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# Some Thoughts on the Extension of More Effective Legal Services to a Greater Number of the Poor\*

By THOMAS H. ROTHWELL\*\*

THE Economic Opportunity Act of 1964<sup>1</sup> declares it to be a policy of the United States to eliminate the paradox of poverty in the midst of plenty in this nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity. It is the purpose of the Act to strengthen, supplement and coordinate efforts in furtherance of that policy.<sup>2</sup> To accomplish this purpose, a part of the Act provides stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs.<sup>3</sup> It should require no citation of authority to show that persons suffering from poverty have legal problems. Indeed, poverty may be the result of legal problems for some. Legal problems often contribute in varying degrees to continuance of poverty once that unhappy state is reached and they may keep the sufferer who has known no other state in a destitute condition.<sup>4</sup>

Observation suggests that many poor persons are unaware of their rights and duties or that they have legal problems. Many lack the initiative or motivation to seek solutions to legal problems. Many are unaware that advice, counsel, and representation are available without payment of a fee. Many drop out at some stage in the process of obtaining solutions to legal problems. A greater proportion of the poverty group than of other groups suffers from these difficulties, some or all of which may combine in a variety of mixtures. Whatever the mixture of difficulties in a particular poor person's case, they contribute to his remaining poor and to the attendant costs of poverty to society

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\* The thoughts expressed in this article are applicable to San Francisco, other large urban areas in California and, in varying degrees, to large urban areas outside of California.

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<sup>1</sup> 78 Stat. 508 (1964), 42 U.S.C. §§ 2701-2981 (1964).

<sup>2</sup> 78 Stat. 508 (1964), 42 U.S.C. § 2701 (1964).

<sup>3</sup> 78 Stat. 516 (1964), 42 U.S.C. § 2781 (1964).

<sup>4</sup> See generally BROWNELL, *LEGAL AID IN THE UNITED STATES* (1951).

Because of the interrelation of legal problems and poverty, funding of legal service programs as part of local community action programs<sup>5</sup> is encouraged by the Office of Economic Opportunity established under the Act.<sup>6</sup>

Entrance of the federal government into the field of financing legal aid activities has provided an unparalleled opportunity for the improvement of legal services available to the poor. As a consequence, much mental marshalling of observations of difficulties of the legal community in extending adequate legal services to the poor and of ideas for practical solutions to difficulties has taken place. Some have recorded their results in articles.<sup>7</sup> The following are the results of the author's own processes recorded in the city of Saint Francis which, in extending legal services to the poor under the Economic Opportunity Act, will be building on a history of leadership.<sup>8</sup>

### Community Preventive Law

If we expect to help solve the legal problems of the poor, then it follows we must first get the poor to recognize that they have legal problems. We must then motivate them to visit the Legal Services Agency from which legal assistance will be extended. To do these things, a preventive law campaign should be organized and operated throughout the community area to be served with special attention given to areas of concentration or centroids of poverty. Such a program should have both an information campaign and an education campaign among the poor and agencies which serve the poor. The information campaign should make known the availability of legal services without payment of a fee and the education campaign should inform potential clients of common legal problems and the advisability of early consultation with an attorney. Members of the staff of the Legal Services Agency may be used for these purposes. If so, they may have to take time away from representing the poor. A thorough campaign will no doubt require more manpower than is available at the Legal Services Agency; consequently, mobilization of private attorneys to

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<sup>5</sup> Hereafter, local C.A.P. In San Francisco, the local C.A.P. is the Economic Opportunity Council of San Francisco.

<sup>6</sup> 78 Stat. 528 (1964), 42 U.S.C. § 2941 (1964).

<sup>7</sup> See, for example, Frankel, *Experiments in Serving the Indigent*, 51 A.B.A.J. 460 (1965); Westwood, *Legal Aid's Economic Opportunity*, 52 A.B.A.J. 127 (1966).

<sup>8</sup> The Legal Aid Society of San Francisco was organized by members of the San Francisco bar in 1916. Presently it does civil and federal criminal defense casework. The Public Defender's office was organized as an elective office in 1921. It presently does state criminal defense casework.

speak wherever the poor congregate, such as before church groups, affairs conducted by agencies serving the poor, and block clubs, will be required.

### Intake Systems

The question of who shall be eligible for services and the question of what services will be made available are at the core of any legal program serving the poor. Financial eligibility may be determined by adoption of an income-and-asset level below which all applicants will be eligible. Advantages of this method are that the ground rules are plain enough to be applied by a skilled receptionist without consulting the law staff and eligibility may easily be determined by social agencies in the areas to be served prior to referral to the Legal Services Agency. Exceptions concerning types of cases not handled are easily grafted onto the adopted standards. If intake policy is common to many agencies, or varies only slightly from that of other agencies, a team-approach spirit and sense of accomplishment may well be engendered among participating receptionists and even professional staffs.

There are inherent disadvantages in a skilled receptionist's being in charge of intake no matter what the eligibility standards. There will be persons whose cases cry out for relief who do not fit this kind of facile intake system. Permitted income must be set very high to avoid rejection of many such cases. Doing so might cause the Legal Services Agency to handle a number of cases which could be handled by attorneys in private practice without financial burden to the clients. Moreover, for most cases in a busy office, the receptionist may become the sole arbiter of who has a legal problem and whether or not a case is of the type the law staff accepts.

Eligibility may be determined by application of a body of rules to each applicant which takes into account the kind of case, the immediacy of need for legal services, ability to pay at the time when legal services will be most beneficial, an income and asset standard,<sup>9</sup> liabilities, size of family and degree of dependency, availability of other services, and other criteria such as social need. Advantages of this system are the avoidance of duplication of services offered by other agencies and elimination of competition with attorneys in private practice. However, the body of rules system is difficult for a receptionist to apply with fairness and uniformity. It is nearly impossible of application by social service agencies which commonly refer applicants

<sup>9</sup> The local C.A.P. reports income standards of \$3,000 per single person, \$4,000 per couple plus \$600 per dependent.

to the Legal Services Agency. These shortcomings give rise to confusion and a continuing need for explanation. Even if a staff attorney is utilized to improve fairness and uniformity in determining eligibility in the Legal Services Agency, the rejected applicant may not find his way to the solution of his legal and other problems.

Eligibility standards vary from community to community. Each makes use of some combination of income and asset standard or more extensive body of rules. All have some restriction on types of cases handled. Some use skilled receptionists only; others supplement the receptionist with a staff attorney. All are oriented to fit to a greater or lesser extent into the neat or not so neat compartments of the local legal community with the fit determined by the amount of money available for services. Orientation is not from the point of view of an applicant with a legal problem but from the point of view of a link in the chain of the legal community.

Poor persons seeking legal services may be timid, fearful, lacking in initiative, easily discouraged, have a language problem, be other than normal mentally or physically, etc. Some are aggressive and will seek out assistance even if the organization rendering it is located in a cellar without street level or other identification. These constitute a minority in the groups to be served. Many drop out of the process of participation in the solution of their legal problems before application for legal aid. Others drop out after being found ineligible by a receptionist or during referral to another agency or to an attorney in private practice or after application but before consultation with a staff attorney. *What is needed is an intake system which at once, or nearly so, permits diagnosis of legal problems, immediate practice of preventive law, and mobilization of existing legal resources in the community and elsewhere.* Such a system should realistically separate applicants whose legal problems will be handled by attorneys in private practice from those whose problems will be handled by the staff of another agency and from those whose legal problems will be handled by the staff of the Legal Services Agency. A full complement of legal services not available elsewhere in the community should be provided by the Legal Services Agency.

### Diagnosis and Agency Preventive Law

If we can assume that applicants visit Legal Services Agency waiting rooms because they have or think they have legal problems, then the number of instances where diagnosis of legal ills and the application of preventive law thereto can be realized will be increased by abolish-

ing financial eligibility standards entirely for the first interview and arranging such an interview with a staff attorney immediately after an applicant's initial contact with the Legal Services Agency

Maximum diagnostic and preventive law practice at the Legal Services Agency will not take place unless a staff of sufficient size is available so that ease of consultation with staff attorneys is possible at all times. A long delay in the waiting room encourages dropping out. Information gathering for record purposes by receptionists should be kept short enough to encourage completion of the process. Consultation with an available staff attorney should not require too long a wait after interview by the receptionist. Making future appointments for first consultation results in a very high drop-out rate. Once an applicant has contacted the Legal Services Agency, he should as soon as possible have at least a first consultation with a staff attorney for diagnostic, preventive law, and mobilization of legal resource purposes.

A major advantage of this system of intake is that emphasis is on the giving of immediate legal services rather than upon a finding of eligibility prior to providing any legal services at all. It is much more nearly aligned with the likely point of view of an applicant with a legal problem than other systems. When such a system is in operation, it is not necessary for prospective applicants or social agencies in the areas to be served to know or understand the eligibility policy of the Legal Services Agency. Social agencies merely inform their clients that orientation, legal diagnosis, advice and counsel are available at the Legal Services Agency and that if further legal services are required, they will be performed either by the law staff of the agency, by the law staff of another organization or by an attorney in private practice, depending on the nature of the problem. The same kind of information concerning legal aid may be disseminated as part of the community preventive law information and education campaign.

No major urban legal services organization doing civil casework in California has enjoyed a ratio between professional staff and caseload<sup>10</sup> or between clerical staff and caseload<sup>11</sup> which would have per-

<sup>10</sup> In Los Angeles 1,814 cases were disposed of per full-time staff attorney; in Oakland 1,572; in San Diego 2,171; in San Francisco 1,710. Computed from figures in NATIONAL LEGAL AID & DEFENDER ASSOCIATION (hereafter, N.L.A.D.A.), *Classification of Civil Legal Aid Cases*, for the year ended December 31, 1964.

<sup>11</sup> In Los Angeles 2,902 cases were disposed of per full-time clerical staff member; in Oakland 4,717; in San Diego 723; in San Francisco 2,280. Volunteer clerical staff was utilized to augment full-time staff to some degree in each cited office. Computed from figures in *Classification of Civil Legal Aid Cases*, N.L.A.D.A., for the year ended December 31, 1964.

mitted operation at such levels prior to the availability of Office of Economic Opportunity funding. Augmentation of staff and facilities to permit such an intake system<sup>12</sup> is required whatever the source of funding.

### Mobilization of Existing Legal Resources

The best way to insure that a maximum of legal services is available to the poor in the areas to be served is to mobilize existing legal services in their behalf as much as possible. Doing so preserves the resources of the Legal Services Agency for application to the cases of poor persons the legal community could not otherwise adequately serve. Emphasis should be on dovetailing services, not upon duplicating or supplanting the functions of existing agencies, whether supported by public, mixed, or private funds. Duplication is costly because it ties up resources which could better be utilized to provide services not available through another agency

For example, suppose an applicant has been charged with an offense made punishable by state law, has been released on his own recognizance and cannot afford to pay attorneys' fees within locally adopted eligibility standards. In San Francisco, the Public Defender's office provides representation in felony, misdemeanor, juvenile, and commitment cases. Obviously, the Public Defender's office should be mobilized to handle the applicant's case in lieu of furnishing the applicant legal aid through the staff of the Legal Services Agency

Another example is an applicant who has a child support collection problem. In San Francisco a division within the Adult Probation Department assists, with the aid of the District Attorney, in collection of support ordered paid in civil divorce actions.<sup>13</sup> Further, the District Attorney's office assists in nonsupport cases by enforcing the provisions of the Penal Code.<sup>14</sup> These services should be mobilized on behalf of

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<sup>12</sup> "If the agency's caseload is 400 or more matters per year, at least one full-time lawyer is needed. If the agency's caseload is less than 400 matters per year, it should have a part-time lawyer or a panel of volunteer lawyers available to serve the clients. The caseload of a full-time lawyer should not exceed 900 matters per year. Proper allowance should be made for performance of administrative work and relationships with other agencies, particularly for the senior lawyer in the office." Taken from *Standards and Practices for Civil Legal Aid* adopted by N.L.A.D.A., November, 1965 and the House of Delegates of the A.B.A., February, 1966.

<sup>13</sup> See CAL. CIV. CODE § 139.5. (Payment to county officer for support of children in divorce action: appearance by district attorney on behalf of children: expenses county charge.)

<sup>14</sup> See CAL. PEN. CODE § 270f (district attorney's investigation of non-support on mother's report); and § 270g (same: periodic review of report).

such an applicant in the same manner as the Public Defender's office should be mobilized on behalf of the applicant with the state criminal defense problem.

Mobilization of the American Civil Liberties Union, the Division of Labor Law Enforcement, and other organizations may take place on the same basis. Reciprocity must be provided. The Legal Services Agency should make every effort to mobilize legal resources in a foreign jurisdiction whenever the legal problems of locally eligible persons can be solved there. Utilizing the mobilization technique, it should handle the legal problems of persons found eligible in foreign jurisdictions whose legal problems can be solved locally. If an applicant requires non-legal services, such as social casework, an agency doing social casework should be mobilized. In the alternative, the applicant could be referred to an agency which itself mobilizes social services in the community.<sup>15</sup>

### Realistic Separation of Cases Which Generate Fees

When an applicant's case generates an attorney's fee because he can pay within the meaning of locally adopted intake standards or because of a statutory fee, a fee payable out of a recovery, or a contingent fee, it becomes desirable to mobilize the services of an attorney in private practice to handle his case.<sup>16</sup> In determining who can afford to pay an attorney's fee, there is a great deal to be said for adoption of the same income standard as that adopted by the local C.A.P.<sup>17</sup>

After participating in his own orientation, diagnosis of his legal problem, and application of emergency preventive law thereto, the applicant with a fee-generating case should not be left to depend solely on his own initiative. Poor persons repeatedly drop out in the referral phase of solving their legal problems. The drop-out rate is not likely to be reduced unless lawyer reference facilities and staffs are augmented and provided with records which will assist in making immediate referrals. If a specialist is required the referral service should mobilize him. Prior to leaving the Legal Services Agency the applicant should have an appointment with an attorney in private practice willing to handle his case.<sup>18</sup>

<sup>15</sup> Such as the local C.A.P. or the intake and referral service of the local United Community Fund or Community Chest.

<sup>16</sup> Hopefully the applicant's own attorney, if he has one, or an available attorney under a permissible group legal services plan. See generally *Group Legal Services*, 39 J.S.B. CAL. 639 (1964).

<sup>17</sup> See note 9 *supra*.

<sup>18</sup> The Legal Services Agency ought to follow a similar technique when it refers

A lawyer reference service may be operated only by a recognized bar association.<sup>19</sup> Formation of new bar associations for the sole purpose of operating such services should be discouraged. Many referral panels serving the same area complicate the mobilization of private attorneys by making the process more time-consuming for the staff of the Legal Services Agency. It may be hard put to refer a fair share of cases which generate fees to each service, especially when the size of the supervising bar association and panel membership vary greatly.<sup>20</sup> If too many exist, a choice will have to be made.

Implementation of the entire body of rules already mentioned should have no adverse effect when applied only to further services after the first consultation if a means of deciding who shall handle the inevitable borderline cases is provided.<sup>21</sup> This may be done by requiring that a fixed number of attorneys, obtained by an augmented lawyer reference service, refuse to accept a fee-generating case before the Legal Services Agency can accept the case and by giving the Chief Counsel the power to waive intake policy in the interest of justice.

### Augmentation of Legal Services

If needed legal services will not be furnished by the staff of another organization or by an attorney in private practice then the Legal Services Agency should have sufficient staff and facilities so that its staff can perform them. Major urban legal service organizations doing civil casework in California have not had the facilities and staff to do a complete job prior to the entrance of the federal government into the field of financing these activities.<sup>22</sup>

#### Augmentation of the staff and facilities of the Legal Services

an applicant whose case does not generate a fee to another legal agency as part of the process of mobilizing existing legal resources.

<sup>19</sup> *Proposed Minimum Standards for a Lawyer Reference Service in California*, 31 J.S.B. CAL. 49 (1956), adopted by the Board of Governors, March, 1956.

In January, 1957, the Board of Governors adopted the following resolution:

"RESOLVED that the Minimum Standards For a Lawyer Reference Service heretofore approved and established by the Board shall include a statement that it is the policy of the Board that operation of a lawyer referral service in conformance with the said standards and participation in such a service so operated is not deemed to be solicitation within the meaning of Rule 2, Rules of Professional Conduct, but such policy shall not be applicable to a lawyer referral service or participation therein if the said service is not operated in conformance with said standards." 32 J.S.B. CAL. 171.

<sup>20</sup> The Bar Association of San Francisco reports about 3,300 members and The Lawyers' Club of San Francisco about 2,600, making them respectively the second and third largest bar local associations in California. The local chapter of the National Lawyers' Guild has about fifty San Francisco members.

<sup>21</sup> See p. 687 *supra*.

<sup>22</sup> See notes 10-11 *supra*.

Agency to permit it to offer a full complement of legal services is essential. Representation should be provided from orientation, diagnosis, advice and counsel through investigation, trial, and appeal as may be necessary according to the highest standards of the legal profession.<sup>23</sup>

Augmentation to permit decentralized operation from branch offices in centroids of poverty is highly desirable. Easily located and identified store-front offices encourage the fearful, the lacking in initiative, the disabled and others, whatever the mixture of difficulties, to enter and participate in the solution of their legal problems. Staff with suitable language abilities and ethnic background should be provided.

There is an inevitable ebb and flow of casework at a Legal Services Agency. A panel of volunteer lawyers should be available to augment the full-time staff of the agency when needed. Panel members should also serve in conflict of interest cases. In the ordinary course of business, staff attorneys will be regularly in contact with augmented lawyer reference services for the purpose of mobilizing private attorneys to handle fee-generating cases. It would be convenient and efficient if the same lawyer reference services were used to obtain lawyers to augment full-time staff to serve in conflict of interest cases and to participate in the education campaign conducted as part of the community preventive law campaign. To cope with these added responsibilities, the referral agencies may need further augmentation of staffs and facilities.

An example of the improvement that can take place when an established legal services organization is augmented to do a particular job occurred in San Francisco recently. The Bar Association of San Francisco and The Legal Aid Society of San Francisco made a successful joint application to the National Legal Aid and Defender Association for funds to conduct a defender demonstration project in the United States District Court for the Northern District of California, Southern Division. Under the terms of the grant, the Society augmented its full-time staff and facilities and utilized as guidelines for the conduct of the project the *Standards for Defender Services*.<sup>24</sup> The District Court

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<sup>23</sup> See *Standards and Practices for Civil Legal Aid*, adopted by N.L.A.D.A., November, 1965 and the House of Delegates of the A.B.A., February, 1955; CAL. BUS. & PROF. CODE § 6068.

<sup>24</sup> See *Standards for Defender Services*, 85 A.B.A. REP. 132 (1960), adopted by N.L.A.D.A. October, 1959 and the House of Delegates of A.B.A. February, 1960: "The Defender system of every state should:

1. Provide counsel for every indigent person unable to employ counsel who faces the possibility of the deprivation of his liberty or other serious criminal sanction;
2. Afford representation which is experienced, competent, and zealous;
3. Provide the investigatory and other facilities necessary for a complete defense;

adopted a plan pursuant to the Criminal Justice Act of 1964<sup>25</sup> under which Society staff is appointed to the cases of indigent defendants charged with federal crimes. Volunteer attorneys are appointed from a panel to supplement the Society's staff when its capacity is reached. Panel members are also appointed in conflict of interest cases.

During the two federal fiscal years that ended June 30, 1961, statistics had been collected and tabulated as part of the work of the Attorney General's Committee on Poverty and the Administration of Criminal Justice in the Northern District of California at San Francisco. These are contained in the report of the Committee dated February 25, 1963. The demonstration project officially commenced operations on March 1, 1965. Comparison is made in a footnote between results obtained by Legal Aid Society staff for the period ended December 31, 1965 and results tabulated in the study<sup>26</sup> Whatever may

4. Come into operation at a sufficiently early stage of the proceedings so as to fully advise and protect the defendant;

5. Assure undivided loyalty of defense counsel to the client;

6. Include the taking of appeals and the prosecuting of other remedies, before or after conviction, considered by the defending counsel to be in the interest of justice;

7. Maintain in each county in which the volume of criminal cases requiring assignment of counsel is such as to justify the employment of at least one full-time lawyer to handle the work effectively, a Defender office, either as a public office or as a quasi-public or private organization;

8. Enlist community participation and responsibility and encourage the continuing co-operation of the organized bar.<sup>27</sup>

<sup>25</sup> 18 U.S.C. § 3006A (1964).

<sup>26</sup>

	Retained Counsel	%	Assigned Counsel	%	Legal Aid Counsel	%
<b>Bail disposition:</b>						
Made	212	42	71	12	14	7
Not made	98	19	279	49	88	41
Other	201	39	224	39	111	52
<b>Initial plea:</b>						
Not guilty	215	42	116	20	25	12
Guilty or nolo	274	54	435	76	168	79
Other	22	4	23	4	20	9
<b>Mode of Trial:</b>						
Jury	65	13	36	6	7	3
Court	25	5	23	4	10	5
None	421	82	515	90	196	92
<b>Outcome:</b>						
Dismissal	86	17	52	9	23	11
Acquittal	11	2	8	1	6	3
Guilty-Plea	349	68	467	81	173	81
Guilty-Adjudication	64	13	44	8	11	5
Other	1	—	1	1	—	—

be said concerning the proper inferences to be drawn from these statistics, they do furnish a basis for demonstrating change. The Attorney General's study shows that 71 per cent of the defendants represented by retained counsel were not imprisoned whereas only 57 per cent of those represented by assigned counsel were not imprisoned. So far, when Legal Aid Society staff members have been appointed, 71 per cent of the defendants represented have not been imprisoned. The acquittal rate in federal courts is low. According to the study, retained counsel obtained about 2 per cent acquittals and assigned counsel about 1 per cent. So far, full-time staff of the Legal Aid Society has obtained about 3 per cent acquittals.

### Continuing Evaluation and Change

A legal services program is not fully developed unless machinery is provided to continually evaluate the performance of not only the Legal Services Agency but the entire legal community in meeting the needs of the poor. When such machinery is provided and working properly, the results of evaluation are continually disseminated to sources capable of bringing out demonstrably needed change.

An important aspect of evaluation of the Legal Services Agency is that it gives a means to compare the results of the augmented program with the former program and programs in operation elsewhere. Recording and tabulation of uniform statistics for use in the comparative statistics compiled by the Standing Committee on Legal Aid Work of The American Bar Association furnishes this means. The design of local evaluation systems which do not include the comparative statistics ought to be discouraged. Adding useful and realistic material not designed to be self-serving should be encouraged.

As an aid in evaluating the performance of the legal community and bringing about needed change, liaison between organizations should be established at the policy level and at the staff level. Difficulties will inevitably crop up during the process of mobilizing existing

<sup>26</sup> (Con't)

	Retained Counsel	%	Assigned Counsel	%	Legal Aid Counsel	%
Correctional disposition:						
Imprisonment	149	29	244	43	62	29
Probation	175	34	254	44	116	55
Other	90	18	16	3	6	2
None	97	19	60	10	29	14
Appeal:						
Attempted	32	6	11	2	2	1
Not attempted	479	94	563	98	211	99

legal resources and of dovetailing legal aid furnished by the Legal Services Agency. We can expect these difficulties to become apparent at the staff level where evaluation of needed change can take place against a practical background. Liaison should bring about participation between staffs of other involved agencies in the evaluation process. Liaison at the policy level should also bring about a consensus of agencies in needed change.

Some of the problems which may be evaluated at the staff level and considered for action at the policy level may at first seem petty. When consideration is given to the fact that substantial numbers of persons are involved, what may seem petty becomes important. For example, assistance offered by the District Attorney's office in collecting support should certainly not be duplicated at the Legal Services Agency. However, that office files U.R.E.S.A.<sup>27</sup> complaints only on behalf of persons receiving welfare. Logically, the augmented Legal Services Agency staff should file similar complaints on behalf of persons who do not receive welfare (and whose cases do not generate a fee) unless the District Attorney changes his policy and accepts such cases. As another example, the Public Defender's office provides representation in state criminal cases by appointment of the courts concerned. In today's world, an attorney is often needed prior to appointment of counsel by a judge.<sup>28</sup> If it is not possible for the Public Defender to furnish this kind of representation, then the Legal Services Agency ought to dovetail its staff operation to do so.

The process of evaluation and change to fill need is one which may be expected to continue until capacity of staff obtained with augmented funds has been reached. At that point priorities will have to be established. These may be pending cases, the agency preventive law program, defense cases, and plaintiffs' cases, in that order, followed by the community preventive law program.

### Poverty and the Law

The interrelation of poverty and the law is not well known. A fundamental part of continuing evaluation should be studies of this relation. When preventive law is combined with techniques which tend to mobilize existing legal services, staff attorneys observe the legal community from a vantage point. Their observation of the cases of many poor persons can well serve as the starting point in any such

<sup>27</sup> Uniform Reciprocal Enforcement of Support Act (CAL. CODE CIV. PROC. §§ 1650-55).

<sup>28</sup> See *Escobedo v. Illinois*, 378 U.S. 478 (1964).

evaluation. With an acceptable ratio between staff and caseload brought about by augmentation, there should be time to write about observations for wide dissemination in the legal community and in the executive and legislative branches of government. When capacity of the augmented agency staff is approached, a suitable increment of effort should remain unmobilized on agency casework for use in this important work.

There are other ways of disseminating the results of evaluation to sources capable of bringing about change. One which has a lasting effect is to participate in the training of young lawyers and law students<sup>29</sup> as they will carry their experiences with them throughout their entire careers. An internship program could be established to give practical experience to recent graduates of law schools. Such a legal intern would serve in each Legal Services Agency branch as a junior member of the staff for one year following admission to practice law.<sup>30</sup>

The primary duty of any Legal Services Agency is, of course, legal aid to the poor. Care must be exercised when law students are involved in legal service programs to insure that professional standards are maintained. Under proper supervision, law students can collect and tabulate data to be used in studies, perform research duties related to studies and related to cases of poor persons, and act as investigators when a professional investigator is not deemed necessary. In performing these duties law students in effect augment the staff of the Legal Services Agency and should be paid by the Legal Services Agency. When a student is permitted to observe the staff at work in or out of court, no augmentation takes place. When staff time is utilized to train the student in interviewing, courtroom or other useful techniques, the staff of the Legal Services Agency in effect augments the staff of the law school in which the students are enrolled. The law school's primary duty is the teaching of law students and not legal aid to the poor. It is important to keep these distinctions in mind because students prefer the kind of training that takes substantial staff time rather than the kind which takes substantial student time. Where substantial, as distinguished from incidental, Legal Services Agency staff time is devoted to students, reimbursement of the value of these services should be made by the law school.

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<sup>29</sup> The University of California, Hastings College of the Law has a present capacity of eighty students per school year in its law student training program, the University of San Francisco School of Law, a capacity of forty students per year. The Legal Aid Society of San Francisco participates in both programs.

<sup>30</sup> See generally Anderson, *Gideon: A Challenging Opportunity for School & Bar*, 9 VILL. L. REV. 619 (1964).

## Participation by the Poor

Determination of what legal needs the poor feel is one aspect of continuing evaluation. Asking poor persons to participate and make their views known at the policy level in the planning and operation of legal service programs is the most direct method of making this determination. In fact the Act requires maximum feasible participation of residents of the areas and members of the groups to be served.<sup>31</sup>

This sort of participation is in reality not unlike a two-way street. Information and new understanding can flow back and forth between poor persons, members of the legal profession and others who may be serving at the policy level. The information and new understanding is certain to be disseminated in circles formerly unreached in either direction. That the walls of poverty may thereby be undermined in many cases is more than a possibility.

Maximum feasible participation by the poor must be equated with independence of the Legal Services Agency. A controlling number of poor persons or their representatives on the governing body of the Legal Services Agency could put staff attorneys in untenable positions. This is not to say that such a controlling number would do so. It is enough that they have power which could be exercised to do so.

The major source of revenue of a Legal Services Agency staff attorney is salary paid by the agency. Indeed, to insure undivided loyalty to the cases of poor persons, private practice should not be permitted. Thus, the Legal Services attorney is especially vulnerable. It cannot be expected that lawyers of the highest qualification will become members of the staff of an agency which is not independent.<sup>32</sup>

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<sup>31</sup> 78 Stat. 516 (1964), 42 U.S.C. § 2782 (1964).

<sup>32</sup> "1. Every legal aid organization (hereinafter referred to in these standards as "agency") should be an independent not-for-profit organization (preferably a corporation) for the purpose of furnishing legal assistance.

"2. The Agency should have a responsible, informed and active governing body selected from the community as a whole, a majority of which should be practicing lawyers. The governing body should meet at regular intervals, but at least quarterly. To the extent feasible and for the purpose of establishing community participation, representation of the areas covered and people served should be included on the agency's governing body or on a separate community advisory group." Taken from *Standards and Practices for Civil Legal Aid*, adopted by N.L.A.D.A., November, 1965, and the House of Delegates of the A.B.A., February, 1966.

Control is not a new problem where federal funding is concerned. "Industries such as the aerospace industry, and the principal government procuring agencies, will continue to contend vigorously with each other as to the specifics and the degree of government control, issues of risk-taking versus profit, and the like. But there exists now within government a widespread recognition of both the merits and the needs of industry's having the freedom and the incentive to do its proper job, and there is a

Another fundamental difficulty with an organization which is controlled by the poor is that such an agency tends to segregate the poor in their own sub-communities rather than encouraging participation in the affairs of the entire greater community. That the walls of poverty may thereby be built up rather than undermined is more than a possibility.

Today one hears the cry that the poor can have no faith in anything the poor do not control. Maximum feasible participation of the poor is *the* vehicle which can destroy such a notion.

### Conclusion

New money is available for the extension of more effective legal services to a greater number of the poor as part of the War on Poverty. In the author's view, maximum benefit from these funds will be realized if the entire legal community is mobilized in a practical and continuing manner as part of the intake process of an independent Legal Services Agency. That agency should furnish legal aid not furnished by private attorneys or other agencies in the community. As part of a preventive law program, it should abolish eligibility criteria for a first consultation with a staff attorney, but not for subsequent services. The author feels strongly that legal service organizations should be oriented as much as possible from the point of view of a person with a legal problem seeking a solution rather than from the point of view of ease in administration of community-sanctioned legal services.

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widespread recognition within industry of the need for government controls adequate to protect the public interest.

"The conclusion that inescapably emerges is that a major segment of American industry *can* function effectively in a close, large-scale working relationship of indefinite duration with the government and still remain independent and free standing. This is not limited to *big* industry. Industrial teams that are involved in aerospace programs run the gamut from the major prime contractors to the smallest suppliers of components." Taken from remarks before the Commonwealth Club of California by Karl G. Harr, Jr., President, Aerospace Industries Association, August 27, 1965.

