Act the Federal Government is extending significant financial assistance to local community action programs, including legal services programs for the poor. Congress is authorizing the underwriting of such programs with up to 90% federal financing. But let me emphasize that the initiative in planning community action programs, including legal services programs, rests with the individual communities. My office is ready to assist any community in drafting a legal services proposal and to make available the assistance of experienced consultants. But we respond only to invitations, to questions and to expressions of interest. We have not and will not impose ourselves and our program on anyone.

We are encouraged by the degree of local initiative in Virginia. There are lawyers in this Commonwealth who have a sense of respon-

[13]From a speech delivered by Attorney General Katzenbach to the Conference on Extension of Legal Services to the Poor in Washington, D.C., 12 Nov. 1964.

sibility to the poor. Virginia lawyers, like lawyers in my home State of Maryland, have long and often served individual impoverished clients. But I don't think you should be surprised or offended when I say that the organized efforts of the bar in Virginia to extend legal services have not been outstandingly successful.

To my knowledge there are only 3 legal aid societies actively in existence in Virginia.[14] Norfolk has none, though I understand that the Norfolk Bar, under the leadership of Ed Baird, will soon fill that breach. Richmond's Legal Aid Bureau has been limping along for a number of years with grossly inadequate support. Its volume of cases is only slightly more than one-half per thousand persons in the area served. The National Legal Aid and Defender Association has deemed the minimum number of cases from 1000 people to be 7½.

But there are some good signs. I understand that applications for legal aid charters have been made in Alexandria and in Norfolk, and that active planning is underway in Newport News and Winchester. A proposal for a legal services program for Roanoke and for the surrounding counties has been submitted to the regional office of OEO. I am sure there are other activities going on in the State of which I am not aware.

The guidelines for the financing of legal services programs under the office of Economic Opportunity will be published soon.

Usually a legal services program must be funded as part of a community action program. There are some exceptions to this rule where there is no existing community action program, where it is not possible to form one or for some other reason it is infeasible, impractical, or impossible to conduct the legal services program as a part of the overall community action program. Thus, one of the first steps in planning for an OEO funded legal services program is to talk to the local community action agency, work with them, coordinate the plans with them to develop the program.

Although legal services programs are a part of a total community action program, they must have a degree of operational independence from the community action agency. An independent policy-making board or committee should be established for the legal services program. The independence of professional legal judgment is absolutely essential. It is not inconceivable that a lawyer working in one of these programs will represent a client against some other program of the

[14]A discussion of the operation of the Arlington organization may be found in the Q & A portion, *infra* at 263-64.

community action agency or even against that agency itself, and he must be free to do so.

Any proposal for a legal services program must describe the standards by which the eligibility of clients will be determined. There is no national standard of eligibility, no OEO standard of income and assets. We have no set figures in mind; we realize that local conditions vary. We have just 2 criteria: First, the standards should not be so low that it excludes people who, after they have paid for housing, clothing, and food as human beings, cannot afford to employ a lawyer. And second, the standards should not be so high that it makes people eligible who can pay the fee of a private attorney without jeopardizing their ability to have decent housing, clothing, and food. This is a program of legal assistance for the poverty-stricken.

A legal services program should provide a full range of legal assistance in all areas of the civil law. No type of civil case should be arbitrarily excluded except cases which are customarily taken on a contingent fee basis or cases for which, by statute or regulation, there is provision for the payment of an attorney's fee. The program may also include advice and representation in the areas of criminal law; that is, in those areas of the criminal law in which counsel are not provided for indigent defendants.

An essential ingredient of a legal services program is comprehensive education to apprise eligible persons of their legal rights and their obligations and of the assistance that lawyers can render. Here an organized bar can make a significant contribution. In Mr. McCalpin's home city of St. Louis the bar association is donating 1500 volunteer hours. Lawyers will speak to groups of poor people and to social workers, to those who work with the poor, to acquaint them with legal problems and with the availability of the legal assistance program. This kind of activity is one of the methods of fulfilling the requirements of the 10% nonfederal contributions. That nonfederal contribution need not be in money; it can be in property and in services.

Law schools and continuing legal education programs of bar associations should sponsor in-service training for the lawyers who will work in these programs and for their assistants. The lawyers are going to be dealing with problems which are sometimes novel, with problems with which they have probably not had much experience, and they and their clients would benefit from a continuing legal education program.

A legal services program funded by OEO must be conducted in complete and faithful observance of the letter and spirit of the Canons

of Professional Ethics. We have not had a single proposal which suggests conduct in violation of the rules of professional ethics. Even the most ambitious and visionary role which legal services can perform for the poor can be conducted within the honorable traditions of the bar. The devotion of each lawyer must be solely to the individual interest of his client, and it is mandatory that each program insure the professional independence of the lawyer.

The controlling board of a program will, in all likelihood, include some lay persons. For years legal aid agencies have included lay persons on their boards of directors. This should present no problem. As a matter of fact, the National Legal Aid and Defender Association has recently stated in its standards for legal aid societies the encouragement of this practice as the official policy of that association.

Legal services lawyers are expected to work closely with other community organizations, such as block clubs, farm bureaus, credit unions, and tenants' associations. Much of the lawyer's sensitivity to the problems of the poor and much of the planning of strategy may be derived from insights gained in such contacts. This kind of activity is in the tradition of the most skilled corporation lawyer who insists on knowing his client's business inside and out in order to make plans to place his client's legal interests in the most advantageous position.

This war that Congress, the President, and our Nation have declared on poverty contains the seeds of its own frustration. Coordinated planning of educational, social, and legal services for the poor is neither new nor demonstrably successful. In this respect there is nothing new about the federal program except its magnitude. But the Anti-Poverty Program also contains a seed of hopeful triumph—the maximum feasible participation of the poor in the planning and the operation of anti-poverty programs.

In this concept the Anti-Poverty Program has a potentiality of growing far beyond traditional charity programs. By mobilizing active participation of the poor we hope to instill in them a new sense of dignity, a new awareness of the processes by which their lives are determined and a new opportunity to be the masters of their own destiny.[15] The principle of participation of the poor is based upon 2 very simple propositions: first, the poor know their own needs better than others; second, simple charity may do more harm than good to the recipient.

When I say that the poor know their own needs better than others,

[15]Mr. Bamberger explains in the Q & A portion how leaders are found among the poor, *infra* at 264-65.

I do not mean to suggest that the expert skills of sociologists, community planners, educators, and lawyers are not required for the success of the Anti-Poverty Program. On the contrary, their skills may be more greatly needed and more pointedly challenged when the definition of goals and the selection of the means must be achieved jointly with their clients. Anyone can impose a course of apparently desirable action upon a passive recipient. It takes a better man to sense the client's perception of his own needs, to assist the client in articulating and weighing these needs and to work cooperatively with the client in developing a program best designed to meet those needs. The really excellent lawyers, like the really excellent sociologists and planners and educators are needed in the War on Poverty.

OEO has no rigid preconception about what maximum feasible participation means. Certainly, to use the statutory language, "the residents of the areas and the members of the groups served" must be involved in the formulation of policy for the conduct of a legal services program. They or their representatives should be on the policy-making board or committee.

In addition, and not as a substitute for a vote where policy is made, advisory councils representing the potential clients can be effective instruments to involve the people we are committed to assist. These councils should be afforded an opportunity to make suggestions to the policy-making group and that group should be obliged to hear and act upon these suggestions.

We recognize that "maximum feasible participation" requires flexibility. As Sargent Shriver said in his address to the American Bar Association in August 1965: "Our statute requires maximum feasible participation of the poor in all aspects of the anti-poverty programs. We intend to carry out the mandate of Congress on this! But to do so does not require the imposition of inflexible and arbitrary quotas. We have already financed legal service programs approaching this requirement in a variety of ways. We believe in flexibility, but flexibility cannot become a euphemism for evasion of our statutory duty."

In all phases of our national life, this is a time of great change and a time of unprecedented opportunity.

Our purpose in OEO is not just to stimulate and implement community efforts to provide a lawyer for a poor person in a particular case. We want lawyers to be advocates for a group of people who are inarticulate and unsophisticated and who do not have advocates. Lawyers will be a voice of the poor in the community. If the poor are represented, we may begin to learn their problems, their aspirations, and the

futility of some of our ill-conceived efforts to help them. If the poor are not represented by lawyers, the voices in which they will learn to speak may sound very alien to our ears.

The bar has responded admirably to the challenge of the Economic Opportunity Act. As a matter of fact, not a single legal services program that has been backed by OEO has been opposed by any bar association, and, on the contrary, the bars have supported and endorsed many of the programs.

The American Bar Association's resolution of last February evidenced the Bar's positive response. There is a National Advisory Committee to the Legal Services Program with 21 members, of whom 6 are ABA officers: the Past President, Mr. Powell; the President, Mr. Kuhn; the President-Elect, Mr. Marden; Chairman of the Special Committee on the Availability of Legal Services, Mr. McCalpin; and the Chairman of the Committee on Legal Aid, Mr. Cummiskgy. Mr. Theodore Voorhees, the President of the National Legal Aid and Defender Association, is also a member.

The ABA resolution is, I might add, a testimonial to the statesmanship and leadership of a great Virginia lawyer, Lewis Powell. In carrying forward this adventure, I hope that I may look forward to an active partnership and cooperation with the Virginia Bar Association.

REMARKS OF MR. THEOPHILUS[16]

Of course, we all know that legal aid is the assistance provided any person by an attorney, but that meaning has narrowed over the years. The words "legal aid" have come to mean the legal assistance provided by an attorney or attorneys free of charge and particularly that legal assistance given by an organized legal aid society as distinguished from the legal assistance provided a client for a fee.

Legal aid is the modern, practical way of assuring the guarantees of the Magna Carta that justice shall not be sold, delayed or denied to anyone. To be equal before the law is itself a right, and the idea behind legal aid is the protection of that right.

Most lawyers recognize they have a monopoly on the practice of law and feel that the monopoly carries with it an obligation to see that no one is without legal assistance. In varying degree they give of their

[16]Attorney in Charge, Legal Aid Society of Pittsburgh, 200 Ross Street, Pittsburgh, Pa. Univ. of Pittsburgh, B.S. 1925; Univ. of Pittsburgh, LL.B. 1928; Member of American Bar Ass'n, Pennsylvania Bar Ass'n (Chairman, Comm. on Service to the Public), Allegheny County Bar Ass'n. Member of firm of Shoemaker, Eynon, Clasper, Rolston & Theophilus, Suite 1324 Frick Building, Pittsburgh, Pa.

time and talent to help the poor. This is true today, even where organized legal aid societies exist. Although we know this does not meet the need, we hope it will never stop. On this one point we definitely can all agree that the need is not being met.

Even though organized legal aid will continue to be necessary and does provide a real service, somehow it fosters a feeling that the poor are a class apart if the only legal service the poor can expect at any time is from a legal aid attorney. That is bad. This often comes to light somewhat amusingly when a client is being questioned to determine his eligibility for legal aid. He will tell the attorney somewhat indignantly that he would not be there asking for help if he could have afforded the services of a real lawyer.

In communities where the legal aid lawyer is permitted a practice of his own and the legal aid client finds out there are persons who come to the legal aid lawyer in his private capacity expecting to pay a fee for the service which that lawyer can provide, somehow the client feels better about it. Actually, he is not a man set apart receiving the services of a lawyer for which no one else can or will pay. Suddenly the poor man is just as good as one who can pay.

The present concept of legal aid dates back to the Legal Aid Society of New York. This organization, incorporated in 1876, grew out of the activity of Arthur von Briesen, who gave advice and legal assistance voluntarily to newly arrived immigrants from Germany. We are told that von Briesen carried on in one of the many German clubs to which these new arrivals gravitated, and his advice and assistance were so helpful that his fame grew and others in need of advice and legal counsel sought his help. Von Briesen enlisted the assistance of other lawyers, and from this came the Legal Aid Society of New York.

The work of this organization inspired the organized legal aid movement in this country. Originally the service related only to civil matters, but soon representation was provided to the indigent defendant in criminal court as well. The path of organized legal aid was not always smooth. Attorneys, not always fringe attorneys at that, looked upon such work as taking away their clients. But the leaders of the Bar saw and approved. The movement gained strength and guidance from them, and additional support was provided by the leaders of finance and industry.

The purpose of the Legal Aid Society is not to compete with the private attorney. It fills in only where the private attorney will not or cannot reasonably be expected to meet the need. The sole purpose

of organized legal aid was to assure justice to those who had no attorney and could not reasonably be expected to pay an attorney's fee. Unfortunately, no matter how good the laws governing us might be, they just are not self-enforcing. Someone has to start the legal process to assure the enjoyment of the rights granted the citizen. In our system that someone is a lawyer. Somehow a lawyer must be made available to all persons. Legal aid is the concept which provides that service.

It is interesting to note that the private practitioner has some freedom in the choice of his clients. The legal aid attorney has no choice. Once the need is established, the legal aid attorney must accept the client and give the best representation possible, regardless of how insolent, ungracious, or difficult the client be, and whatever the race, color, sex, age, or religion of the client.

Although the organized bar did have some legal aid committees, legal aid societies struggled along for a long time primarily with such assistance as their own national organization might provide;[17] which organization, fortunately, had able and conscientous guidance from many leaders of the bar. Finally, the American Bar Association House of Delegates, at the suggestion of Chief Justice Arthur T. Vanderbilt of New Jersey, by resolution on 26 February 1951 asked the Chief Justice and the chairman of the state bar legal aid committee in each state to create and execute a legal aid plan through a legal aid society supported "through private sources without government aid." [18]

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[17]The organization referred to was the National Association of Legal Aid Organizations, subsequently the National Legal Aid and Defender Association.

[18] The full text of the resolution read as follows:

"WHEREAS, the American Bar Association by resolution adopted at the 1950 Annual Meeting in Washington declared that its policy with reference to legal aid was—

"1. That it is the primary responsibility of the legal profession to assume the leadership in establishing adequate aid in conjunction with private agencies without government aid; and

"2. That the state bar associations should organize such legal aid service in the respective states;

"NOW, THEREFORE, BE IT RESOLVED that the American Bar Association, through its Committee on Legal Aid Work, recommends a procedure to the state bar association as follows:

"a. That the President of each state bar immediately request the Chief Justice and the Chairman of the state bar legal aid committee to act with him in creating and executing a statewide legal aid plan, and

"b. That legal aid societies be organized and administered in each county

There was no sudden surge of support, but legal aid was recognized everywhere and was made a respectable arm of the Bar. Since that time, organized legal aid has made great strides, although there always seems to be a greater need than there is service available to meet that need.

Legal aid in practice takes many forms, but the organization found to be the most effective is a charitable corporation organized to provide that service alone. The advantages of the corporation are many, but chiefly: (1) perpetual existence, and (2) effective supervision through the charter and by-laws. The board of directors is made up of community leaders motivated by the ideal that justice is a matter of right and determined to do everything possible to make it available to all. In smaller communities the legal aid organization is often a committee of the Bar Association, or even a division or arm of a social agency, such as a family and children's welfare association.

Operating any Legal Aid Program requires 4 essentials:

(1) There must be a definite place where the service can be found. Ordinarily this is near the courts and social service agencies. The place should be well known and accessible to those who desire to use the service. It is interesting to note that many legal aid societies had their first office in communities where they expected to find their clients. For instance, the offices for the service which later became the Legal Aid Society of Pittsburgh were set up in 1901 in 2 heavily populated districts where the service was deemed most needed. Eventually it was consolidated in a downtown office at a point where all streetcar lines converged near the social agencies and the courthouse.

(2) A definite time when the client can obtain the service. This means regular office hours which meet the convenience of the people who may need the service.

(3) A definite person who will provide the service.

(4) A supervisory body, which could be the Bar Association, a board of directors of a separate charitable organization, or a board of directors of a family agency. A good supervisory body, representative of the best the community has to offer, has—up to this time at least—been deemed best to assure a sound program.

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through local bar associations and be financially supported through private sources without government aid, and

"c. That each member of the Board of Governors pledges his cooperation and assistance to the Legal Aid Committee of the American Bar Association and to the state bar associations in his circuit in organizing and implementing such plan and procedure."

The foregoing are relatively simple except when the operation is carried on by a committee of the Bar. Usually the members of the committee like to carry on the service from their own private offices. If there is a bar association with a paid staff, a staff member can direct legal aid applicants to the members of the Legal Aid Committee in rotation. If the Bar is so small that there is no definite headquarters except the office of the President, which changes from year to year, then the assistance of a public official, such as the Clerk of the Courts, is often enlisted.

How is the operation financed? Except where the service is a committee of the bar association, the usual and most satisfactory method is by funds raised by general subscription such as through the United Fund or Community Chest campaigns. Thus, the whole community is involved. There are other methods, of course. Some societies conduct their own campaigns; others are supported by membership fees; and some by an extra assessment of court costs. The Bar committee method of legal aid is usually supported by the Bar Association through dues assessments, or profits from the bar journal, although frequently it is a voluntary service provided by the members of the committee.

Operating a legal aid society has been described as the same as operating any other law office except that the office is busier and no bills are sent out. A good legal aid operation should identify itself with the local bar association and the local lawyers to the greatest possible extent.

One of the best ways to keep the local Bar actually concerned about the situation of the poor in their efforts to be assured of their legal rights is to see that the legal aid societies do not accept as a client anyone who has the assistance of a private attorney. It is not uncommon for a person who is actually being helped by a private attorney to apply to the legal aid society, claiming that he is unable to pay an attorney's fees and that he cannot conscientiously accept any further help from his attorney. Even so, we have always taken the position that we will do nothing to interfere with the charitable instincts of any lawyer.

We have found upon investigation of a number of these cases that the lawyer hopes that he will be paid but has no present expectation of collecting a fee and no expectation of dunning a client for a fee. We have found that very frequently the cases are being handled as a favor to a paying client because he is a fellow church member or for any of a number of reasons. Sometimes there is no reason except that he

wants to do something for this person and has the time to do it. I think it is fortunate for all of us when a private attorney proceeds in this way. Thus, a legal aid society will not interfere with an established attorney-client relationship, nor appraise or second-guess the way the private attorney is handling the case for the applicant.

Present Lawyer Reference Bureaus are the outgrowth of the legal aid society's determination to involve the Bar with the work. These societies had many requests for help from persons who could afford to pay or who had a case which, successfully prosecuted, would generate a fee. The Lawyer Reference Bureau developed from the practice of getting from the Bar Association a list of attorneys who would take referrals, many for reduced fees, from clients who were not eligible for legal aid.

Legal aid lawyers, even where a Lawyer Reference Service is available, make every effort to get a client to a lawyer of his choice. Many times the client has forgotten a lawyer who handled satisfactorily a case for a relative, or a fellow church or lodge member who is a lawyer to whom he would be happy to entrust his problem. If a client can recall no lawyer to whom he might go, then the Lawyer Reference Service is a wonderful substitute. The accepted practice is to send the client to this service with a note under the Legal Aid letterhead indicating the reason for the referral. *Never* may the referring attorney, if he is permitted a private practice, take the case himself or refer it to a friend. An applicant often suggests this solution, but doing it is grounds for immediate discharge.

There are other ways of keeping the Bar interested and active in legal aid. One is to seek volunteers from the Bar when a superabundance of applications bogs down the regular legal aid staff. This happens most often in programs involving the defense of the indigent in criminal court. Another is to operate a law school clinic. This often instills in a student a life-long interest in helping the poor solve their legal problems.

How do potential clients get to know about legal aid? There is no advertising and there is no one going from house to house inquiring whether anyone there might have a legal problem, but all social workers know of the availability of legal aid and have some understanding of its nature. This same is true for court attaches, the court itself, and jail officials. In addition, feature stories in the newspapers, legal aid reports, and word-of-mouth are quite effective.

The client is expected to do all that he can for himself by locating and bringing in witnesses and, of course, he must pay the court costs.

The collection of court costs serves a two-fold purpose. It prevents the Society from being flooded by nuisance cases. Second, it is somewhat akin to a surgeon's advising a patient that the operation will be painful and result in a long period of convalescence. If the patient says go ahead and operate, the surgeon has a pretty good idea that the patient is not a malingerer. The same is true of a legal case. If the client is willing to pay the costs, then he is really in earnest about proceeding with the case. Of course, if the client cannot raise the costs and he is really in jeopardy of losing his rights, most societies have a cost fund available for an emergency. The costs are usually paid in the expectation that they will be returned when the client is in a position to do so.

Of equal importance to providing representation for the poor person is the work of legal aid in doing what it can to make such changes in the law or procedure as will make unnecessary the assistance of an attorney and still obtain for the client the protection or assistance which the client must have. One example will suffice: legal aid may be called upon to draft pleadings and represent the client in many cases involving only a small amount of money. A small claims court, where no formal pleadings are required, will give the client the relief that he needs without the assistance of an attorney.

Many years ago the Legal Aid Society of Pittsburgh used to handle many appeals from the Magistrate's Courts—which were not courts of record—to the court of record where the case was heard de novo. It took most of the time of one legal aid attorney to draft pleadings and appear in court on these cases. Now, the transcript prepared by the Magistrate in all cases under a certain amount serve both the plaintiff and the defendant in the court of record, and that court hears the case, usually without counsel on either side. However, counsel can appear for either party, and where a difficult problem is to be decided a lawyer may be necessary. In such a case the matter will be referred to the Legal Aid Society if one of the parties has no attorney and is a poor person.

Now, having heard something of the general procedure of legal aid in practice, just what kinds of cases are handled? By far the largest number of cases fall into the category of family problems. The person consulting the legal aid society is usually the wife. It is in this category that most often both parties come into the office and the society is faced with the quandary of what to do since the society cannot represent both sides of the case.

As persons make application for legal aid, the receptionist checks the

files to see whether the applicant or the named defendant has ever before been in the office. Should the other party have been in the office on the same case before the current applicant is accepted, the lawyer will apprise the applicant of that fact and will go no further with the case unless the first applicant is willing to try to mediate the matter and the current applicant wishes to tell his story with the understanding that if it should come to court action, then legal aid could not represent him. If the case gets into court, the attorney for the society will enlist the assistance of another attorney not connected with the society in handling the case for the other party if the applicant cannot himself get an attorney.

Usually the domestic problems do not concern divorce, but rather support, the right of one party or the other to require the spouse to leave the home, custody of the children, and similar matters. Usually divorce is cited as an example of a situation in which, it is alleged, the poor person cannot get the same representation through legal aid as he could from a private attorney. In the beginning most legal aid societies addressed themselves to what were felt to be actions necessary to protect the client's rights; divorce was not usually considered a right but a privilege. It was thought this principle applied to all, rich and poor. However, it soon became apparent that there were cases when a divorce was actually a necessity, and where counsel fees can not be paid legal aid usually does step in and take care of the matter, although some organizations, my own included, for a long time insisted that a divorce could not be handled by legal aid without a written recommendation and report from a social agency that a divorce in the particular case would serve some useful purpose. Now, however, the policy is that the attorney should decide whether a divorce should be sought using the same criteria as for a private client. It is expected that if a social agency is involved, the attorney will consult a social worker to assist him in arriving at a decision as to whether he should handle the case.

The criticism directed toward the policy of divorce often gives the impression that a person ought to be able to step into a legal aid society or any lawyer's office and order a divorce just as he would order a hamburger in a restaurant. I do not think that this is the way most attorneys handle the matter. Even though court proceedings are adversary in nature and it is up to the other party to present a defense if he has one, I think most attorneys take into consideration that it is to the benefit of all to preserve marriages where possible. The first step is to try to work out a reconciliation, particularly if children are

involved. Only after considering the matter from all angles and advising his client of his obligations and responsibilities does he go ahead with the case even when the client can pay a fee.

Another phase of family problems is the question of adoption. Legal aid societies ordinarily limit themselves to family adoption; that is to say, the case must entail the adoption of a child born prior to the present marriage to either the husband or the wife. At times, the adoption is by a grandparent, aunt, or uncle. For the most part legal aid societies will not handle an adoption of a child placed with the client by an adoption agency. There may be exceptions, of course, but it is the feeling that we are not promoting the welfare of the child by encouraging an adoption into a family that could not even pay the court costs to make that child a true member of the family.

The clients that legal aid societies never handle are those with a fee-generating case, such as a personal injury matter, unless it is minor and directed only to recovering out-of-pocket expenses, such as a small medical bill or damaged clothing. No attorney would be interested in such a case because of the smallness of the amount involved. Generally, if the client feels that he has pain and suffering for which he must receive compensation the case is not for legal aid. In such cases as legal aid does handle the client is always made to understand that a settlement for out-of-pocket expenses only will preclude him from any further recovery. As a result, tort cases are handled very cautiously and represent only a small part of legal aid work.

As a matter of course, no legal aid societies undertake libel and slander actions. The reasons for this should be obvious.

Next to family problems, contracts are the biggest category of cases handled. This includes wages, landlord and tenant, small loans, installment contracts and the like. Landlord and tenant problems usually form the largest share of this category, and of course the society always represents the tenant. Even here, however, there may be circumstances which could justify an exception.

Small loans do not present the problem they did at one time, at least in Pittsburgh. Ordinarily small loan companies are very careful of their public image and can be reasoned with so that such matters are frequently resolved without recourse to the courts.

Wage claims do not present the problem they once did. In most states, the Department of Labor provides a very effective procedure for collecting them. It is usually the policy of legal aid, perhaps born of necessity, that it will not undertake anything unless there is no adequate remedy elsewhere.

Legal aid will represent clients who have had their relief status questioned. This is becoming a somewhat larger field. Usually these matters can be resolved without formal action being taken against the Relief Board. At least, that has been our experience.

Legal aid does not handle patent and copyright matters. I know of no legal aid with a patent expert on its staff. Usually such assistance is not required, since patent attorneys are almost always willing to gamble their fee for a piece of any patent which appears to have any merit. We consider this a fee-generating case.

Legal aid societies do not handle real estate transactions or examine titles to real estate. Any person buying property certainly should have enough money to pay for an attorney's services to assure him that he will have good title.

Estate matters are not handled unless they are very small. In Pennsylvania, this usually means the Family Exemption Procedure.[19] In past years this presented a very real problem to our Legal Aid Society, but the Legislature has since made it possible for many claims which could have been paid only through Family Exemption Procedure to be paid directly to the family.

It has been the practice in most legal aid programs to represent only the individual. If a number of persons come into the office, who individually may qualify for legal aid but wish to collectively undertake some single action affecting all of them, every effort is made to direct this group to a private attorney. Even a small sum equivalent to a week's cigarette money from each of them can provide a fee which will interest a lawyer, often not because of the fee but because it provides the lawyer with multiple contacts which can be helpful to him as his practice develops. Generally, legal aid does everything possible to supply a proper client with the same aid as that supplied by the private attorney for a fee-paying client.

I hope I have made it clear that legal aid provides a real service, which, properly run, can help assure to all the preservation of their legal rights, the preservation to the private lawyer of his practice, and foster the feeling that we are truly a classless society as far as equality before the law is concerned.

QUESTIONS FROM THE FLOOR

Q: Mr. McCalpin referred several times to the English subsidy system and also to the fact that Durham, North Carolina, I believe, has

[19]Pa. Stat. Ann. tit. 20, §§ 320.211-320.216 (Supp. 1965).

a proposal to adopt that system. Could you explain what the English subsidy system is?

MR. McCALPIN: I can attempt to explain it at secondhand. One of the things I am looking for is the opportunity to go through it at firsthand. So far that opportunity hasn't arisen.

The English pride themselves on advertising that every English citizen may be represented by the lawyer of his choice, and I am told that there are even billboards lining the highways of England proclaiming this fact.

The way the system works is that an individual goes to a lawyer with his problem. If he proclaims himself unable to pay the lawyer's customary fee, the lawyer hands him a form. The lawyer proceeds to handle the case without any delay. The man takes the form to the National Assistance Board of England, which determines what portion of the fee shall be paid by the client, and at the conclusion of the matter the client pays that portion of the fee. The difference between what the client pays and what the lawyer receives is paid to the lawyer by the Law Society out of funds provided by appropriation by the Government to the Law Society.

As I understand it, the lawyers involved in the program—and this involves more than 90% of all the solicitors in the Law Society, at least—have agreed in advance that they will accept from clients of this sort 90% of the customary fee rather than 100%. What it amounts to is a subsidy inversely to the clients' ability to pay, the subsidy being paid by the government but being administered by the Law Society.

Now, Clint Bamberger can tell you better than I how the Durham and Wisconsin proposals approach this program.

MR. BAMBERGER: The Wisconsin proposal originally was to cover the whole State of Wisconsin, except Milwaukee County, where there is an existing Legal Aid Society which has applied for a grant from OEO to expand its program. But, now the Wisconsin State Bar Association is the applicant as well as delegate agency funded by the Office of Economic Opportunity for the purpose of conducting a program for legal services in 27 sparsely populated, predominantly rural counties in northern Wisconsin, embracing approximately 50,000 underprivileged residents. A person in need of legal services, upon establishing eligibility, will be given a "judicare" card, enabling him to select the lawyer (cooperating with the plan) of his choice. The State Bar Association, upon rendition of a bill, will then compensate the attorney from OEO funds at a rate not to exceed 80% of the minimum fee schedule established by the Bar Association, subject to

a maximum fee of $300 on any one particular matter. This is not to be considered as a statewide plan, but only as a demonstration program for the purpose of evaluating the effectiveness of the so-called "Judicare" plan, particularly in rural areas.[20]

In Durham, North Carolina, I think there is a total bar of about 100 lawyers. They will have 2 full-time salaried attorneys in the office to whom all applicants will come. These attorneys will decide the eligibility of the applicant for free legal assistance, and will handle as many of the cases as they can. They will refer some cases, particularly cases that require some specialized skill and cases that will require extensive briefing and argument, to private attorneys in cooperation with the Bar Association according to an ethical referral system.

Those attorneys will be compensated, again, a percentage—I think in this case it's 75%, but some percentage—of a minimum fee schedule, and there is some kind of maximum hourly charge for services. I think it is geared to the Federal Criminal Justice Act of $10 per hour for office time and $15 for court time.

We are going to fund some programs like that on a purely demonstration basis to see how it works. I doubt that we will fund any more than the 2 we have, and perhaps one other, one from some other kind of an urban complex, something different from the sparsely populated area in Wisconsin and the medium-sized town of Durham.[21]

Q: Mr. Bamberger, I would like to describe briefly a type of legal aid organization which I haven't heard specifically mentioned here. It happens to be the one that exists in Arlington County, which is the third of the 3 legal aid societies in Virginia. As far as I know it has been in effect about 20 years. The members of the Arlington bar, almost all of whom belong to the County Bar Association, simply line themselves up on a list—that makes about 200 lawyers—and they take legal aid days in turn so that every lawyer has a legal aid day about every 200th day. On the day his turn comes up in strict rotation a lawyer keeps his calendar clear, he stays in his office, and he is available to take any cases that come in that day. He must handle such cases through to the end, even though it means going through an appellate case. The burden thus spread is not too heavy, and I have never heard of a lawyer's refusing to take a case that came to him on that basis. Also, I have never heard it suggested by any lawyer that

[20]See note 11, *supra.*

[21]Population of Durham was 78,300 at the 1960 Census; it is now approximately 81,500.

he should be compensated for this; it seems to be an obligation which follows as a concomitant of the monopoly that we enjoy.

Where something like this is apparently adequate to suit the needs of the poor and is donated by the lawyers as a kind of public charity, I gathered from Mr. Bamberger's remarks that there is a certain disapproval of that type of legal aid system and a certain preference for one which is funded. I would like to inquire what objection there is to this kind of program.

MR. BAMBERGER: I am sorry if you gathered that from my remarks, because I did not mean to imply that. If your program is adequate to meet the need, we have no desire to duplicate it or supplant it. We *have* funded a program like that where none existed, in Clarksdale, Mississippi, a small town. There are, I think, 6 groups of law firms or lawyers in Clarksdale, and each of these groups will supply a lawyer to the office on a particular day. He takes any case that comes in that day and follows through on it. He will be compensated for that day at something less than you would expect him to earn in his office, *and for that compensation for that day he performs whatever work is required as a result of the business that comes in that day*. There is a staff lawyer who will administer the program and will handle some of the cases. But there is *no* effort on the part of OEO to duplicate existing adequate legal aid services.

Q: I found quite interesting that part of the Government program in which the poor themselves are to participate in the operation of the plans. Frequently there is the experience that when you are trying to get help from the so-called underprivileged classes you cannot find the leadership. I wonder if Mr. Bamberger can tell us the experience so far in successfully locating poor people who can really contribute to the program and in just what fashion they have been able to contribute.

MR. BAMBERGER: The only problem I have heard so far is finding too many leaders.

Let me repeat something else I said. You know, this is not just OEO policy, but this is the standard for legal aid societies of the National Legal Aid and Defender Association, which says that "the residents of the area and members of the group served"—they don't use exactly that statutory language, but it's darn near the same—should be on the policy-making board or on advisory committees. Now, we differ a little bit about the advisory committee. Leaders from the poor are found in a number of ways. If there is an existing community action

agency,[22] it very often has advisory councils in the neighborhoods where it locates its offices. It will have on its own board residents of the area or members of the group served, and let me emphasize, you use the word "poor", and I tend to use it as shorthand for the statutory language, which is "maximum feasible participation of the residents of the area and members of the group served." "Maximum feasible participation" means that the board should include actual residents of the area served and actual members of the poor community. They are selected in a variety of ways. In some places it may be desirable to have those people choose their representatives—who need not be poor—for the board. If there is an existing community action agency it might select these people. In some cases some of the residents of the areas and members of the groups who are on the community action agency board would nominate, or themselves sit on, the board of a separate legal services program.

In some places they have actually conducted elections. In Philadelphia and Kansas City elections have been conducted among the poor for their representatives on the community action agency. You can look to church groups, civil rights groups, and other groups who have concerned themselves with the problems of these people for leadership.

Q: Mr. Theophilus, concerning the nonsupport case, you say that quite a few of the cases heard were nonsupport on behalf of the woman. Surely you don't mean where the husband is capable of paying the court costs and the fees, and the court orders him to do so, that the woman would still be able to be represented by the legal aid society.

MR. THEOPHILUS: Unfortunately, where we operate, the court will not order fees to be paid by the husband in desertion and nonsupport cases. They will in a divorce case. Automatically, on application by the wife to the court for counsel fees in a divorce case

22A "community action agency" is a broadly-based local body designed to unite the efforts of institutions and groups concerned with the alleviation of poverty. It is incorporated under the charitable corporation statutes of its jurisdiction to operate a variety of anti-poverty programs attacking local problems in the field of health, education, housing, employment, etc. Some projects are run by the agency itself; others by local public or private organizations *under contract* to the community action agency. With regard to projects proposed by other local organizations for funding by OEO, the community action agency screens proposals in the light of community needs and availability of funds and submits endorsed proposals to OEO. The legal aid services program is one of the few exceptions to the direct supervisory control of the community action agency. See GUIDELINES FOR LEGAL SERVICES PROGRAMS, available from Community Action Program, Office of Economic Opportunity, Washington, D.C. 20506.

there will be a reasonable fee required of the husband. But in desertion and nonsupport cases there is no order made by the court for counsel fees, so the woman, if she is going to be represented, will have to be represented by us or some other attorney free of charge.

Q: Returning to the question of representation on the advisory committee and advisory group, I would like to ask Mr. Theophilus the extent to which, in the Pittsburgh Legal Aid Society, representation follows the guidelines which have apparently been put out heretofore by the National Legal Aid and Defender Association, and also the extent to which the Pittsburgh Legal Aid Society has had to or would have to change its make-up in order to comply with Mr. Bamberger's Office of Economic Opportunity criteria.

MR. THEOPHILUS: I don't have the copy of the conditions with me, but we do not have an advisory committee, we just have a regular board made up of persons who have been considered as leaders in the community interested in only one thing: that we do a job.

The conditions imposed by the Office of Economic Opportunity would have required us to accept on the board one person from each of the 8 poverty pockets in the City of Pittsburgh. They would be selected for us. We wouldn't know who they would be. In addition to that, the board would have had to have been constituted in proportion to the population of the community. For instance, in the city of Pittsburgh 20% of the population are Negro, and that would mean that somehow, if the members selected for us by the target areas did not give us 4 Negro members, then we would have had to rearrange our board in order to make sure that there were 4 Negro members on the board, 2 of whom we were told would have to be professionals. Should 4 or more Negroes be selected for us by the target areas and none of them be professionals, then we would have to further rearrange our regular board by providing 2 more Negroes who would be professionals. Those were the conditions which were imposed upon us.

Q: Will you give us a definition of what you mean by "poor" or "indigent"?

MR. BAMBERGER: That depends upon in what sense you are asking. You mean, who is eligible for free legal services?

Q: Yes, sir.

MR. BAMBERGER: Well, as I said, there is no national standard of eligibility for free legal services. The local community would determine the standard, based on the cost of living and the cost of legal

services in that community. We have just 2 concerns: (1) that the standard isn't so low that it excludes a considerable number of people who, after they pay for decent food and housing and clothing, cannot afford a lawyer; and (2) that it not be so high that it includes people who can afford a lawyer. Every program which has been approved has a different standard of eligibility.

Q: Mr. Bamberger, assuming that a properly constituted community action group—one with representatives of the poor on its board—has a contract with OEO, may such a group also contract with a local legal aid society that does *not* have representatives of the poor on its board?

MR. BAMBERGER: While a Community Action Program may contract with a local legal aid society (or any other acceptable group) as a delegate agency for the purpose of developing and rendering competent legal services, it is required that such a delegate agency have a separate and independent board, including representatives of "the residents of the areas and members of the groups served." Let me emphasize that this is not only the policy of the Office of Economic Opportunity, but is now the standard for legal aid societies promulgated by the National Legal Aid and Defender Association and approved by the American Bar Association. The purpose of an independent board is to preserve the attorney-client relationship inviolate, and to insure staff attorneys the freedom and discretion of handling cases in the same manner that a private practitioner would have in a matter for a fee-paying client. The attorney in a legal services program should be free to litigate in behalf of clients against public bodies and administrative agencies, including the Community Action Agency itself, if such a course is indicated. Involving the poor on the board lends dignity and a sense of pride to those who so long have been told "what is good for them" rather than ascertaining an expression from them as to their needs and problems.

Q: I would like to know approximately how you determined the need for legal aid in the communities. Did you just take a few cities and go on this average? It seems to me you are accusing the Virginia Bar of not having done all it should for the poor. Have you gone into it thoroughly enough to see exactly what systems we have before you make this accusation, to see whether we are handling the problem adequately?

MR. BAMBERGER: Well, what I said was that I thought that the evidence of only 3 legal aid societies in the State of Virginia didn't indicate to me that the organized bar had been very strong in sup-

port of the legal aid movement. Now, that may not necessarily mean that the lawyers in Virginia are not providing all of the legal needs of poor people, but I would be willing, on the basis of past experience, to make that generalization without making any investigation.

In every community in which a legal aid society has begun to operate, it has uncovered in a few months a vast need that it could not meet. The 4 gray areas projects funded by the Ford Foundation, of which Mr. McCalpin spoke, New Haven, Boston, Oakland and Washington, D. C., uncovered this tremendous need just by reaching out and making the lawyers visible and accessible to the poor.

In Washington, D. C., there has been an existing Legal Aid Society for about 50 years, with a present annual case load of about 8,400 cases. The recently established Neighborhood Legal Services Program,[23] at the end of 9 months had a case load at an annual rate of an additional 7,800 cases a year, just 600 less than the long-existing Legal Aid Society. At the same time the rate of intake in the Legal Aid Society increased and they had the highest annual rate of increase of new cases that they had ever had.

What has happened is that where anybody has really started a legal services program and reached out and identified it, made it visible and accessible, he has uncovered a need the depths of which nobody has yet determined, because every program is swamped. Our concern is that they not become so swamped that they don't really, in every case, get at the roots of the problems.

Q: I want to say something about what we have done in Norfolk. I hate to say we lawyers are ignorant, but this thing is new to us, and the organizational period, which I would say is the first couple of years, is a whale of a lot different from the operation period through the years to come. It requires me and my friends in Norfolk to adjust our philosophies, our traditions relating to charitable practice.

The Norfolk and Portsmouth Bar Association has approved the incorporation of the Tidewater Legal Aid Society, and it has a Board of Trustees which is its governing body, and an Advisory Board which is advisory only.

The Board of Trustees has 15 members and is comprised of lawyers or judges elected by the Bar Association. The Advisory Board has 10 members, and they are the community leaders, officers of the United Community Fund, the Health, Welfare and Recreation Planning Coun-

[23]This program is funded jointly by the Ford Foundation and the Department of Health, Education, and Welfare.

cil, which I think is the OEO local community action agent, labor union officials, indigent residents of the neighborhood to be served, physicians, women, all sorts of people [laughter]. I got that in the wrong order.

Personally, I don't think much of the Tidewater Legal Aid Society, because I think it is a mere subsidiary of the Bar Association. I think we ought to have a majority of lawyers or judges in order to insure the operation within our county and within our traditions, but I am personally very sure that we ought to have representatives of the poor and representatives of the community on our Board of Trustees.

And I am just as sure that we have got to go out into a neighborhood and establish our office, rather than hoping to have the indigents come downtown to our office on the 19th floor of a new bank building. I don't think that's the way to operate this thing.

What I am really trying to explain is that we are making a start, and there is quite a variety of opinion on how it should be done. But just because we lawyers are ignorant about it and are trying to do something that we all agree is in the right direction, that doesn't mean it is controversial.

What I want to ask you, Clint, is the name and address of a lawyer on your staff in Washington who can come to Norfolk and spend a day or two with us just chewing the rag and helping work the thing out.

One of the great problems is that when we talk in the terms of OEO, the community action program covers Norfolk, the City of Portsmouth, the City of Virginia Beach, part of the City of Chesapeake and part of Nansemond County. I am thinking in terms of starting 1 neighborhood legal aid office, but when you have to think in terms that broad, why, shucks, I could run into 15 in my mind, that might not even scratch the surface. I am satisfied that the business is there. Who can come to each community and help us?

MR. BAMBERGER: Let me take this occasion to tell you something about how we operate and also to introduce someone to you.

We have myself and a deputy director, Earl Johnson, who is a graduate of the University of Chicago with a master's in criminal law from Northwestern and was formerly the Deputy Director of the Neighborhood Legal Services Project in Washington. He is my deputy. In addition to that, there are 3 other lawyers on the staff in the Washington headquarters. As a matter of fact, 1 of them I stole from Mr. McCalpin's firm, Chuck Edson.

OEO divides into 17 regions around the country, and there are

regional offices. Virginia is in the Mid-Atlantic Region, which has its office in Washington. There will be 1 legal services representative in each of those regional offices. The man in the regional office in the Mid-Atlantic Region is Herman Wilson, who is a graduate of the Harvard Law School, and he is the man that anybody in Virginia who wants to talk about a legal services program should contact.[24]

And in addition to that, we have consultants. These are lawyers and law professors. We have about 20 of them scattered around the country, and when we can't take care of the problem (principally because of time) we ask them to go and meet with a program, and they will help you. I can't think of any we have in Virginia, but we have several in Washington. Dean Kenneth Pye, who is Assistant Dean at Georgetown University, is one; Jack Murphy, who is a Professor at Georgetown, is another; a young lady who was an associate in Covington & Burling, Zona Hostetler, is a third. Those are the people we send, but if you got in touch with Herman Wilson, he would either come down or send someone to talk to you.

One other resource we have is the National Legal Aid and Defender Association. We have made a grant to them to assist them by employing 1 additional field representative who will go around and help communities begin legal aid societies which may or may not want to seek federal financing.

Q: Mr. Bamberger, might a legal services program be funded without the formal approval of the local bar?

MR. BAMBERGER: It could be, and I had to say that first in my own town in the Baltimore City Bar Association when they had 500 of them there to roast me; but that's right, we look to organized bar support. It is one of the things that we want and will consider. But even if the organized bar takes action against a program, we consider it. If we think that it is a good program, we will fund it. We won't fund it just because they disapprove it, and we don't disapprove it because they disapprove it—it is an important factor to be considered.

Q: Mr. Bamberger, may I ask this question: It seems to me a great deal of our discussion this morning has been directed to the performance of legal aid duties by members of the bar on a part-time basis. Is it true that a great portion of these services, instead of being performed by the bar, would finally come into a staff system where there would be 1 or more of the staff attorneys handling the great majority of the cases, with only the remainder finding their way into the hands of the general practitioner?

[24]Mr. Wilson's address is 1730 K Street, N.W., Washington, D.C. 20506.

MR. BAMBERGER: We have no kind of standard program. One of the things we are very interested in doing is funding different kinds of programs, some using full-time staffs, some using part-time people, some using a combination of both to find out the most effective way to provide legal aid. I think that in most large cities there should be full-time staff. I think in any city it would be well to involve other lawyers on some kind of advisory basis, perhaps on a part-time basis handling cases. One of the things I would like very much to see in a city where you had a full-time staff would be an advisory committee of lawyers to help that staff—a sort of law-firm-senior-partner concept—since the full-time people are going to be overworked, and occasionally along comes the kind of case that Mr. Theophilus talked about, one that if properly appealed will change a rule and lighten your burden in the future.

If the kind of case comes along that requires a good deal of research, preparation, briefing, and argument, the full-time lawyer servicing the clients in the legal aid office may not have the time to do the best job. It would be very good if the bar would volunteer to help in that kind of case, and the best lawyers would take that kind of case.

I think in rural communities you may not need even one full-time person to handle legal needs. It may be that what you would want to have is some kind of staff person who would administer a system which would call on the bar in several small towns or counties to represent poor people who could not afford a lawyer and had legal problems. We have also talked about the circuit-riding concept; that is, a lawyer, probably full-time, who would be available at little crossroads towns or market centers on particular days to render assistance to people.

We don't have any preconceived notions about the necessity for everybody's being full-time or volunteer help. I have only one concern about volunteer help, and that is if you tried to run a large program with just volunteer lawyers we might never solve the really big problems.

For example, Lawyer A on Tuesday has a retaliatory eviction case, Lawyer B has another one the next day, and another lawyer has one next week, and they never really get together, and they see that what is needed here is an amendment of the statute, a real challenge to the practice in courts with an appellate decision which will correct this practice thus avoiding the necessity for a good number of these cases in the future.

I worry a little bit about whether, with an entirely voluntary system that disseminated the cases that broadly, you would ever achieve a concerted attack on the problem. On the other hand, you could well argue that by spreading the work around enough lawyers would get to know about the problem and maybe they would begin to do something about it. But we want to try different ways and find the best way.

We will require record keeping not much greater than the records kept by legal aid societies under the standards of the National Legal Aid and Defender Association, and we will use these records to evaluate programs. All of them will go through at least some kind of evaluation at the community level by the community action agency when they come up for refunding. We will evaluate some sample programs to see what is the best way.

Q: Mr. Bamberger, when you are making your determination about funding a community action program with a legal component, how do you go about determining whether the services already rendered in that community are sufficient.

MR. BAMBERGER: Well, we have some guides on those. Studies have been made and articles published which have made some assessment of the number of legal problems to be expected in any group of 1000 poor people. However, we haven't really had to face the duplication of services problem yet because we haven't had any application coming in alongside a large existing legal aid society where that society said it was meeting the need. I haven't yet heard a legal aid society say that it was satisfied that it was meeting the total need in its community.

Q: Mr. Chairman, a lot of us have heard some things about the program in Gum Springs, Virginia, and I am wondering if Mr. Bamberger would like to enlighten us officially about that. Things we have heard are not very complimentary, and I wonder if he would develop it.

MR. BAMBERGER: I have not heard anything, either complimentary or uncomplimentary about it. All I know is that the Gum Springs operation is somewhat of an anomalous situation. The Director of the Community Action Program is a lawyer who agreed to render legal services as the need arose, and has enlisted a number of volunteer lawyers from the nearby Washington area to assist him. Technically, no money has been allocated for a comprehensive legal services program from our office. The United Planning Organization has allocated the funds from its grant for the Gum Springs Community Action

Program, as the incidence of poverty is very great in this area. But if there is anything that you have heard about it, I would like to know it, and you will get an answer, I assure you.[25]

Q: Mr. Bamberger, just to determine the scope of the program, are you familiar with what the budget will be for the fiscal year 1967 for the Legal Aid Section of the OEO?

MR. BAMBERGER: That sort of changes from day to day as there are demands for other money for community action programs. You see, we are part of the total community action program, but the last figure I heard is $20 million, and the programs which have been approved so far are spending a total of about $3.2 million.

Q: What are you doing to increase the moral standards of people that you may be working for? I will grant you there are some of them that have very little, but my experience as an old country lawyer is that you will get men who may not be able to pay a cash fee but can bring in a half-gallon of sorghum or something like that. And over the 40-odd years that I have been trying to practice law I have seen a number of people come in with practically nothing and I have given them services. Every time I gave them some service they wanted to come back and beg more, or they wanted to ride me, and if I made them pay something, they earned it and they felt better about it and their pride was not hurt. I am not sure making "corn" affected their moral character.

MR. BAMBERGER: Well, I don't know. I think you are getting into a whole philosophical debate whether government ought to do anything for poor people. That would take a long time.

I think it helps the moral fiber of a man when he finds out that this system of justice is a system for him too, and that a lawyer is somebody other than the man who comes to evict him or comes to repossess his automobile. I think that is the picture the poor have of lawyers, and there are some good studies that show that.

As Mr. McCalpin said, among the poor in Missouri the number of people with personal injuries who go to lawyers is considerably less than any of us lawyers thought it was. I have forgotten who said it, but the poor think of the law as a night stick, and the law is occasionally an oppressive force for the poor. I think it helps a man when he finds out Mr. Lawyer in town, the judge, and the law are things that help him. I think it helps his moral character.

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[25]The attorney who asked this question later wrote to Mr. Bamberger that he had no further questions to ask and no information to pass on concerning the legal service program in Gum Springs.