THE LEGAL PROFESSION AND LEGAL SERVICES: EXPLORATIONS IN LOCAL BAR POLITICS

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I. INTRODUCTION

"Students of law and society have grown increasingly aware of the contribution to the character of the legal system made by the attorney in his professional role."[1] In his capacity as "gate keeper to the courts" the private attorney is a significant actor in the judicial process, especially at the community level (Jacob and Vines, 1963: 251). His decisions, formulated within limits set by the norms, rules, and expectations of the profession (*i.e.*, bar associations) initially determine who has a right to lodge a grievance, at what cost, under what conditions, and to what ends.[2]

The Legal Services Program of the Office of Economic Opportunity provides a unique opportunity to explore the professional values and attitudes of lawyers, because the Program challenges the traditional prerogatives of bar associations in controlling access to the legal resources.[3] The three aspects of the Program representing the most serious challenge to the traditional practice of law are: (1) OEO's insistence that local programs utilize the legal process as an instrument of social and political reform on behalf of the poor; (2) the conscious, though wavering, effort to structure programs so as to insure their independence from local bar domination; and (3) the

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concept and practice of "maximum feasible participation" of the poor in the actual management of local programs. The response of private practitioners to the OEO challenge provides some insights into such matters as the profession's criteria for gatekeeping and the lawyers' instruments of control.

A useful point of departure in exploring bar responses is at the time programs are established and funded.[4] Eligibility requirements, staffing policies, composition and powers of governing boards and similar basic matters are raised and debated, often resulting in considerable acrimony within the legal community. The kinds of bar responses observable within this context are instructive indeed. Hence, what follows is a descriptive history of the establishment of a local legal services program in a western state. The research was undertaken during the winter of 1967-68 and resulted in a lengthy narrative report from which the following abbreviated version was extracted.[5] An analysis and evaluation follows the case history.

II. THE LANDERMAN COUNTY LEGAL AID SOCIETY

Landerman County[6]

Although Landerman County serves as a bedroom for the middle-class white collar office workers and executives of large neighboring urban centers, its pockets of poverty are notable. According to 1960 U.S. Census figures, 17 percent of all families within the county had incomes of $4,000 or less, the upper limit for a family of four to qualify for legal assistance from the Landerman County Legal Aid Society. Within the target area where neighborhood legal aid offices came to be located, the percentages were considerably higher, running from 27.3 percent in the Eldorado-Martinvale area (which is approximately 90 percent black) to as high as 35 percent in the eastern, more rural section of the county. Despite this rather high incidence of poverty, there was, in 1965, no legal aid society at all in the county (Dill, 1966).

The Landerman County Bar Association, consisting of approximately 250 members, was of relatively recent origin, organized in an attempt to bring together the sometimes competing Eldorado Bar Association and the Encanto Bar Association. However, at the time this research was undertaken, both of the latter organizations continued to exist and function as semi-independent entities.

Initial Proposals and Responses

In August, 1965, following a governor's conference on the subject, the Landerman County Bar Association formed a "study committee" to develop a proposal for a combined civil-criminal legal services program. Mr. Kenneth Allen, county bar president, chaired most of the meetings of the group. By mid-September what was entitled "A Report of the Public Defender Committee of the Landerman County Bar Association" was drawn up. The lineaments of the proposal were: a non-profit legal aid society was to be formed, governed by a twenty-one member board, eleven of whom were to be lawyers and ten non-lawyers (*i.e.*, representatives of the poor); both civil and criminal representation was to be provided; eligibility limits to be $3,000 income annually for a man and wife plus $600 per dependent; a policy of "presumptive eligibility" was to apply; and a social service coordinator was to be employed to coordinate the program's activities with other community services (Dill, 1966: 14-15). The bare majority of lawyers on the governing board of the proposed program was an unusual provision which was to become the nub of criticism and objections that soon mounted.

As more attorneys became aware of the program's structure and implications, opposition grew. There were complaints of "outsiders" interfering in program planning (*i.e.*, social workers and representatives of the county Economic Opportunity Board participating in study committee deliberations), and there was a feeling that some legal services, such as divorces, were a "luxury" not to be enjoyed by the poor. Typical was the sentiment expressed by one local attorney that a good many lawyers in the county ". . . feel that the poor don't need divorce in quite the same way middle-income people do."[7]

It became clear that a second draft would be needed to pacify the opposition. This second draft contained these important modifications: the policy of presumptive eligibility was eliminated; the function of coordination of social services was placed upon the executive director; staff attorneys were to be prohibited from engaging in political activity and in general practice; and the ratio of attorneys to non-attorneys on the board of directors was changed to thirteen lawyers, eight non-lawyers. Meeting after meeting was held in an attempt to sell the plan to the attorneys in the county. On November 24, the study committee of the county bar association met in an

attempt to push the plan through. The meeting was termed "informational" by bar President Allen, though as it proceeded it became evident that the principal business was to be the consideration of yet a third draft of the proposal. This time the changes were:

1. The ratio of lawyers to non-lawyers on the board was again increased, from 13:8 to 15:6.
2. Professional (lawyer) members of the society (all active members of recognized bar associations in the county) were to be entitled to vote for all board members.
3. The six lay members of the governing board were to serve terms of one year, while the fifteen professional members were to have three year terms.
4. Officers of the society were to be selected from among the professional members of the society.
5. The referral of clients to appropriate social agencies — a responsibility which one month earlier had rested upon the executive attorney — now became a general obligation of the society.
6. Final decision as to the provision of legal representation or advice to organizations was to reside in the governing board.
7. Eligibility for the services of the society was made dependent upon the applicant's holding "no readily liquidated assets" and his inability to "provide for his required legal services with credit (Dill, 1966: 21-22)."

Short of having no legal services program at all, it is difficult to see how the proposal could have gone further in protecting the interests of the private attorney. It would seem that any relationship between this proposal and the stated goals of the Legal Services Program, including the concept of "maximum feasible participation" can be attributed more to coincidence than to intent.[8]

At the meeting, Mr. Allen agreed to mail to all members of the county bar this third draft of the proposal. The draft revealed the rolling adjustments members of the study committee were making in response to the voiced opposition of their fellow attorneys. By these changes, they hoped to buy approval, or at least an end to the open and growing hostility the proposal was encountering. Even with these alterations, a great many attorneys were still dissatisfied and fearful. However, on December 16, with repeated assurances from Mr. Allen that the proposal was in the best interests of the private

attorney,[9] the executive committee of the county bar approved the plan, and it was immediately submitted to the Economic Opportunity Council which gave its approval by a near-unanimous vote.[10]

The County Commission was the next to be approached for support. County approval of the proposal for a combined civil-criminal program meant the appropriation of some $25,000 of county funds as the local, non-federal share. On January 11, 1966, by a vote of 3-2, the County Commission rejected the bar's proposal. The reasons for this action were many, but an important one was clearly the continued maneuverings of the opposition within the bar to drastically revise the program or kill it outright. The division within the bar was well known by the county commissioners. Samuel French, one of the commissioners, had received a three-page letter from a local collection agency attorney who was strongly opposed to the program, apparently in any form. Although the letter was dated a few days after the Commission vote, its opening paragraphs indicated that French was aware of and apparently interested in the opposition's arguments. Since some of the points raised in the letter were quite representative of often-heard arguments of the opposition, it might be useful to summarize them: (1) there is no need for this type of program in civil matters; (2) the program would use tax dollars to raise "spurious defenses," thereby delaying the legal action of creditors and landlords; (3) this would be "disastrous," and the county commissioners would have to bear the brunt of the creditors' ill-feeling; and (4) even the public defender part of the plan is not needed, in part because public defender offices, unfortunately, do not attract the best legal talent.[11]

Another Attempt

Shortly after the County Commission's veto, representatives of the opposition, now better organized, addressed a letter to the entire bar calling for a referendum on the then-current proposal. The letter challenged the representativeness of the county bar's executive committee and urged attendance at a meeting set for February 17, 1966.[12] The opposition had in mind two tactics: blocking or severely modifying the executive committee's legal services plan and realigning the executive committee more in keeping with its views. Both were initially successful. Two members of the opposition were elected to the executive committee at the February 17 meeting, and the

results of the vote indicated a clear majority in opposition to the combined civil-criminal proposal (70-55) and in favor of "Judicare," one of the alternatives listed on the ballot. (Judicare is an arrangement whereby *private* attorneys are reimbursed for services performed for indigent clients.) Fifty-six votes were cast in favor of Judicare as opposed to 61 for the three other alternatives mentioned. The vote was taken by mailed ballot after the meeting, however, because the general acrimony and bitterness at the meeting prevented orderly procedures. Many respondents recalled it as the stormiest session in memory. One attorney, a bar official at the time, described it as:

> . . . an extremely hot meeting. Dirty names, fisticuffs in the hall and things like that. An obscene gesture was given by one of our more prominent attorneys at the time. . . .

Judicare had been mentioned in early study committee sessions, but apparently had never been seriously considered. Now it was evident that a large majority of the bar favored the plan, and the executive committee proceeded to develop a new proposal along these lines. However, a quick check with OEO in Washington revealed that there was little, if any, likelihood of obtaining funds for such a program. Washington argued that Judicare tended to be more expensive and less efficient than neighborhood law offices. It was also argued that Judicare was not oriented to the reform goals of the Legal Services Program since, as a group, private attorneys tend to have little zeal about using the legal system for fundamental change. At this point the idea of Judicare was dropped, for the time being, and the executive committee, through more modifications and adjustments, continued to work for bar approval of a conventional, staffed program. Because the County Commission was going ahead with a separate Public Defender system, the criminal aspects of the proposal were dropped, and the plan now called for provision of civil legal services only. A board of directors of 15 lawyers and six laymen was still envisioned, however, although none of the latter would be voting members. Otherwise the revisions left the proposal very much as it was at the time of the County Commission veto. At a general meeting of the county bar association in March, 1966, this proposal was approved by a vote of 44-29.

However, in February and March, the bar plan came to face opposition of a different sort, this time from the poor themselves. From the outset, the bar plan for legal aid had

come under heavy criticism from leaders of the poverty community (mostly black) and from several representatives of the EOC. The progressive reduction of the voice of the poor in proposed governing board structure and the dominance of the bar in all deliberations helped to unite sectors of the black community. With the aid of five or six private attorneys of like mind, plus numerous neighborhood organizations under the umbrella of EOC, a new plan was set forth which incorporated many recommendations of the poor themselves. One notable feature was a governing board consisting of twenty representatives of the poor and one representative of the bar! In contrast to the initial hostility the bar plan received, this proposal won the immediate backing of EOC with very little opposition.

Both of these proposals were presented to the County Commission in March of 1966. Unwilling to choose between the two, the Commission directed that the initiators meet to arrive at a compromise. At a whirlwind Saturday session a compromise was reached which related primarily to the composition of the board of directors. The new plan called for three "classes" of directors: Class I — eight lawyers elected by the bar; Class II — five lawyers elected by the bar from a slate of ten nominated by the poor; and Class III — eight representatives of the poor of whom five must be target area residents. The procedure for selecting representatives of the poor was ambiguous, which caused considerable tension between legal professionals and the poverty community. The proposal was approved by the Landerman County Bar Association on April 13, 1966, by a close vote, 54-49, and soon thereafter the EOC endorsed it. On April 28, by a tie vote of 2-2, the County Commission failed to approve the compromise plan.

As far as the general membership of the bar was concerned, this was the final veto for a legal services program in the county. Attorneys who had opposed the program from the outset and who had worked for its defeat before the County Commission were delighted with their victory and felt sure the issue was dead. The majority of the county's lawyers — those who had been relatively indifferent throughout the struggle — remained apathetic to the veto. But a very small group of attorneys who had fought strongly for a Legal Services Program did not regard the Commission's rejection as final. If the commissioners, acting as the local CAP agency, were unwilling to allocate funds, then there was another route

— direct funding from Washington. Thus, on June 24, backed by the EOC, a small group of private attorneys began to mount a direct appeal to the national office of OEO legal services. Their proposal was essentially the same as the above-described compromise. The plan was being submitted under the auspices of the Landerman County Bar Association, although precisely how much bar support it enjoyed is unknown.[13] When the executive committee of the county bar association met on July 21, the Landerman County Legal Aid Society was a corporate entity, and plans were made for the selection of directors, eligibility requirements, dues, and so on. On February 28, 1967, the OEO in Washington approved the program for funding, and in March Mr. Edgar Lamb, new bar president, as well as president of the Legal Aid Society, announced that the program would begin operations about April 1. He called on the county lawyers to join in support of the new program and to pay their dues to join the Legal Aid Society.

Program Operations and Crises

The narrative would end here had it not been for the continued opposition and harassment by dissident attorneys. Presented with a *fait accompli,* those opposed to the program were left with little choice but to accept it, or work from within for its alteration or demise. They chose the latter course, using as their chief ideological weapon the appeal of Judicare. The interaction between attorneys and representatives of the poor in board decision making is also instructive as an indication of the response of the private attorney to the OEO challenge.

Faced with an on-going program, the opposition, increasingly manifested the economic basis of its stance. Several local attorneys whose incomes were based in whole or in part on bankruptcy and divorce cases indicated concern and anger that they might lose business to a "federal bureaucracy." Many attorneys also felt that program eligibility standards were too low, permitting service to persons who could afford private attorney fees. Such complaints, as well as strong support for Judicare, were reflected in the recommendations of a "study committee" appointed by Mr. Lamb to look into the operations of a program then barely two months old. The recommendations, in summary form, called for: (1) prior bar review of *all* actions filed by program attorneys, (2) inclusion on client intake sheets of a perjury clause and private attorney investi-

gation of the finances of all potential clients, (3) placing all divorce and bankruptcy cases in the hands of private attorneys who would be reimbursed by program funds, and (4) creation of a bar committee to consider converting the entire program to Judicare the following year.[14] Judging from this report, one might conclude that the committee was less concerned with providing legal services to the eligible poor than with insuring that every possible dollar be squeezed out of the total volume of legal business in the county.

The tempo of activity concerning the newly awakened hope for Judicare quickened. In a lengthy letter to Mr. Lamb dated October 17, 1967, an attorney from Eldorado specifically proposed that $25,000 of the program's budget be allocated to private attorneys to handle divorce cases. Under this plan, attorneys would be reimbursed at 80% of the bar's standard fee or $20.00 per hour, and the client would be free to select his own attorney (a point frequently made in favor of Judicare). At the program's board meeting on October 18, President Lamb was directed to appoint a committee to study all aspects of Judicare.

At no time, so far as any evidence indicates, were any of the representatives of the poor consulted regarding the blossoming Judicare proposal. As one Class III board member said, "We were uninvited to participate." Washington was unwilling to buy the entire $25,000 package, but OEO officials tentatively agreed to a $10,000 grant modification. The plan was perfected at subsequent meetings, and at the December 20, 1967, board meeting the arrangement was pushed through. Private attorneys would receive up to $200 per divorce, or $16 per hour, whichever was less; $100 of this would be paid when the complaint was filed; clients would continue to pay costs; and no limit was placed on the number of cases an attorney could accept. The plan was to be experimental.[15]

Thus, the two-year drive for Judicare in the county had partly succeeded, and in the absence of any significant opposition in the program's board of directors. Mr. Lamb regarded it as a sop to the bar which would be helpful in obtaining future private attorney support. However, one attorney board member, Mr. David Miller, who was absent from the December 20 meeting, was quite upset and attempted to reverse the Judicare decision. His motion to this end, introduced at the January 9, 1968, board meeting, was first ruled out of order

by the chair (Mr. Lamb), but was subsequently voted on only after an hour's delay, the time necessary to call in absent lawyer board members in order to defeat it. The impact on representatives of the poor was noticeable in interviews some three months later. As one Class III representative said:

> . . . all of a sudden we had a tie vote [on the Miller motion] . . . . The attorneys kept dragging it out until these other attorneys got down there. . . . So I said, 'What's going on?' So I did tell them to their faces. . . . 'Now look, this is something I'm not going to be involved in. . . .' Now all of a sudden they're splitting. Here goes this little group over there; they're just *lined up* . . . . It was so obvious. It was finally 8 to 8, and Lamb voted in their favor.

Another Class III director said:

> . . . we're a little bit resentful. I know I speak for others. We're a little unhappy with the structure of the By-laws and the way they kinda went around the poor people. . . .

Despite the Judicare victory, some attorneys in Landerman County continued to oppose the OEO-funded legal services program. In meeting after meeting of the program's board of directors and of bar associations in the county, Judicare was discussed with increasing frequency and enthusiasm. Far from being satisfied with their apparent domination of policy making on the existing program board, several attorneys seemed even more bitter than before. One such attorney was Mr. Alan Goldstein, elected as a Class I director in early 1968. Goldstein's letter in response to the authors' inquiry for information is indicative of the strong opposition faced by the Landerman County Legal Aid Society. The letter reads in part:

> . . . [F]rankly, I'm getting a trifle 'fed-up' with the amount of time I am being asked to consume relating the history of an organization that has practically ruined the income base I spent about 15 years establishing. . . .
>
> My uncompensated time on this project began about three years ago . . . when [I tried] to persuade my fellow members of the Bar to adopt this program. . . . I was called a fool, I lost within the Bar and was excluded from the Bar's Executive Committee at the next vote, and the obvious thing did happen: a few members of the Bar pulled an end-run around the adamant positions of the County Commissioners and the majority of the members of the Bar and set up the present organization wherein the Bar has little voice during any Board Meeting wherein a few of its members fail to show up for the meeting.

The letter goes on to suggest that the Judicare concession is still not sufficient and that in any case, there is really little need for legal services to the poor in the county.[16]

On March 28, 1968, the Eldorado Bar Association met to take a position on Judicare. Prior to the meeting a report went out to all members entitled "JUDICARE vs. NEIGHBORHOOD LEGAL SERVICE HOUSE."[17] It made the following points, among others: (1) legal services to the poor in administrative matters (*e.g.*, welfare, social security) are unnecessary because administrative agencies have pre-empted this field; (2) neighborhood (target area) legal services offices are not needed because the poor in the county are "extremely mobile" and can easily reach the office of a private attorney; and (3) Judicare is preferable to the neighborhood office plan because private practitioners are experienced in legal matters poor people are concerned with, and Judicare provides a free choice to the client.

One of the authors attended the March 28 meeting. During the meeting, arguments in favor of Judicare were made on grounds of efficiency, quality of service, and economy. Mr. Maynard Powers, Executive Attorney of the Landerman County Legal Aid Society, rose to defend his program, but not without considerable background noise and heckling — heckling which accompanied the statements of all program staff attorneys who spoke. It was moved that the Eldorado Bar Association go on record as favoring a full Judicare program. During the debate Mr. Lamb requested that the group hear the views of Mr. Percy Hamilton, a Class III program director. The presiding officer ruled that the hour was late and that there was no time to hear Mr. Hamilton. One attorney said that those who wanted to listen to Mr. Hamilton could do so after the vote; this evoked general laughter from the floor. The motion passed overwhelmingly with 30 ayes and 7 nays; four of the latter were cast by staff attorneys of the program. After the meeting, one program official said ruefully, "I will assume they voted to abolish legal services." At their meeting in April, 1968, leaders of the Eldorado Bar Association continued their pursuit of Judicare by inviting an official of a genuine Judicare program to speak. The speaker extolled the virtues of Judicare before a large (about 45) and enthusiastic gathering.

At the conclusion of this study, it appeared likely that OEO would disapprove the $10,000 partial Judicare arrangement. The impact of such a decision would have been problematic but likely would have stiffened the opposition in their determination to water down or abolish federally-funded legal services in the county.

III. AN ANALYSIS AND SOME CONCLUSIONS

Typicality

A question relevant to any case study is: is it typical, or have we stumbled upon an aberrant instance of local bar reaction to OEO legal services? The original manuscript upon which this paper is based included six brief sketches of program operations in six different cities which reveal that the nature and extent of local bar opposition elsewhere bore striking similarity to events in Landerman County (Stumpf, 1970: 14-19). These sketches may be supplemented by data in the authors' files on programs in nine additional states: California, Florida, New York, Oklahoma, Kansas, Massachusetts, Texas, Colorado, and Michigan. All cases cited, save those in Michigan and New Mexico, are included on the strength of semi-annual (and supposedly confidential) program evaluations undertaken or directed by OEO Legal Services in Washington.

The former chairman of the Community Action Committee of Saginaw County, Michigan, was so struck by the similarity of the Landerman County study to events he personally observed that he was moved to remark: "Change a few names and a few tactics and you have the Saginaw story."[18] One of the authors has observed developments in New Mexico (Albuquerque Legal Aid Society) over a period of four years and can safely apply the above remark to the Albuquerque experience. Although not gathered systematically via a nation-wide random sample, the available evidence seems to justify the conclusion that bar response in Landerman County is typical of that to be found elsewhere. Space permits but a small sample of this evidence.

*Not a single opposition tactic noted in Landerman County has been untried by Albuquerque attorneys. The Judicare approach has been attempted in five separate pleas to Washington. Success was finally achieved by persuading the governing board of United Community Fund to withdraw its annual support of the OEO program (some $25,000) and transfer that amount to an Albuquerque Bar "client's choice" plan, which program is now in operation.[19]

*In each of two separate programs known to the authors, the director flatly admitted that the local bar runs the program and that non-lawyer board members are not permitted to have a voice. As one program director put it,

"Lay people think they know law better than lawyers. We ignore them at board meetings and keep them in their place."

*Evaluations of other programs (at least six examples in the authors' files) clearly indicate that neither the program board nor director make any effort whatever to seek litigation on behalf of the poor as a group nor even to inform the poor of the program's existence. Community aides are not hired and legal services posters are not displayed because, in the view of some this constitutes solicitation in violation of the Canons of Professional Ethics. To file class actions or engage in any type of law reform activity would be "huckster" tactics or "socialized law," "not what a lawyer is trained to do."

*In program after program (at least four specific examples could be detailed in each of the following categories) directors or board members express doubt that the program is needed at all, refuse to permit the filing of *in forma pauperis* proceedings ("[this] would be an imposition on the courts"), and admit they serve mainly, as one respondent put it, ". . . as a watchdog to hold down this socialized operation. . . ." (Stumpf, 1970: 16; see also OEO study, 1968: Ch. 6,7,8).

Law and Social Change

If the above conclusion regarding typicality is valid, the responses evoked by the OEO Legal Services Program provide some insights into the socio-political ideology of the private attorney as related to his professional function. Some of his instruments for controlling access to the judiciary have been illustrated, as well as his criteria for "gate-keeping." But of especial interest is the way in which he views his own politico-legal role. It would appear that the legal profession is far from prepared to accept the philosophy implicit in the aims and operations of the legal services program. While there are leaders (and followers) who stand out as exceptions, exceptions are what they are. In the main, the profession remains tied to the traditions and *modus operandi* of the old legal aid societies, with their emphasis on case-by-case individualized service, restrictive attitudes toward *in forma pauperis* proceedings and program eligibility standards (serve only those whose financial means, direct or indirect, preclude absolutely any fee

to a private attorney), and revulsion against the use of the judicial processes for purposes of social reform.

While it is easy to explain this on pecuniary grounds, evidence based on the responses of judges[20] as well as on those of private lawyers suggests that the problem may be deeper than that. The highly individualized, case-by-case approach to lawyering appears to be so ingrained as a prime article of faith in the profession that shock is sometimes registered when a more sociological view of the legal process is suggested (Stumpf, 1969: 1058-1076). It may very well be that this stems in large part from the "splendid isolation" from the broader academic disciplines which characterizes American legal education. The stark contrast between conceptions of the role of law (and lawyers) held by the founders of the legal services program on the one hand, and by many private practitioners on the other, has a close parallel in American universities as between the pedagogy and epistemology of law schools and that of the social and behavioral sciences.[21] Social scientists generally agree that publicly financed legal services can be used to marshal the instrumentalities of the law for social and political change. While modern legal education tends to accept this truism in the abstract, training of law students proceeds nevertheless as if it were not true—as if the case, the individual legal problem, had no broader social consequences and the lawyer had no responsibilities beyond the immediate needs of his client. If this marks the one hundredth time the reader has heard the plea for a closer collaboration between legal education and the social sciences,[22] this time it has been accompanied by an illustration of the consequences of the parochialism of legal education.[23] It may be argued that this places undue responsibility on legal education, for law schools are faced with the task of training effective practitioners for a judicial system and legal profession they did not create. But among the deeper reforms now said to be needed in the entire judicial process, a new look at legal education is certainly to be included.

Some Apparent Exceptions

Before proceeding too far in these rather pessimistic conclusions regarding OEO legal services, it might be well to note some exceptions to the generalizations being set forth. There are both attorneys and programs that do not seem to fit the Landerman County model. The question is, of course, why? In

the absence of hard data systematically gathered at the situs of a number of community programs, the best tentative resolution is to offer some informed hypotheses which may be worth considering for their immediate policy implications as well as for purposes of further research.

One important source of variation in attorney responses to legal services programs seems almost certain to be found in differences in specialization of law practice. For example, in their research on local bar politics involving the issue of judicial selection, Professors Watson and Downing found a basic cleavage within bar associations between "Defendant" and "Plaintiff" attorneys (Watson and Downing, 1969). Attorney Charles J. Parker suggests that a similar pattern emerges when the issue is federally financed legal aid (Parker, 1966: 126-141). That is, plaintiff attorneys will be more likely to oppose the program than defendant attorneys. An attitudinal questionnaire to examine this proposition has recently been pretested in five communities and administered in Albuquerque. Results from this study should provide some evidence to confirm or refute the hypothesis.[24]

Regarding variations in programs, Stumpf's San Francisco project focused on at least two programs which have been notable exceptions to the Landerman County story: San Francisco Neighborhood Legal Assistance Foundation and California Rural Legal Assistance. In the substantive areas of welfare and consumer law, both of these programs were found to have made a substantial impact (OEO Study, 1968: Ch. 3,4). The history of these programs also reveals that they were both successful in overcoming bar and other local opposition and establishing themselves as aggressive, reform-oriented agencies dedicated to social change through law (OEO Study, 1968: 19-22). In seeking an explanation for this variation, it is useful to recall Professor Wells's conceptualization of the attorney's community role:

> Emphasis should be placed upon the 'reinforcing' characteristics in the exercise of power, insofar as the lawyer is concerned. Although the lawyer is apparently an essential and continuing figure in the civic and cultural affairs of his community, he is not seen as a 'leader' in these settings. In a sense he is the 'captive' of the values of his community; more precisely, he is likely to be the product of the community and its values, depending upon the size of the community involved.[25]

The private attorney thus appears to act primarily as a surrogate for the interests he represents, and these interests are those which reflect established community values. If this is so,

it is politically naive to expect the private attorney to share and further the central goals of OEO legal services. This point is suggested as a useful datum for understanding CRLA and SFNLAF.

The first striking feature of these programs is the manner in which they were organized *vis-à-vis* local bar associations. CRLA, a state-wide program, was originally funded via a research and demonstration grant, and partially for this reason is beholden to no city or county bar association. Moreover, since its inception, it has successfully opposed all efforts—and there have been many—to bring its regional offices under effective control of the respective local bars.[26] The program was not conceived within the communities and counties it serves; it was, in fact, imposed from the outside, to the distinct displeasure of many local bar organizations. A by-product of this organizational history is that CRLA attorneys, as a group, are not members of the local legal community in the sense discussed by Professor Wells above. Few of them are hometown attorneys, they have no interest in remaining in the community when and if they leave the program, and as a general rule, their professional careers are not tied to the communities they serve. Most CRLA staff attorneys are not only professionally independent of the local legal fraternity but are also personally and socially aloof from it. These conditions are of the utmost importance in explaining CRLA's aggressive, law-reform orientation, its willingness to take on the most unpopular causes, and its reputation as the program which represents the best OEO has to offer. Of course, one cannot ignore factors such as leadership, high-quality legal talent, and a surprising degree of political acumen which is evident in CRLA's operations. But the best attorneys are unlikely to be oriented to legal reform in the interests of the poor if they are products of the established legal community.

Although the San Francisco Neighborhood Legal Assistance Foundation was community conceived, its relation with the principal local bar association has been quite similar to that of CRLA. The founders of SFNLAF were not, in the main, leaders of the San Francisco legal community. On the contrary, the program was funded at the express displeasure and strong opposition of the local bar (Wright, 1967: 579-592); the key issue in the original dispute was the role of representatives of the poor in program control. On two occasions the California State Bar Association explicitly refused to en-

dorse SFNLAF because the program's by-laws do not require a majority of lawyers on the governing board. In addition to strong, imaginative leadership, again a factor the significance of which cannot be denied, a distinguishing feature of the program has been its independence from the local legal establishment. Program staff attorneys are financially and professionally independent of the traditional leadership of the San Francisco Bar Association and the legal community which it represents. In addition, San Francisco is a large, cosmopolitan community with a highly heterogeneous legal fraternity. This has provided SFNLAF with a much wider choice of legal groups from which to garner support than is available in a small, homogeneous community. The program has not needed to rely upon, nor has it been adversely affected by, the *status quo* elements within San Francisco because there are so many other sources of support upon which to draw.[27]

This last remark suggests a second factor which may be essential in the successful operation of an aggressive legal services program. This factor is the program's constituency. No program, whether in San Francisco or Landerman County, can function successfully in the absence of strong backing from some groups within its target areas; a program must have a local constituency to survive politically. It must have a source of funds, or means of raising funds and in-kind contributions, to meet its nonfederal share (now 20 percent). But more importantly, a successful program requires the *vocal* support of elements within the community when its inevitably unpopular activities become the targets of political attack. Very early in the game CRLA realized this, but instead of relying on the California State Bar Association — a questionable source of support at best in view of the *modus operandi* of CRLA — it actively and successfully solicited the support of labor unions, liberal political leaders, and sympathetic bar groups throughout the state. The result was a coalition of individuals and groups which could usually be relied upon to support the program when needed, and such support has been utilized frequently by CRLA in letter-writing campaigns and other political tactics to save the program from extinction or emasculation.

The point to be emphasized is that when the program (CRLA) was established, a serious commitment to reform-oriented goals was made, then support was solicited *both by word and by deed* from those elements in the community

which agreed with the program's philosophy. The same pattern has been evident in the creation and maintenance of SFNLAF as an aggressive program. In both programs, the wide range of possible constituencies has made this approach feasible. As we have indicated, however, this pattern seems atypical. Thus, in Landerman County, for example, the program was established and now functions on the basis of a constituency which at best is lukewarm to the broad goals of the program, and at worst contains elements which will completely destroy the program. In such a situation, continued support must be *purchased,* and usually at a very high price. The result is usually a program which was never committed to fundamental social and political change because this goal was sacrificed when the program was established. It is probably inaccurate to say that many legal services programs are evolving into traditional legal aid operations. Rather, if the above evidence is at all indicative of the national pattern, non-reform-oriented programs have always been that way, partially because they were created by and function under the auspices of community interests indifferent if not hostile to the interests of the poor.

So long as the private attorney plays his customary politico-legal role in the community, he stands as an ominous barrier to the use of the legal system for widespread societal change. His monopoly as gatekeeper to the courts is well entrenched in custom and heavily armored by his canons of professional ethics which have the force of law and the support of the political system. He shows little or no willingness to share this power with mere laymen, on whose behalf, it is said, law exists. The unavoidable conclusion is that we have come full circle: for a solution one is forced back to the political system from which this unique experiment in legal reform originally sprang.

FOOTNOTES

[1] This point is made in a useful essay by Wells (1970: 149-160). For a rather different, normatively oriented perspective, *cf.* Nonet and Carlin (1968: 66-72).

[2] In addition to Jacob and Vines (1963), two other items which have influenced the authors in conceptualizing the attorney's role are Kolonoski and Mendelsohn (1970: Ch. 1) and Cahn and Cahn (1964: 1317-1362).

[3] This point is more fully developed in Stumpf (1970: 1-4). Perhaps the best overview of the program, its structure, aims, and activities, is Harvard Law Review (1967: 805-850). See also Pye (1966: 211-249); Stumpf (1968: 701-707); and Carlin, *et. al.* (1966: 67-68).

[4] Carlin, *et al.* (1966: 67). Carlin argues that at this point we need good historians to record accurately the salient aspects of program evolu-

tion. Interview with Jerome E. Carlin in San Francisco, February 28, 1968; also *cf.* Hannon (1969).

[5] The study (OEO Contract No. 4096) took place over a period of 15 months (June, 1967-September, 1968) and attempted to assess the comparative community impact (defined as interaction) of five local programs in northern California in the areas of (1) consumer credit, (2) the administration of categorical aid programs of county welfare departments, (3) local bar associations, and (4) local courts. The target programs were the San Francisco Neighborhood Legal Assistance Foundation, the Alameda County Legal Aid Society (Oakland), the regional office in Salinas of the statewide California Rural Legal Assistance Program, the San Mateo County Legal Aid Society, and the Washington Township Legal Assistance Center, a small Judicare Program in Fremont in south Alameda County. The research findings appear in 1 & 2 Study of OEO Legal Services Programs, Bay Area, California, Sept. 15, 1968 [hereinafter cited as OEO Study]. These two mimeographed volumes, comprising 352 pages plus endnotes, appendices, and bibliography, are now in the offices of the OEO Legal Services Program in Washington, D.C.

[6] The names of all persons and places as well as most documentary source titles are fictional in order to protect the promised anonymity of respondents. The authors are aware that less than full documentation violates accepted canons of scholarship, but the alternative is no research report at all.

[7] Dill (1966: 13-14). This attitude toward divorce is evidently quite common among private attorneys. More broadly, those opposed to federally-financed legal aid often object to the potential for economic equality it provides the poor. Seldom has this point been more badly stated than in the recent pronouncement by Mr. Lewis Uhler, head of OEO programs in California. In defending Governor Reagan's veto of the California Rural Legal Assistance Program, Uhler said, "What we've created in CRLA is an economic leverage equal to that of large corporations. Clearly that should not be." See Barnes (1971: 16).

[8] Program goals are set out in *Evaluation Manual: Legal Services Programs, Section 205 Grants* (1967).

[9] Dill (1966: 23). At a December 9 study committee meeting, Mr. Allen told his colleagues:

> Somebody once said that the only difference between a profession and conspiracy against the public is that a profession is willing to make some sacrifices. Now I know as well as you do that this program may cost some of you some money. There are some lawyers in this county who make money handling cases for poor people and we all know that the poor can sometimes cough up enough money to get a lawyer. . . . But in this case, our concerns should be with idealism and altruism. The medical profession has made its services more widely available to the poor, maybe somewhat against its own wishes, but in the process it has improved its public image. Through this public relations gimmick, we can build our own image and in the long run people will begin to think of going to a lawyer in the same way they now do to a doctor.

[10] Prior to approval, however, members of the EOC evinced their displeasure and distrust of the whole plan inasmuch as it had been conceived by the bar and for the bar. The initial reaction of the four attorneys who submitted the proposal was shock and astonishment that they — lawyers — would be criticized for conceiving so fine a proposal for the poor.

[11] Letter from (name withheld) to Commissioner French, January 12, 1966.

[12] Letter "To: Members of the Landerman County Bar Association," February 7, 1966.

[13] One indication of bar support was the response to a question put to the bar members during the April plebiscite. When asked how many attorneys would contribute time and money to a "county-wide legal aid program utilizing local contributions and volunteer services of attorneys," (admittedly not the same as asking for support of a federally-funded program), 74 attorneys volunteered 4,619 hours per year, 59 volunteered to work in a legal aid office, and 45 would contribute a total of $4,485 annually. See Landerman County Bar Association (1966).

[14] Minutes of Board of Directors Meeting, Landerman County Legal Aid Society, October 18, 1967.

[15] Minutes of Board Meeting, December 20, 1967.

[16] Letter from Mr. Alan Goldstein to one of the authors, March 16, 1968.

[17] "OEO Committee Report," Eldorado, March 28, 1968.

[18] Interview with Mr. R. K. Letherer, Albuquerque, New Mexico, July 20, 1970. Later, Mr. Letherer described the local bar opposition in Saginaw via a thirty-minute tape, recorded on October 12, 1970, which he sent to one of the authors.

[19] Opposition in Albuquerque has also taken the forms of: (1) attempting to dismiss the program director because he commented favorably on a circular mildly critical of the local police, (2) filing a formal petition to physically oust the program from the county courthouse, and, to mention but one more among many, (3) brought charges of unprofessional conduct against the director for marching in a picket line. One battle in this internecine warfare in Albuquerque is described in Dewey (1970: 227-235).

[20] See Stumpf and Janowitz (1969: 1058-1076). The argument pursued here is taken directly from that piece.

[21] Ralph Nader (1969), where this point is elaborated. See also Schubert (1968: 409) and Savoy (1970: 444-505).

[22] For but one such plea, see *Report of the American Assembly on Law and the Changing Society* (1968).

[23] This point was made more fully in Stumpf and Janowitz (1969).

[24] This hypothesis is more fully discussed in Stumpf (1968: 715-716).

[25] Wells (1970: 158). Quotation from original dittoed paper.

[26] However, one present threat no program can escape is gubernatorial veto. Hence, on December 26, 1970, Governor Reagan vetoed the 1.8 million dollar annual CRLA appropriation, and at this point OEO in Washington is deciding whether to override that veto. See Barnes (1971).

[27] Since the basic research for this paper was completed, SFNLAF has gone through significant change. Whether these generalizations regarding the program are still valid may be best judged by the reader. See Carlin (1970: 64-74).

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